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1ST SESSION

H.R. 1758

IN THE SENATE OF THE UNITED STATES

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Received; read twice and referred to the Committee on the Judiciary

AN ACT

To revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V–X of title 49, United States Code, “Transportation”, and to make other technical improvements in the Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SUBTITLES II, III, AND V–X OF TITLE 49, UNITED STATES CODE

SECTION 1. (a) Certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted by subsections (c)–(e) of this section without substantive change as subtitles II, III, and V–X of title 49, United States Code, “Transportation”. Those laws may be cited as “49 U.S.C. -----”.

(b) Title 49, United States Code, is amended by striking the table of subtitles at the beginning of the title and substituting the following new table of subtitles:

“SUBTITLE	Sec.
“I. DEPARTMENT OF TRANSPORTATION	101
“II. OTHER GOVERNMENT AGENCIES	1101
“III. GENERAL AND INTERMODAL PROGRAMS	5101
“IV. INTERSTATE COMMERCE	10101
“V. RAIL PROGRAMS	20101
“VI. MOTOR VEHICLE AND DRIVER PROGRAMS	30101
“VII. AVIATION PROGRAMS	40101
“VIII. PIPELINES	60101
“IX. COMMERCIAL SPACE TRANSPORTATION	70101
“X. MISCELLANEOUS	80101”.

1 (c) Title 49, United States Code, is amended by striking subtitle II, ex-
 2 cept that chapter 31 (comprising sections 3101–3104) of subtitle II is re-
 3 designated and restated as chapter 315 (comprising sections 31501–31504)
 4 of subtitle VI of title 49, as enacted by subsection (e) of this section.

5 (d) Title 49, United States Code, is amended by adding the following im-
 6 mediately after subtitle I:

7 **SUBTITLE II—OTHER GOVERNMENT AGENCIES**

CHAPTER	Sec.
11. NATIONAL TRANSPORTATION SAFETY BOARD	1101

8 **CHAPTER 11—NATIONAL TRANSPORTATION SAFETY**
 9 **BOARD**

SUBCHAPTER I—GENERAL

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10 SUBCHAPTER I—GENERAL

11 **§ 1101. Definitions**

12 Section 40102(a) of this title applies to this chapter.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

§ 1111. General organization

(a) ORGANIZATION.—The National Transportation Safety Board is an independent establishment of the United States Government.

(b) APPOINTMENT OF MEMBERS.—The Board is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. Not more than 3 members may be appointed from the same political party. At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

(c) TERMS OF OFFICE AND REMOVAL.—The term of office of each member is 5 years. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(d) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate, by and with the advice and consent of the Senate, a Chairman of the Board. The President also shall designate a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2 years. When the Chairman is absent or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.

(e) DUTIES AND POWERS OF CHAIRMAN.—The Chairman is the chief executive and administrative officer of the Board. Subject to the general policies and decisions of the Board, the Chairman shall—

(1) appoint, supervise, and fix the pay of officers and employees necessary to carry out this chapter;

(2) distribute business among the officers, employees, and administrative units of the Board; and

(3) supervise the expenditures of the Board.

(f) QUORUM.—Three members of the Board are a quorum in carrying out duties and powers of the Board.

(g) OFFICES, BUREAUS, AND DIVISIONS.—The Board shall establish offices necessary to carry out this chapter, including an office to investigate and report on the safe transportation of hazardous material. The Board shall establish distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

(1) aviation.

1 (2) highway and motor vehicle.

2 (3) rail and tracked vehicle.

3 (4) pipeline.

4 (h) SEAL.—The Board shall have a seal that shall be judicially recog-
5 nized.

6 **§ 1112. Special boards of inquiry on air transportation safe-**
7 **ty**

8 (a) ESTABLISHMENT.—If an accident involves a substantial question
9 about public safety in air transportation, the National Transportation Safe-
10 ty Board may establish a special board of inquiry composed of—

11 (1) one member of the Board acting as chairman; and

12 (2) 2 members representing the public, appointed by the President
13 on notification of the establishment of the special board of inquiry.

14 (b) QUALIFICATIONS AND CONFLICTS OF INTEREST.—The public mem-
15 bers of a special board of inquiry must be qualified by training and experi-
16 ence to participate in the inquiry and may not have a pecuniary interest
17 in an aviation enterprise involved in the accident to be investigated.

18 (c) AUTHORITY.—A special board of inquiry has the same authority that
19 the Board has under this chapter.

20 **§ 1113. Administrative**

21 (a) GENERAL AUTHORITY.—(1) The National Transportation Safety
22 Board, and when authorized by it, a member of the Board, an administra-
23 tive law judge employed by or assigned to the Board, or an officer or em-
24 ployee designated by the Chairman of the Board, may conduct hearings to
25 carry out this chapter, administer oaths, and require, by subpoena or other-
26 wise, necessary witnesses and evidence.

27 (2) A witness or evidence in a hearing under paragraph (1) of this sub-
28 section may be summoned or required to be produced from any place in the
29 United States to the designated place of the hearing. A witness summoned
30 under this subsection is entitled to the same fee and mileage the witness
31 would have been paid in a court of the United States.

32 (3) A subpoena shall be issued under the signature of the Chairman or
33 the Chairman's delegate but may be served by any person designated by the
34 Chairman.

35 (4) If a person disobeys a subpoena, order, or inspection notice of the
36 Board, the Board may bring a civil action in a district court of the United
37 States to enforce the subpoena, order, or notice. An action under this para-
38 graph may be brought in the judicial district in which the person against
39 whom the action is brought resides, is found, or does business. The court
40 may punish a failure to obey an order of the court to comply with the sub-
41 pena, order, or notice as a contempt of court.

- 1 (b) ADDITIONAL POWERS.—(1) The Board may—
2 (A) procure the temporary or intermittent services of experts or con-
3 sultants under section 3109 of title 5;
4 (B) make agreements and other transactions necessary to carry out
5 this chapter without regard to section 3709 of the Revised Statutes (41
6 U.S.C. 5);
7 (C) use, when appropriate, available services, equipment, personnel,
8 and facilities of a department, agency, or instrumentality of the United
9 States Government on a reimbursable or other basis;
10 (D) confer with employees and use services, records, and facilities of
11 State and local governmental authorities;
12 (E) appoint advisory committees composed of qualified private citi-
13 zens and officials of the Government and State and local governments
14 as appropriate;
15 (F) accept voluntary and uncompensated services notwithstanding
16 another law;
17 (G) accept gifts of money and other property;
18 (H) make contracts with nonprofit entities to carry out studies relat-
19 ed to duties and powers of the Board; and
20 (I) require that the departments, agencies, and instrumentalities of
21 the Government, State and local governments, and governments of for-
22 eign countries provide appropriate consideration for the reasonable
23 costs of goods and services supplied by the Board.
24 (2) The Board shall deposit in the Treasury amounts received under
25 paragraph (1)(I) of this subsection to be credited to the appropriation of
26 the Board.
- 27 (c) SUBMISSION OF CERTAIN COPIES TO CONGRESS.—When the Board
28 submits to the President or the Director of the Office of Management and
29 Budget a budget estimate, budget request, supplemental budget estimate,
30 other budget information, a legislative recommendation, prepared testimony
31 for congressional hearings, or comments on legislation, the Board must sub-
32 mit a copy to Congress at the same time. An officer, department, agency,
33 or instrumentality of the Government may not require the Board to submit
34 the estimate, request, information, recommendation, testimony, or comments
35 to another officer, department, agency, or instrumentality of the Govern-
36 ment for approval, comment, or review before being submitted to Congress.
- 37 (d) LIAISON COMMITTEES.—The Chairman may determine the number of
38 committees that are appropriate to maintain effective liaison with other de-
39 partments, agencies, and instrumentalities of the Government, State and
40 local governmental authorities, and independent standard-setting authorities

1 that carry out programs and activities related to transportation safety. The
2 Board may designate representatives to serve on or assist those committees.

3 (e) INQUIRIES.—The Board, or an officer or employee of the Board des-
4 ignated by the Chairman, may conduct an inquiry to obtain information re-
5 lated to transportation safety after publishing notice of the inquiry in the
6 Federal Register. The Board or designated officer or employee may require
7 by order a department, agency, or instrumentality of the Government, a
8 State or local governmental authority, or a person transporting individuals
9 or property in commerce to submit to the Board a written report and an-
10 swers to requests and questions related to a duty or power of the Board.
11 The Board may prescribe the time within which the report and answers
12 must be given to the Board or to the designated officer or employee. Copies
13 of the report and answers shall be made available for public inspection.

14 (f) REGULATIONS.—The Board may prescribe regulations to carry out
15 this chapter.

16 **§ 1114. Disclosure, availability, and use of information**

17 (a) GENERAL.—Except as provided in subsections (b) and (c) of this sec-
18 tion, a copy of a record, information, or investigation submitted or received
19 by the National Transportation Safety Board, or a member or employee of
20 the Board, shall be made available to the public on identifiable request and
21 at reasonable cost. This subsection does not require the release of informa-
22 tion described by section 552(b) of title 5 or protected from disclosure by
23 another law of the United States.

24 (b) TRADE SECRETS.—(1) The Board may disclose information related
25 to a trade secret referred to in section 1905 of title 18 only—

26 (A) to another department, agency, or instrumentality of the United
27 States Government when requested for official use;

28 (B) to a committee of Congress having jurisdiction over the subject
29 matter to which the information is related, when requested by that
30 committee;

31 (C) in a judicial proceeding under a court order that preserves the
32 confidentiality of the information without impairing the proceeding; and

33 (D) to the public to protect health and safety after giving notice to
34 any interested person to whom the information is related and an oppor-
35 tunity for that person to comment in writing, or orally in closed ses-
36 sion, on the proposed disclosure, if the delay resulting from notice and
37 opportunity for comment would not be detrimental to health and safety.

38 (2) Information disclosed under paragraph (1) of this subsection may be
39 disclosed only in a way designed to preserve its confidentiality.

40 (c) COCKPIT VOICE RECORDINGS AND TRANSCRIPTS.—(1) The Board
41 may not disclose publicly any part of a cockpit voice recorder recording or

1 transcript of oral communications by and between flight crew members and
2 ground stations related to an accident or incident investigated by the Board.
3 However, the Board shall make public any part of a transcript the Board
4 decides is relevant to the accident or incident—

5 (A) if the Board holds a public hearing on the accident or incident,
6 at the time of the hearing; or

7 (B) if the Board does not hold a public hearing, at the time a major-
8 ity of the other factual reports on the accident or incident are placed
9 in the public docket.

10 (2) This subsection does not prevent the Board from referring at any
11 time to cockpit voice recorder information in making safety recommenda-
12 tions.

13 (d) DRUG TESTS.—(1) Notwithstanding section 503(e) of the Supple-
14 mental Appropriations Act, 1987 (Public Law 100–71, 101 Stat. 471), the
15 Secretary of Transportation shall provide the following information to the
16 Board when requested in writing by the Board:

17 (A) any report of a confirmed positive toxicological test, verified as
18 positive by a medical review officer, conducted on an officer or em-
19 ployee of the Department of Transportation under post-accident, un-
20 safe practice, or reasonable suspicion toxicological testing requirements
21 of the Department, when the officer or employee is reasonably associ-
22 ated with the circumstances of an accident or incident under the inves-
23 tigative jurisdiction of the Board.

24 (B) any laboratory record documenting that the test is confirmed
25 positive.

26 (2) Except as provided by paragraph (3) of this subsection, the Board
27 shall maintain the confidentiality of, and exempt from disclosure under sec-
28 tion 552(b)(3) of title 5—

29 (A) a laboratory record provided the Board under paragraph (1) of
30 this subsection that reveals medical use of a drug allowed under appli-
31 cable regulations; and

32 (B) medical information provided by the tested officer or employee
33 related to the test or a review of the test.

34 (3) The Board may use a laboratory record made available under para-
35 graph (1) of this subsection to develop an evidentiary record in an investiga-
36 tion of an accident or incident if—

37 (A) the fitness of the tested officer or employee is at issue in the
38 investigation; and

39 (B) the use of that record is necessary to develop the evidentiary
40 record.

§ 1115. Training

(a) DEFINITION.—In this section, “Institute” means the Transportation Safety Institute of the Department of Transportation and any successor organization of the Institute.

(b) USE OF INSTITUTE SERVICES.—The National Transportation Safety Board may use, on a reimbursable basis, the services of the Institute. The Secretary of Transportation shall make the Institute available to—

(1) the Board for safety training of employees of the Board in carrying out their duties and powers; and

(2) other safety personnel of the United States Government, State and local governments, governments of foreign countries, interstate authorities, and private organizations the Board designates in consultation with the Secretary.

(c) FEES.—(1) Training at the Institute for safety personnel (except employees of the Government) shall be provided at a reasonable fee established periodically by the Board in consultation with the Secretary. The fee shall be paid directly to the Secretary, and the Secretary shall deposit the fee in the Treasury. The amount of the fee—

(A) shall be credited to the appropriate appropriation (subject to the requirements of any annual appropriation); and

(B) is an offset against any annual reimbursement agreement between the Board and the Secretary to cover all reasonable costs of providing training under this subsection that the Secretary incurs in operating the Institute.

(2) The Board shall maintain an annual record of offsets under paragraph (1)(B) of this subsection.

§ 1116. Reports and studies

(a) PERIODIC REPORTS.—The National Transportation Safety Board shall report periodically to Congress, departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities concerned with transportation safety, and other interested persons. The report shall—

(1) advocate meaningful responses to reduce the likelihood of transportation accidents similar to those investigated by the Board; and

(2) propose corrective action to make the transportation of individuals as safe and free from risk of injury as possible, including action to minimize personal injuries that occur in transportation accidents.

(b) STUDIES, INVESTIGATIONS, AND OTHER REPORTS.—The Board also shall—

(1) carry out special studies and investigations about transportation safety, including avoiding personal injury;

1 (2) examine techniques and methods of accident investigation and
2 periodically publish recommended procedures for accident investiga-
3 tions;

4 (3) prescribe requirements for persons reporting accidents and avia-
5 tion incidents that—

6 (A) may be investigated by the Board under this chapter; or

7 (B) involve public aircraft (except aircraft of the armed forces
8 and the intelligence agencies);

9 (4) evaluate, examine the effectiveness of, and publish the findings
10 of the Board about the transportation safety consciousness of other de-
11 partments, agencies, and instrumentalities of the Government and their
12 effectiveness in preventing accidents; and

13 (5) evaluate the adequacy of safeguards and procedures for the
14 transportation of hazardous material and the performance of other de-
15 partments, agencies, and instrumentalities of the Government respon-
16 sible for the safe transportation of that material.

17 **§ 1117. Annual report**

18 The National Transportation Safety Board shall submit a report to Con-
19 gress on July 1 of each year. The report shall include—

20 (1) a statistical and analytical summary of the transportation acci-
21 dent investigations conducted and reviewed by the Board during the
22 prior calendar year;

23 (2) a survey and summary of the recommendations made by the
24 Board to reduce the likelihood of recurrence of those accidents together
25 with the observed response to each recommendation;

26 (3) a detailed appraisal of the accident investigation and accident
27 prevention activities of other departments, agencies, and instrumental-
28 ities of the United States Government and State and local govern-
29 mental authorities having responsibility for those activities under a law
30 of the United States or a State; and

31 (4) an evaluation conducted every 2 years of transportation safety
32 and recommendations for legislative and administrative action and
33 change.

34 **§ 1118. Authorization of appropriations**

35 (a) GENERAL.—Not more than \$38,800,000 may be appropriated to the
36 National Transportation Safety Board for the fiscal year ending September
37 30, 1993, to carry out this chapter.

38 (b) EMERGENCY FUND.—The Board has an emergency fund of
39 \$1,000,000 available for necessary expenses of the Board, not otherwise
40 provided for, for accident investigations. The following amounts may be ap-
41 propriated to the fund:

1 (1) \$1,000,000 to establish the fund.

2 (2) amounts equal to amounts expended annually out of the fund.

3 (c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this sec-
4 tion remain available until expended.

5 SUBCHAPTER III—AUTHORITY

6 **§ 1131. General authority**

7 (a) GENERAL.—(1) The National Transportation Safety Board shall in-
8 vestigate or have investigated (in detail the Board prescribes) and establish
9 the facts, circumstances, and cause or probable cause of—

10 (A) an aircraft accident the Board has authority to investigate under
11 section 1132 of this title;

12 (B) a highway accident, including a railroad grade crossing accident,
13 the Board selects in cooperation with a State;

14 (C) a railroad accident in which there is a fatality or substantial
15 property damage, or that involves a passenger train;

16 (D) a pipeline accident in which there is a fatality, substantial prop-
17 erty damage, or significant injury to the environment;

18 (E) a major marine casualty (except a casualty involving only public
19 vessels) occurring on the navigable waters or territorial sea of the Unit-
20 ed States, or involving a vessel of the United States, under regulations
21 prescribed jointly by the Board and the head of the department in
22 which the Coast Guard is operating; and

23 (F) any other accident related to the transportation of individuals or
24 property when the Board decides—

25 (i) the accident is catastrophic;

26 (ii) the accident involves problems of a recurring character; or

27 (iii) the investigation of the accident would carry out this chap-
28 ter.

29 (2) An investigation by the Board under paragraph (1)(A)–(D) or (F) of
30 this subsection has priority over any investigation by another department,
31 agency, or instrumentality of the United States Government. The Board
32 shall provide for appropriate participation by other departments, agencies,
33 or instrumentalities in the investigation. However, those departments, agen-
34 cies, or instrumentalities may not participate in the decision of the Board
35 about the probable cause of the accident.

36 (3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)–
37 (e) of this title do not affect the authority of another department, agency,
38 or instrumentality of the Government to investigate an accident under appli-
39 cable law or to obtain information directly from the parties involved in, and
40 witnesses to, the accident. The Board and other departments, agencies, and

1 instrumentalities shall ensure that appropriate information developed about
2 the accident is exchanged in a timely manner.

3 (b) ACCIDENTS INVOLVING PUBLIC VESSELS.—(1) The Board or the
4 head of the department in which the Coast Guard is operating shall inves-
5 tigate and establish the facts, circumstances, and cause or probable cause
6 of a marine accident involving a public vessel and any other vessel. The re-
7 sults of the investigation shall be made available to the public.

8 (2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this sec-
9 tion do not affect the responsibility, under another law of the United States,
10 of the head of the department in which the Coast Guard is operating.

11 (c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NON-
12 FEASANCE.—(1) When asked by the Board, the Secretary of Transportation
13 may—

14 (A) investigate an accident described under subsection (a) or (b) of
15 this section in which misfeasance or nonfeasance by the Government
16 has not been alleged; and

17 (B) report the facts and circumstances of the accident to the Board.

18 (2) The Board shall use the report in establishing cause or probable cause
19 of an accident described under subsection (a) or (b) of this section.

20 (d) ACCIDENT REPORTS.—The Board shall report on the facts and cir-
21 cumstances of each accident investigated by it under subsection (a) or (b)
22 of this section. The Board shall make each report available to the public
23 at reasonable cost.

24 **§ 1132. Civil aircraft accident investigations**

25 (a) GENERAL AUTHORITY.—(1) The National Transportation Safety
26 Board shall investigate—

27 (A) each accident involving civil aircraft; and

28 (B) with the participation of appropriate military authorities, each
29 accident involving both military and civil aircraft.

30 (2) A person employed under section 1113(b)(1) of this title that is con-
31 ducting an investigation or hearing about an aircraft accident has the same
32 authority to conduct the investigation or hearing as the Board.

33 (b) NOTIFICATION AND REPORTING.—The Board shall prescribe regula-
34 tions governing the notification and reporting of accidents involving civil air-
35 craft.

36 (c) PARTICIPATION OF SECRETARY.—The Board shall provide for the
37 participation of the Secretary of Transportation in the investigation of an
38 aircraft accident under this chapter when participation is necessary to carry
39 out the duties and powers of the Secretary. However, the Secretary may not
40 participate in establishing probable cause.

1 (d) ACCIDENTS INVOLVING ONLY MILITARY AIRCRAFT.—If an accident
 2 involves only military aircraft and a duty of the Secretary is or may be in-
 3 volved, the military authorities shall provide for the participation of the Sec-
 4 retary. In any other accident involving only military aircraft, the military
 5 authorities shall give the Board or Secretary information the military au-
 6 thorities decide would contribute to the promotion of air safety.

7 **§ 1133. Review of other agency action**

8 The National Transportation Safety Board shall review on appeal—

9 (1) the denial, amendment, modification, suspension, or revocation of
 10 a certificate issued by the Secretary of Transportation under section
 11 44703, 44709, or 44710 of this title;

12 (2) the revocation of a certificate of registration under section 44106
 13 of this title;

14 (3) a decision of the head of the department in which the Coast
 15 Guard is operating on an appeal from the decision of an administrative
 16 law judge denying, revoking, or suspending a license, certificate, docu-
 17 ment, or register in a proceeding under section 6101, 6301, or 7503,
 18 chapter 77, or section 9303 of title 46; and

19 (4) under section 46301(d)(5) of this title, an order imposing a pen-
 20 alty under section 46301.

21 **§ 1134. Inspections and autopsies**

22 (a) ENTRY AND INSPECTION.—An officer or employee of the National
 23 Transportation Safety Board—

24 (1) on display of appropriate credentials and written notice of inspec-
 25 tion authority, may enter property where a transportation accident has
 26 occurred or wreckage from the accident is located and do anything nec-
 27 essary to conduct an investigation; and

28 (2) during reasonable hours, may inspect any record, process, con-
 29 trol, or facility related to an accident investigation under this chapter.

30 (b) INSPECTION, TESTING, PRESERVATION, AND MOVING OF AIRCRAFT
 31 AND PARTS.—(1) In investigating an aircraft accident under this chapter,
 32 the Board may inspect and test, to the extent necessary, any civil aircraft,
 33 aircraft engine, propeller, appliance, or property on an aircraft involved in
 34 an accident in air commerce.

35 (2) Any civil aircraft, aircraft engine, propeller, appliance, or property on
 36 an aircraft involved in an accident in air commerce shall be preserved, and
 37 may be moved, only as provided by regulations of the Board.

38 (c) AVOIDING UNNECESSARY INTERFERENCE AND PRESERVING EVI-
 39 DENCE.—In carrying out subsection (a)(1) of this section, an officer or em-
 40 ployee may examine or test any vehicle, vessel, rolling stock, track, or pipe-
 41 line component. The examination or test shall be conducted in a way that—

1 (1) does not interfere unnecessarily with transportation services pro-
2 vided by the owner or operator of the vehicle, vessel, rolling stock,
3 track, or pipeline component; and

4 (2) to the maximum extent feasible, preserves evidence related to the
5 accident, consistent with the needs of the investigation and with the co-
6 operation of that owner or operator.

7 (d) EXCLUSIVE AUTHORITY OF BOARD.—Only the Board has the author-
8 ity to decide on the way in which testing under this section will be con-
9 ducted, including decisions on the person that will conduct the test, the type
10 of test that will be conducted, and any individual who will witness the test.
11 Those decisions are committed to the discretion of the Board. The Board
12 shall make any of those decisions based on the needs of the investigation
13 being conducted and, when applicable, subsections (a), (c), and (e) of this
14 section.

15 (e) PROMPTNESS OF TESTS AND AVAILABILITY OF RESULTS.—An in-
16 spection, examination, or test under subsection (a) or (c) of this section
17 shall be started and completed promptly, and the results shall be made
18 available.

19 (f) AUTOPSIES.—(1) The Board may order an autopsy to be performed
20 and have other tests made when necessary to investigate an accident under
21 this chapter. However, local law protecting religious beliefs related to autop-
22 sies shall be observed to the extent consistent with the needs of the accident
23 investigation.

24 (2) With or without reimbursement, the Board may obtain a copy of an
25 autopsy report performed by a State or local official on an individual who
26 died because of a transportation accident investigated by the Board under
27 this chapter.

28 **§ 1135. Secretary of Transportation's responses to safety**
29 **recommendations**

30 (a) GENERAL.—When the National Transportation Safety Board submits
31 a recommendation about transportation safety to the Secretary of Transpor-
32 tation, the Secretary shall give a formal written response to each rec-
33 ommendation not later than 90 days after receiving the recommendation.
34 The response shall indicate whether the Secretary intends—

35 (1) to carry out procedures to adopt the complete recommendation;

36 (2) to carry out procedures to adopt a part of the recommendation;

37 or

38 (3) to refuse to carry out procedures to adopt the recommendation.

39 (b) TIMETABLE FOR COMPLETING PROCEDURES AND REASONS FOR RE-
40 FUSALS.—A response under subsection (a)(1) or (2) of this section shall in-
41 clude a copy of a proposed timetable for completing the procedures. A re-

1 sponse under subsection (a)(2) of this section shall detail the reasons for
 2 the refusal to carry out procedures on the remainder of the recommenda-
 3 tion. A response under subsection (a)(3) of this section shall detail the rea-
 4 sons for the refusal to carry out procedures.

5 (c) PUBLIC AVAILABILITY.—The Board shall make a copy of each rec-
 6 ommendation and response available to the public at reasonable cost.

7 (d) REPORTS TO CONGRESS.—The Secretary shall submit to Congress on
 8 January 1 of each year a report containing each recommendation on trans-
 9 portation safety made by the Board to the Secretary during the prior year
 10 and a copy of the Secretary’s response to each recommendation.

11 SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

12 **§ 1151. Aviation enforcement**

13 (a) CIVIL ACTIONS BY BOARD.—The National Transportation Safety
 14 Board may bring a civil action in a district court of the United States
 15 against a person to enforce section 1132, 1134(b) or (f)(1)(related to an
 16 aircraft accident), or 1155(a) of this title or a regulation prescribed or order
 17 issued under any of those sections. An action under this subsection may be
 18 brought in the judicial district in which the person does business or the vio-
 19 lation occurred.

20 (b) CIVIL ACTIONS BY ATTORNEY GENERAL.—On request of the Board,
 21 the Attorney General may bring a civil action in an appropriate court—

22 (1) to enforce section 1132, 1134(b) or (f)(1)(related to an aircraft
 23 accident), or 1155(a) of this title or a regulation prescribed or order
 24 issued under any of those sections; and

25 (2) to prosecute a person violating those sections or a regulation pre-
 26 scribed or order issued under any of those sections.

27 (c) PARTICIPATION OF BOARD.—On request of the Attorney General, the
 28 Board may participate in a civil action to enforce section 1132, 1134(b) or
 29 (f)(1)(related to an aircraft accident), or 1155(a) of this title.

30 **§ 1152. Joinder and intervention in aviation proceedings**

31 A person interested in or affected by a matter under consideration in a
 32 proceeding or a civil action to enforce section 1132, 1134(b) or
 33 (f)(1)(related to an aircraft accident), or 1155(a) of this title, or a regula-
 34 tion prescribed or order issued under any of those sections, may be joined
 35 as a party or permitted to intervene in the proceeding or civil action.

36 **§ 1153. Judicial review**

37 (a) GENERAL.—The appropriate court of appeals of the United States or
 38 the United States Court of Appeals for the District of Columbia Circuit may
 39 review a final order of the National Transportation Safety Board under this
 40 chapter. A person disclosing a substantial interest in the order may apply

1 for review by filing a petition not later than 60 days after the order of the
2 Board is issued.

3 (b) PERSONS SEEKING JUDICIAL REVIEW OF AVIATION MATTERS.—(1)
4 A person disclosing a substantial interest in an order related to an aviation
5 matter issued by the Board under this chapter may apply for review of the
6 order by filing a petition for review in the United States Court of Appeals
7 for the District of Columbia Circuit or in the court of appeals of the United
8 States for the circuit in which the person resides or has its principal place
9 of business. The petition must be filed not later than 60 days after the
10 order is issued. The court may allow the petition to be filed after the 60
11 days only if there was a reasonable ground for not filing within that 60-
12 day period.

13 (2) When a petition is filed under paragraph (1) of this subsection, the
14 clerk of the court immediately shall send a copy of the petition to the
15 Board. The Board shall file with the court a record of the proceeding in
16 which the order was issued.

17 (3) When the petition is sent to the Board, the court has exclusive juris-
18 diction to affirm, amend, modify, or set aside any part of the order and may
19 order the Board to conduct further proceedings. After reasonable notice to
20 the Board, the court may grant interim relief by staying the order or taking
21 other appropriate action when cause for its action exists. Findings of fact
22 by the Board, if supported by substantial evidence, are conclusive.

23 (4) In reviewing an order under this subsection, the court may consider
24 an objection to an order of the Board only if the objection was made in
25 the proceeding conducted by the Board or if there was a reasonable ground
26 for not making the objection in the proceeding.

27 (5) A decision by a court under this subsection may be reviewed only by
28 the Supreme Court under section 1254 of title 28.

29 (c) ADMINISTRATOR SEEKING JUDICIAL REVIEW OF AVIATION MAT-
30 TERS.—When the Administrator of the Federal Aviation Administration de-
31 cides that an order of the Board under section 44709 or 46301(d)(5) of
32 this title will have a significant adverse impact on carrying out this chapter
33 related to an aviation matter, the Administrator may obtain judicial review
34 of the order under section 46110 of this title. The Administrator shall be
35 made a party to the judicial review proceedings. Findings of fact of the
36 Board are conclusive if supported by substantial evidence.

37 **§ 1154. Discovery and use of cockpit voice and other mate-**
38 **rial**

39 (a) TRANSCRIPTS AND RECORDINGS.—(1) Except as provided by this
40 subsection, a party in a judicial proceeding may not use discovery to ob-
41 tain—

1 (A) any part of a cockpit voice recorder transcript that the National
2 Transportation Safety Board has not made available to the public
3 under section 1114(c) of this title; and

4 (B) a cockpit voice recorder recording.

5 (2)(A) Except as provided in paragraph (4)(A) of this subsection, a court
6 may allow discovery by a party of a cockpit voice recorder transcript if, after
7 an in camera review of the transcript, the court decides that—

8 (i) the part of the transcript made available to the public under sec-
9 tion 1114(c) of this title does not provide the party with sufficient in-
10 formation for the party to receive a fair trial; and

11 (ii) discovery of additional parts of the transcript is necessary to pro-
12 vide the party with sufficient information for the party to receive a fair
13 trial.

14 (B) A court may allow discovery, or require production for an in camera
15 review, of a cockpit voice recorder transcript that the Board has not made
16 available under section 1114(c) of this title only if the cockpit voice recorder
17 recording is not available.

18 (3) Except as provided in paragraph (4)(A) of this subsection, a court
19 may allow discovery by a party of a cockpit voice recorder recording if, after
20 an in camera review of the recording, the court decides that—

21 (A) the parts of the transcript made available to the public under
22 section 1114(c) of this title and to the party through discovery under
23 paragraph (2) of this subsection do not provide the party with suffi-
24 cient information for the party to receive a fair trial; and

25 (B) discovery of the cockpit voice recorder recording is necessary to
26 provide the party with sufficient information for the party to receive
27 a fair trial.

28 (4)(A) When a court allows discovery in a judicial proceeding of a part
29 of a cockpit voice recorder transcript not made available to the public under
30 section 1114(c) of this title or a cockpit voice recorder recording, the court
31 shall issue a protective order—

32 (i) to limit the use of the part of the transcript or the recording to
33 the judicial proceeding; and

34 (ii) to prohibit dissemination of the part of the transcript or the re-
35 cording to any person that does not need access to the part of the tran-
36 script or the recording for the proceeding.

37 (B) A court may allow a part of a cockpit voice recorder transcript not
38 made available to the public under section 1114(c) of this title or a cockpit
39 voice recorder recording to be admitted into evidence in a judicial proceed-
40 ing, only if the court places the part of the transcript or the recording under

1 seal to prevent the use of the part of the transcript or the recording for
 2 purposes other than for the proceeding.

3 (5) This subsection does not prevent the Board from referring at any
 4 time to cockpit voice recorder information in making safety recommenda-
 5 tions.

6 (b) REPORTS.—No part of a report of the Board, related to an accident
 7 or an investigation of an accident, may be admitted into evidence or used
 8 in a civil action for damages resulting from a matter mentioned in the re-
 9 port.

10 **§ 1155. Aviation penalties**

11 (a) CIVIL PENALTY.—(1) A person violating section 1132 or 1134(b) or
 12 (f)(1)(related to an aircraft accident) of this title or a regulation prescribed
 13 or order issued under either of those sections is liable to the United States
 14 Government for a civil penalty of not more than \$1,000. A separate viola-
 15 tion occurs for each day a violation continues.

16 (2) This subsection does not apply to a member of the armed forces of
 17 the United States or an employee of the Department of Defense subject to
 18 the Uniform Code of Military Justice when the member or employee is per-
 19 forming official duties. The appropriate military authorities are responsible
 20 for taking necessary disciplinary action and submitting to the National
 21 Transportation Safety Board a timely report on action taken.

22 (3) The Board may compromise the amount of a civil penalty imposed
 23 under this subsection.

24 (4) The Government may deduct the amount of a civil penalty imposed
 25 or compromised under this subsection from amounts it owes the person lia-
 26 ble for the penalty.

27 (5) A civil penalty under this subsection may be collected by bringing a
 28 civil action against the person liable for the penalty. The action shall con-
 29 form as nearly as practicable to a civil action in admiralty.

30 (b) CRIMINAL PENALTY.—A person that knowingly and without authority
 31 removes, conceals, or withholds a part of a civil aircraft involved in an acci-
 32 dent, or property on the aircraft at the time of the accident, shall be fined
 33 under title 18, imprisoned for not more than 10 years, or both.

34 **SUBTITLE III—GENERAL AND INTERMODAL**
 35 **PROGRAMS**

CHAPTER	Sec.
51. TRANSPORTATION OF HAZARDOUS MATERIAL	5101
53. MASS TRANSPORTATION	5301
55. INTERMODAL TRANSPORTATION	5501
57. SANITARY FOOD TRANSPORTATION	5701
59. INTERMODAL SAFE CONTAINER TRANSPORTATION	5901

1 (B) includes an owner-operator of a motor vehicle transporting
2 hazardous material in commerce; and

3 (C) includes an individual, employed by a hazmat employer, who
4 during the course of employment—

5 (i) loads, unloads, or handles hazardous material;

6 (ii) manufactures, reconditions, or tests containers, drums,
7 and packages represented as qualified for use in transporting
8 hazardous material;

9 (iii) prepares hazardous material for transportation;

10 (iv) is responsible for the safety of transporting hazardous
11 material; or

12 (v) operates a vehicle used to transport hazardous material.

13 (4) “hazmat employer”—

14 (A) means a person using at least one employee of that person
15 in connection with—

16 (i) transporting hazardous material in commerce;

17 (ii) causing hazardous material to be transported in com-
18 merce; or

19 (iii) manufacturing, reconditioning, or testing containers,
20 drums, and packages represented as qualified for use in
21 transporting hazardous material;

22 (B) includes an owner-operator of a motor vehicle transporting
23 hazardous material in commerce; and

24 (C) includes a department, agency, or instrumentality of the
25 United States Government, or an authority of a State, political
26 subdivision of a State, or Indian tribe, carrying out an activity de-
27 scribed in subclause (A)(i), (ii), or (iii) of this clause (4).

28 (5) “imminent hazard” means the existence of a condition that pre-
29 sents a substantial likelihood that death, serious illness, severe personal
30 injury, or a substantial endangerment to health, property, or the envi-
31 ronment may occur before the reasonably foreseeable completion date
32 of a formal proceeding begun to lessen the risk of that death, illness,
33 injury, or endangerment.

34 (6) “Indian tribe” has the same meaning given that term in section
35 4 of the Indian Self-Determination and Education Assistance Act (25
36 U.S.C. 450b).

37 (7) “motor carrier” means a motor common carrier, motor contract
38 carrier, motor private carrier, and freight forwarder as those terms are
39 defined in section 10102 of this title.

40 (8) “national response team” means the national response team es-
41 tablished under the national contingency plan established under section

1 105 of the Comprehensive Environmental Response, Compensation, and
2 Liability Act of 1980 (42 U.S.C. 9605).

3 (9) “person”, in addition to its meaning under section 1 of title 1—

4 (A) includes a government, Indian tribe, or authority of a gov-
5 ernment or tribe offering hazardous material for transportation in
6 commerce or transporting hazardous material to further a com-
7 mercial enterprise; but

8 (B) does not include—

9 (i) the United States Postal Service; and

10 (ii) in sections 5123 and 5124 of this title, a department,
11 agency, or instrumentality of the Government.

12 (10) “public sector employee”—

13 (A) means an individual employed by a State, political subdivi-
14 sion of a State, or Indian tribe and who during the course of em-
15 ployment has responsibilities related to responding to an accident
16 or incident involving the transportation of hazardous material;

17 (B) includes an individual employed by a State, political subdivi-
18 sion of a State, or Indian tribe as a firefighter or law enforcement
19 officer; and

20 (C) includes an individual who volunteers to serve as a fire-
21 fighter for a State, political subdivision of a State, or Indian tribe.

22 (11) “State” means—

23 (A) except in section 5119 of this title, a State of the United
24 States, the District of Columbia, Puerto Rico, the Northern Mari-
25 ana Islands, the Virgin Islands, American Samoa, Guam, and any
26 other territory or possession of the United States designated by
27 the Secretary; and

28 (B) in section 5119 of this title, a State of the United States
29 and the District of Columbia.

30 (12) “transports” or “transportation” means the movement of prop-
31 erty and loading, unloading, or storage incidental to the movement.

32 (13) “United States” means all of the States.

33 **§ 5103. General regulatory authority**

34 (a) DESIGNATING MATERIAL AS HAZARDOUS.—The Secretary of Trans-
35 portation shall designate material (including an explosive, radioactive mate-
36 rial, etiologic agent, flammable or combustible liquid or solid, poison, oxidiz-
37 ing or corrosive material, and compressed gas) or a group or class of mate-
38 rial as hazardous when the Secretary decides that transporting the material
39 in commerce in a particular amount and form may pose an unreasonable
40 risk to health and safety or property.

1 (b) REGULATIONS FOR SAFE TRANSPORTATION.—(1) The Secretary shall
2 prescribe regulations for the safe transportation of hazardous material in
3 intrastate, interstate, and foreign commerce. The regulations—

4 (A) apply to a person—

5 (i) transporting hazardous material in commerce;

6 (ii) causing hazardous material to be transported in commerce;

7 or

8 (iii) manufacturing, fabricating, marking, maintaining, recondi-
9 tioning, repairing, or testing a package or container that is rep-
10 resented, marked, certified, or sold by that person as qualified for
11 use in transporting hazardous material in commerce; and

12 (B) shall govern safety aspects of the transportation of hazardous
13 material the Secretary considers appropriate.

14 (2) A proceeding to prescribe the regulations must include an opportunity
15 for informal oral presentations.

16 **§ 5104. Representation and tampering**

17 (a) REPRESENTATION.—A person may represent, by marking or other-
18 wise, that—

19 (1) a container or package for transporting hazardous material is
20 safe, certified, or complies with this chapter only if the container or
21 package meets the requirements of each regulation prescribed under
22 this chapter; or

23 (2) hazardous material is present in a package, container, motor ve-
24 hicle, rail freight car, aircraft, or vessel only if the material is present.

25 (b) TAMPERING.—A person may not alter, remove, destroy, or otherwise
26 tamper unlawfully with—

27 (1) a marking, label, placard, or description on a document required
28 under this chapter or a regulation prescribed under this chapter; or

29 (2) a package, container, motor vehicle, rail freight car, aircraft, or
30 vessel used to transport hazardous material.

31 **§ 5105. Transporting certain highly radioactive material**

32 (a) DEFINITIONS.—In this section, “high-level radioactive waste” and
33 “spent nuclear fuel” have the same meanings given those terms in section
34 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

35 (b) TRANSPORTATION SAFETY STUDY.—In consultation with the Sec-
36 retary of Energy, the Nuclear Regulatory Commission, potentially affected
37 States and Indian tribes, representatives of the rail transportation industry,
38 and shippers of high-level radioactive waste and spent nuclear fuel, the Sec-
39 retary of Transportation shall conduct a study comparing the safety of
40 using trains operated only to transport high-level radioactive waste and
41 spent nuclear fuel with the safety of using other methods of rail transpor-

1 tation for transporting that waste and fuel. The Secretary of Transportation
2 shall submit to Congress not later than November 16, 1991, a report on
3 the results of the study.

4 (c) SAFE RAIL TRANSPORTATION REGULATIONS.—Not later than Novem-
5 ber 16, 1992, after considering the results of the study conducted under
6 subsection (b) of this section, the Secretary of Transportation shall pre-
7 scribe amendments to existing regulations that the Secretary considers ap-
8 propriate to provide for the safe rail transportation of high-level radioactive
9 waste and spent nuclear fuel, including trains operated only for transporting
10 high-level radioactive waste and spent nuclear fuel.

11 (d) ROUTES AND MODES STUDY.—Not later than November 16, 1991,
12 the Secretary of Transportation shall conduct a study to decide which fac-
13 tors, if any, shippers and carriers should consider when selecting routes and
14 modes that would enhance overall public safety related to the transportation
15 of high-level radioactive waste and spent nuclear fuel. The study shall in-
16 clude—

17 (1) notice and opportunity for public comment; and

18 (2) an assessment of the degree to which at least the following affect
19 the overall public safety of the transportation:

20 (A) population densities.

21 (B) types and conditions of modal infrastructures (including
22 highways, railbeds, and waterways).

23 (C) quantities of high-level radioactive waste and spent nuclear
24 fuel.

25 (D) emergency response capabilities.

26 (E) exposure and other risk factors.

27 (F) terrain considerations.

28 (G) continuity of routes.

29 (H) available alternative routes.

30 (I) environmental impact factors.

31 (e) INSPECTIONS OF MOTOR VEHICLES TRANSPORTING CERTAIN MATE-
32 RIAL.—(1) Not later than November 16, 1991, the Secretary of Transpor-
33 tation shall require by regulation that before each use of a motor vehicle
34 to transport a highway-route-controlled quantity of radioactive material in
35 commerce, the vehicle shall be inspected and certified as complying with this
36 chapter and applicable United States motor carrier safety laws and regula-
37 tions. The Secretary may require that the inspection be carried out by an
38 authorized United States Government inspector or according to appropriate
39 State procedures.

40 (2) The Secretary of Transportation may allow a person, transporting or
41 causing to be transported a highway-route-controlled quantity of radioactive

1 material, to inspect the motor vehicle used to transport the material and
2 to certify that the vehicle complies with this chapter. The inspector quali-
3 fication requirements the Secretary prescribes for an individual inspecting
4 a motor vehicle apply to an individual conducting an inspection under this
5 paragraph.

6 **§ 5106. Handling criteria**

7 The Secretary of Transportation may prescribe criteria for handling haz-
8 ardous material, including—

9 (1) a minimum number of personnel;

10 (2) minimum levels of training and qualifications for personnel;

11 (3) the kind and frequency of inspections;

12 (4) equipment for detecting, warning of, and controlling risks posed
13 by the hazardous material;

14 (5) specifications for the use of equipment and facilities used in han-
15 dling and transporting the hazardous material; and

16 (6) a system of monitoring safety procedures for transporting the
17 hazardous material.

18 **§ 5107. Hazmat employee training requirements and grants**

19 (a) TRAINING REQUIREMENTS.—The Secretary of Transportation shall
20 prescribe by regulation requirements for training that a hazmat employer
21 must give hazmat employees of the employer on the safe loading, unloading,
22 handling, storing, and transporting of hazardous material and emergency
23 preparedness for responding to an accident or incident involving the trans-
24 portation of hazardous material. The regulations—

25 (1) shall establish the date, as provided by subsection (b) of this sec-
26 tion, by which the training shall be completed; and

27 (2) may provide for different training for different classes or cat-
28 egories of hazardous material and hazmat employees.

29 (b) BEGINNING AND COMPLETING TRAINING.—A hazmat employer shall
30 begin the training of hazmat employees of the employer not later than 6
31 months after the Secretary of Transportation prescribes the regulations
32 under subsection (a) of this section. The training shall be completed within
33 a reasonable period of time after—

34 (1) 6 months after the regulations are prescribed; or

35 (2) the date on which an individual is to begin carrying out a duty
36 or power of a hazmat employee if the individual is employed as a
37 hazmat employee after the 6-month period.

38 (c) CERTIFICATION OF TRAINING.—After completing the training, each
39 hazmat employer shall certify, with documentation the Secretary of Trans-
40 portation may require by regulation, that the hazmat employees of the em-

1 ployer have received training and have been tested on appropriate transpor-
2 tation areas of responsibility, including at least one of the following:

3 (1) recognizing and understanding the Department of Transpor-
4 tation hazardous material classification system.

5 (2) the use and limitations of the Department hazardous material
6 placarding, labeling, and marking systems.

7 (3) general handling procedures, loading and unloading techniques,
8 and strategies to reduce the probability of release or damage during or
9 incidental to transporting hazardous material.

10 (4) health, safety, and risk factors associated with hazardous mate-
11 rial and the transportation of hazardous material.

12 (5) appropriate emergency response and communication procedures
13 for dealing with an accident or incident involving hazardous material
14 transportation.

15 (6) the use of the Department Emergency Response Guidebook and
16 recognition of its limitations or the use of equivalent documents and
17 recognition of the limitations of those documents.

18 (7) applicable hazardous material transportation regulations.

19 (8) personal protection techniques.

20 (9) preparing a shipping document for transporting hazardous mate-
21 rial.

22 (d) COORDINATION OF TRAINING REQUIREMENTS.—In consultation with
23 the Administrator of the Environmental Protection Agency and the Sec-
24 retary of Labor, the Secretary of Transportation shall ensure that the train-
25 ing requirements prescribed under this section do not conflict with—

26 (1) the requirements of regulations the Secretary of Labor prescribes
27 related to hazardous waste operations and emergency response that are
28 contained in part 1910 of title 29, Code of Federal Regulations; and

29 (2) the regulations the Agency prescribes related to worker protec-
30 tion standards for hazardous waste operations that are contained in
31 part 311 of title 40, Code of Federal Regulations.

32 (e) TRAINING GRANTS.—In consultation with the Secretaries of Trans-
33 portation and Labor and the Administrator, the Director of the National
34 Institute of Environmental Health Sciences may make grants to train
35 hazmat employees under this section. A grant under this subsection shall
36 be made to a nonprofit organization that demonstrates—

37 (1) expertise in conducting a training program for hazmat employ-
38 ees; and

39 (2) the ability to reach and involve in a training program a target
40 population of hazmat employees.

1 (f) RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not
2 apply to an activity of the Secretary of Transportation under subsections
3 (a)–(d) of this section.

4 (2) An action of the Secretary of Transportation under subsections (a)–
5 (d) of this section and sections 5106, 5108(a)–(g)(1) and (h), and 5109 of
6 this title is not an exercise, under section 4(b)(1) of the Occupational Safety
7 and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to
8 prescribe or enforce standards or regulations affecting occupational safety
9 or health.

10 **§ 5108. Registration**

11 (a) PERSONS REQUIRED TO FILE.—(1) A person shall file a registration
12 statement with the Secretary of Transportation under this subsection if the
13 person is transporting or causing to be transported in commerce any of the
14 following:

15 (A) a highway-route-controlled quantity of radioactive material.

16 (B) more than 25 kilograms of a class A or B explosive in a motor
17 vehicle, rail car, or transport container.

18 (C) more than one liter in each package of a hazardous material the
19 Secretary designates as extremely toxic by inhalation.

20 (D) hazardous material in a bulk package, container, or tank, as de-
21 fined by the Secretary, if the package, container, or tank has a capacity
22 of at least 3,500 gallons or more than 468 cubic feet.

23 (E) a shipment of at least 5,000 pounds (except in a bulk packaging)
24 of a class of hazardous material for which placarding of a vehicle, rail
25 car, or freight container is required under regulations prescribed under
26 this chapter.

27 (2) The Secretary of Transportation may require any of the following per-
28 sons to file a registration statement with the Secretary under this sub-
29 section:

30 (A) a person transporting or causing to be transported hazardous
31 material in commerce and not required to file a registration statement
32 under paragraph (1) of this subsection.

33 (B) a person manufacturing, fabricating, marking, maintaining, re-
34 conditioning, repairing, or testing a package or container the person
35 represents, marks, certifies, or sells for use in transporting in com-
36 merce hazardous material the Secretary designates.

37 (3) A person required to file a registration statement under this sub-
38 section may transport or cause to be transported, or manufacture, fabricate,
39 mark, maintain, recondition, repair, or test a package or container for use
40 in transporting, hazardous material, only if the person has a statement on
41 file as required by this subsection.

1 (b) FORM, CONTENTS, AND LIMITATION ON FILINGS.—(1) A registration
2 statement under subsection (a) of this section shall be in the form and con-
3 tain information the Secretary of Transportation requires by regulation. The
4 Secretary may use existing forms of the Department of Transportation and
5 the Environmental Protection Agency to carry out this subsection. The
6 statement shall include—

7 (A) the name and principal place of business of the registrant;

8 (B) a description of each activity the registrant carries out for which
9 filing a statement under subsection (a) of this section is required; and

10 (C) each State in which the person carries out the activity.

11 (2) A person carrying out more than one activity, or an activity at more
12 than one location, for which filing is required only has to file one registra-
13 tion statement to comply with subsection (a) of this section.

14 (c) FILING DEADLINES AND AMENDMENTS.—(1) Each person required to
15 file a registration statement under subsection (a) of this section must file
16 the first statement not later than March 31, 1992. The Secretary of Trans-
17 portation may extend that date to September 30, 1992, for activities re-
18 ferred to in subsection (a)(1) of this section. A person shall renew the state-
19 ment periodically consistent with regulations the Secretary prescribes, but
20 not more than once each year and not less than once every 5 years.

21 (2) The Secretary of Transportation shall decide by regulation when and
22 under what circumstances a registration statement must be amended and
23 the procedures to follow in amending the statement.

24 (d) SIMPLIFYING THE REGISTRATION PROCESS.—The Secretary of
25 Transportation may take necessary action to simplify the registration proc-
26 ess under subsections (a)–(c) of this section and to minimize the number
27 of applications, documents, and other information a person is required to
28 file under this chapter and other laws of the United States.

29 (e) COOPERATION WITH ADMINISTRATOR.—The Administrator of the En-
30 vironmental Protection Agency shall assist the Secretary of Transportation
31 in carrying out subsections (a)–(g)(1) and (h) of this section by providing
32 the Secretary with information the Secretary requests to carry out the ob-
33 jectives of subsections (a)–(g)(1) and (h).

34 (f) AVAILABILITY OF STATEMENTS.—The Secretary of Transportation
35 shall make a registration statement filed under subsection (a) of this section
36 available for inspection by any person for a fee the Secretary establishes.
37 However, this subsection does not require the release of information de-
38 scribed in section 552(f) of title 5 or otherwise protected by law from disclo-
39 sure to the public.

40 (g) FEES.—(1) The Secretary of Transportation may establish, impose,
41 and collect from a person required to file a registration statement under

1 subsection (a) of this section a fee necessary to pay for the costs of the Sec-
2 retary in processing the statement.

3 (2)(A) In addition to a fee established under paragraph (1) of this sub-
4 section, the Secretary of Transportation shall establish and impose by regu-
5 lation and collect an annual fee. Subject to subparagraph (B) of this para-
6 graph, the fee shall be at least \$250 but not more than \$5,000 from each
7 person required to file a registration statement under this section. The Sec-
8 retary shall determine the amount of the fee under this paragraph on at
9 least one of the following:

10 (i) gross revenue from transporting hazardous material.

11 (ii) the type of hazardous material transported or caused to be trans-
12 ported.

13 (iii) the amount of hazardous material transported or caused to be
14 transported.

15 (iv) the number of shipments of hazardous material.

16 (v) the number of activities that the person carries out for which fil-
17 ing a registration statement is required under this section.

18 (vi) the threat to property, individuals, and the environment from an
19 accident or incident involving the hazardous material transported or
20 caused to be transported.

21 (vii) the percentage of gross revenue derived from transporting haz-
22 ardous material.

23 (viii) the amount to be made available to carry out sections 5107(e),
24 5108(g)(2), 5115, and 5116 of this title.

25 (ix) other factors the Secretary considers appropriate.

26 (B) The Secretary of Transportation shall adjust the amount being col-
27 lected under this paragraph to reflect any unexpended balance in the ac-
28 count established under section 5116(i) of this title. However, the Secretary
29 is not required to refund any fee collected under this paragraph.

30 (C) The Secretary of Transportation shall transfer to the Secretary of the
31 Treasury amounts the Secretary of Transportation collects under this para-
32 graph for deposit in the account the Secretary of the Treasury establishes
33 under section 5116(i) of this title.

34 (h) MAINTAINING PROOF OF FILING AND PAYMENT OF FEES.—The Sec-
35 retary of Transportation may prescribe regulations requiring a person re-
36 quired to file a registration statement under subsection (a) of this section
37 to maintain proof of the filing and payment of fees imposed under sub-
38 section (g) of this section.

39 (i) RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not
40 apply to an activity of the Secretary of Transportation under subsections
41 (a)–(g)(1) and (h) of this section.

1 (2)(A) This section does not apply to an employee of a hazmat employer.

2 (B) Subsections (a)–(h) of this section do not apply to a department,
3 agency, or instrumentality of the United States Government, an authority
4 of a State or political subdivision of a State, or an employee of a depart-
5 ment, agency, instrumentality, or authority carrying out official duties.

6 **§ 5109. Motor carrier safety permits**

7 (a) REQUIREMENT.—A motor carrier may transport or cause to be trans-
8 ported by motor vehicle in commerce hazardous material only if the carrier
9 holds a safety permit the Secretary of Transportation issues under this sec-
10 tion authorizing the transportation and keeps a copy of the permit, or other
11 proof of its existence, in the vehicle. The Secretary shall issue a permit if
12 the Secretary finds the carrier is fit, willing, and able—

13 (1) to provide the transportation to be authorized by the permit;

14 (2) to comply with this chapter and regulations the Secretary pre-
15 scribes to carry out this chapter; and

16 (3) to comply with applicable United States motor carrier safety laws
17 and regulations and applicable minimum financial responsibility laws
18 and regulations.

19 (b) APPLICABLE TRANSPORTATION.—The Secretary shall prescribe by
20 regulation the hazardous material and amounts of hazardous material to
21 which this section applies. However, this section shall apply at least to
22 transportation by a motor carrier, in amounts the Secretary establishes,
23 of—

24 (1) a class A or B explosive;

25 (2) liquefied natural gas;

26 (3) hazardous material the Secretary designates as extremely toxic
27 by inhalation; and

28 (4) a highway-route-controlled quantity of radioactive material, as
29 defined by the Secretary.

30 (c) APPLICATIONS.—A motor carrier shall file an application with the
31 Secretary for a safety permit to provide transportation under this section.
32 The Secretary may approve any part of the application or deny the applica-
33 tion. The application shall be under oath and contain information the Sec-
34 retary requires by regulation.

35 (d) AMENDMENTS, SUSPENSIONS, AND REVOCATIONS.—(1) After notice
36 and an opportunity for a hearing, the Secretary may amend, suspend, or
37 revoke a safety permit, as provided by procedures prescribed under sub-
38 section (e) of this section, when the Secretary decides the motor carrier is
39 not complying with a requirement of this chapter, a regulation prescribed
40 under this chapter, or an applicable United States motor carrier safety law
41 or regulation or minimum financial responsibility law or regulation.

1 (2) If the Secretary decides an imminent hazard exists, the Secretary may
2 amend, suspend, or revoke a permit before scheduling a hearing.

3 (e) PROCEDURES.—The Secretary shall prescribe by regulation—

4 (1) application procedures, including form, content, and fees nec-
5 essary to recover the complete cost of carrying out this section;

6 (2) standards for deciding the duration, terms, and limitations of a
7 safety permit;

8 (3) procedures to amend, suspend, or revoke a permit; and

9 (4) other procedures the Secretary considers appropriate to carry out
10 this section.

11 (f) SHIPPER RESPONSIBILITY.—A person offering hazardous material for
12 motor vehicle transportation in commerce may offer the material to a motor
13 carrier only if the carrier has a safety permit issued under this section au-
14 thORIZING the transportation.

15 (g) CONDITIONS.—A motor carrier may provide transportation under a
16 safety permit issued under this section only if the carrier complies with con-
17 ditions the Secretary finds are required to protect public safety.

18 (h) REGULATIONS.—The Secretary shall prescribe regulations necessary
19 to carry out this section not later than November 16, 1991.

20 **§ 5110. Shipping papers and disclosure**

21 (a) PROVIDING SHIPPING PAPERS.—Each person offering for transpor-
22 tation in commerce hazardous material to which the shipping paper require-
23 ments of the Secretary of Transportation apply shall provide to the carrier
24 providing the transportation a shipping paper that makes the disclosures the
25 Secretary prescribes under subsection (b) of this section.

26 (b) CONSIDERATIONS AND REQUIREMENTS.—In carrying out subsection
27 (a) of this section, the Secretary shall consider and may require—

28 (1) a description of the hazardous material, including the proper
29 shipping name;

30 (2) the hazard class of the hazardous material;

31 (3) the identification number (UN/NA) of the hazardous material;

32 (4) immediate first action emergency response information or a way
33 for appropriate reference to the information (that must be available im-
34 mediately); and

35 (5) a telephone number for obtaining more specific handling and
36 mitigation information about the hazardous material at any time dur-
37 ing which the material is transported.

38 (c) KEEPING SHIPPING PAPERS ON THE VEHICLE.—(1) A motor carrier,
39 and the person offering the hazardous material for transportation if a pri-
40 vate motor carrier, shall keep the shipping paper on the vehicle transporting
41 the material.

1 (2) Except as provided in paragraph (1) of this subsection, the shipping
2 paper shall be kept in a location the Secretary specifies in a motor vehicle,
3 train, vessel, aircraft, or facility until—

4 (A) the hazardous material no longer is in transportation; or

5 (B) the documents are made available to a representative of a de-
6 partment, agency, or instrumentality of the United States Government
7 or a State or local authority responding to an accident or incident in-
8 volving the motor vehicle, train, vessel, aircraft, or facility.

9 (d) DISCLOSURE TO EMERGENCY RESPONSE AUTHORITIES.—When an
10 incident involving hazardous material being transported in commerce occurs,
11 the person transporting the material, immediately on request of appropriate
12 emergency response authorities, shall disclose to the authorities information
13 about the material.

14 **§5111. Rail tank cars**

15 A rail tank car built before January 1, 1971, may be used to transport
16 hazardous material in commerce only if the air brake equipment support at-
17 tachments of the car comply with the standards for attachments contained
18 in sections 179.100-16 and 179.200-19 of title 49, Code of Federal Regula-
19 tions, in effect on November 16, 1990.

20 **§5112. Highway routing of hazardous material**

21 (a) APPLICATION.—(1) This section applies to a motor vehicle only if the
22 vehicle is transporting hazardous material in commerce for which placarding
23 of the vehicle is required under regulations prescribed under this chapter.
24 However, the Secretary of Transportation by regulation may extend applica-
25 tion of this section or a standard prescribed under subsection (b) of this
26 section to—

27 (A) any use of a vehicle under this paragraph to transport any haz-
28 ardous material in commerce; and

29 (B) any motor vehicle used to transport hazardous material in com-
30 merce.

31 (2) Except as provided by subsection (d) of this section and section
32 5125(c) of this title, each State and Indian tribe may establish, maintain,
33 and enforce—

34 (A) designations of specific highway routes over which hazardous
35 material may and may not be transported by motor vehicle; and

36 (B) limitations and requirements related to highway routing.

37 (b) STANDARDS FOR STATES AND INDIAN TRIBES.—(1) The Secretary,
38 in consultation with the States, shall prescribe by regulation standards for
39 States and Indian tribes to use in carrying out subsection (a) of this sec-
40 tion. The standards shall include—

1 (A) a requirement that a highway routing designation, limitation, or
2 requirement of a State or Indian tribe shall enhance public safety in
3 the area subject to the jurisdiction of the State or tribe and in areas
4 of the United States not subject to the jurisdiction of the State or tribe
5 and directly affected by the designation, limitation, or requirement;

6 (B) minimum procedural requirements to ensure public participation
7 when the State or Indian tribe is establishing a highway routing des-
8 ignation, limitation, or requirement;

9 (C) a requirement that, in establishing a highway routing designa-
10 tion, limitation, or requirement, a State or Indian tribe consult with
11 appropriate State, local, and tribal officials having jurisdiction over
12 areas of the United States not subject to the jurisdiction of that State
13 or tribe establishing the designation, limitation, or requirement and
14 with affected industries;

15 (D) a requirement that a highway routing designation, limitation, or
16 requirement of a State or Indian tribe shall ensure through highway
17 routing for the transportation of hazardous material between adjacent
18 areas;

19 (E) a requirement that a highway routing designation, limitation, or
20 requirement of one State or Indian tribe affecting the transportation
21 of hazardous material in another State or tribe may be established,
22 maintained, and enforced by the State or tribe establishing the designa-
23 tion, limitation, or requirement only if—

24 (i) the designation, limitation, or requirement is agreed to by
25 the other State or tribe within a reasonable period or is approved
26 by the Secretary under subsection (d) of this section; and

27 (ii) the designation, limitation, or requirement is not an unrea-
28 sonable burden on commerce;

29 (F) a requirement that establishing a highway routing designation,
30 limitation, or requirement of a State or Indian tribe be completed in
31 a timely way;

32 (G) a requirement that a highway routing designation, limitation, or
33 requirement of a State or Indian tribe provide reasonable routes for
34 motor vehicles transporting hazardous material to reach terminals, fa-
35 cilities for food, fuel, repairs, and rest, and places to load and unload
36 hazardous material;

37 (H) a requirement that a State be responsible—

38 (i) for ensuring that political subdivisions of the State comply
39 with standards prescribed under this subsection in establishing,
40 maintaining, and enforcing a highway routing designation, limita-
41 tion, or requirement; and

- 1 (ii) for resolving a dispute between political subdivisions; and
2 (I) a requirement that, in carrying out subsection (a) of this section,
3 a State or Indian tribe shall consider—
4 (i) population densities;
5 (ii) the types of highways;
6 (iii) the types and amounts of hazardous material;
7 (iv) emergency response capabilities;
8 (v) the results of consulting with affected persons;
9 (vi) exposure and other risk factors;
10 (vii) terrain considerations;
11 (viii) the continuity of routes;
12 (ix) alternative routes;
13 (x) the effects on commerce;
14 (xi) delays in transportation; and
15 (xii) other factors the Secretary considers appropriate.

16 (2) The Secretary may not assign a specific weight that a State or Indian
17 tribe shall use when considering the factors under paragraph (1)(I) of this
18 subsection.

19 (c) LIST OF ROUTE DESIGNATIONS.—In coordination with the States, the
20 Secretary shall update and publish periodically a list of currently effective
21 hazardous material highway route designations.

22 (d) DISPUTE RESOLUTION.—(1) The Secretary shall prescribe regulations
23 for resolving a dispute related to through highway routing or to an agree-
24 ment with a proposed highway route designation, limitation, or requirement
25 between or among States, political subdivisions of different States, or Indian
26 tribes.

27 (2) A State or Indian tribe involved in a dispute under this subsection
28 may petition the Secretary to resolve the dispute. The Secretary shall re-
29 solve the dispute not later than one year after receiving the petition. The
30 resolution shall provide the greatest level of highway safety without being
31 an unreasonable burden on commerce and shall ensure compliance with
32 standards prescribed under subsection (b) of this section.

33 (3)(A) After a petition is filed under this subsection, a civil action about
34 the subject matter of the dispute may be brought in a court only after the
35 earlier of—

- 36 (i) the day the Secretary issues a final decision; or
37 (ii) the last day of the one-year period beginning on the day the Sec-
38 retary receives the petition.

39 (B) A State or Indian tribe adversely affected by a decision of the Sec-
40 retary under this subsection may bring a civil action for judicial review of

1 the decision in an appropriate district court of the United States not later
2 than 89 days after the day the decision becomes final.

3 (e) RELATIONSHIP TO OTHER LAWS.—This section and regulations pre-
4 scribed under this section do not affect sections 31111 and 31113 of this
5 title or section 127 of title 23.

6 (f) EXISTING RADIOACTIVE MATERIAL ROUTING REGULATIONS.—The
7 Secretary is not required to amend or again prescribe regulations related
8 to highway routing designations over which radioactive material may and
9 may not be transported by motor vehicles, and limitations and requirements
10 related to the routing, that were in effect on November 16, 1990.

11 **§ 5113. Unsatisfactory safety rating**

12 (a) PROHIBITED TRANSPORTATION.—A motor carrier receiving an unsat-
13 isfactory safety rating from the Secretary of Transportation has 45 days to
14 improve the rating to conditional or satisfactory. Beginning on the 46th day
15 and until the motor carrier receives a conditional or satisfactory rating, a
16 motor carrier not having received a conditional or satisfactory rating during
17 the 45-day period may not operate a commercial motor vehicle (as defined
18 in section 31132 of this title)—

19 (1) to transport hazardous material for which placarding of a motor
20 vehicle is required under regulations prescribed under this chapter; or

21 (2) to transport more than 15 individuals.

22 (b) RATING REVIEW.—The Secretary shall review the factors that re-
23 sulted in a motor carrier receiving an unsatisfactory rating not later than
24 30 days after the motor carrier requests a review.

25 (c) PROHIBITED GOVERNMENT USE.—A department, agency, or instru-
26 mentality of the United States Government may not use a motor carrier
27 that has an unsatisfactory rating from the Secretary—

28 (1) to transport hazardous material for which placarding of a motor
29 vehicle is required under regulations prescribed under this chapter; or

30 (2) to transport more than 15 individuals.

31 (d) PUBLIC AVAILABILITY AND UPDATING OF RATINGS.—The Secretary,
32 in consultation with the Interstate Commerce Commission, shall prescribe
33 regulations amending the motor carrier safety regulations in subchapter B
34 of chapter III of title 49, Code of Federal Regulations, to establish a system
35 to make readily available to the public, and update periodically, the safety
36 ratings of motor carriers that have unsatisfactory ratings from the Sec-
37 retary.

38 **§ 5114. Air transportation of ionizing radiation material**

39 (a) TRANSPORTING IN AIR COMMERCE.—Material that emits ionizing ra-
40 diation spontaneously may be transported on a passenger-carrying aircraft
41 in air commerce (as defined in section 40102(a) of this title) only if the

1 material is intended for a use in, or incident to, research or medical diag-
2 nosis or treatment and does not present an unreasonable hazard to health
3 and safety when being prepared for, and during, transportation.

4 (b) PROCEDURES.—The Secretary of Transportation shall prescribe pro-
5 cedures for monitoring and enforcing regulations prescribed under this sec-
6 tion.

7 (c) NONAPPLICATION.—This section does not apply to material the Sec-
8 retary decides does not pose a significant hazard to health or safety when
9 transported because of its low order of radioactivity.

10 **§ 5115. Training curriculum for the public sector**

11 (a) DEVELOPMENT AND UPDATING.—Not later than November 16, 1992,
12 in coordination with the Director of the Federal Emergency Management
13 Agency, Chairman of the Nuclear Regulatory Commission, Administrator of
14 the Environmental Protection Agency, Secretaries of Labor, Energy, and
15 Health and Human Services, and Director of the National Institute of Envi-
16 ronmental Health Sciences, and using the existing coordinating mechanisms
17 of the national response team and, for radioactive material, the Federal Ra-
18 diological Preparedness Coordinating Committee, the Secretary of Transpor-
19 tation shall develop and update periodically a curriculum consisting of a list
20 of courses necessary to train public sector emergency response and pre-
21 paredness teams. Only in developing the curriculum, the Secretary of Trans-
22 portation shall consult with regional response teams established under the
23 national contingency plan established under section 105 of the Comprehen-
24 sive Environmental Response, Compensation, and Liability Act of 1980 (42
25 U.S.C. 9605), representatives of commissions established under section 301
26 of the Emergency Planning and Community Right-To-Know Act of 1986
27 (42 U.S.C. 11001), persons (including governmental entities) that provide
28 training for responding to accidents and incidents involving the transpor-
29 tation of hazardous material, and representatives of persons that respond
30 to those accidents and incidents.

31 (b) REQUIREMENTS.—The curriculum developed under subsection (a) of
32 this section—

33 (1) shall include—

34 (A) a recommended course of study to train public sector em-
35 ployees to respond to an accident or incident involving the trans-
36 portation of hazardous material and to plan for those responses;

37 (B) recommended basic courses and minimum number of hours
38 of instruction necessary for public sector employees to be able to
39 respond safely and efficiently to an accident or incident involving
40 the transportation of hazardous material and to plan those re-
41 sponses; and

1 (C) appropriate emergency response training and planning pro-
2 grams for public sector employees developed under other United
3 States Government grant programs, including those developed with
4 grants made under section 126 of the Superfund Amendments and
5 Reauthorization Act of 1986 (42 U.S.C. 9660a); and

6 (2) may include recommendations on material appropriate for use in
7 a recommended basic course described in clause (1)(B) of this sub-
8 section.

9 (c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—A rec-
10 ommended basic course described in subsection (b)(1)(B) of this section
11 shall provide the training necessary for public sector employees to comply
12 with—

13 (1) regulations related to hazardous waste operations and emergency
14 response contained in part 1910 of title 29, Code of Federal Regula-
15 tions, prescribed by the Secretary of Labor;

16 (2) regulations related to worker protection standards for hazardous
17 waste operations contained in part 311 of title 40, Code of Federal
18 Regulations, prescribed by the Administrator; and

19 (3) standards related to emergency response training prescribed by
20 the National Fire Protection Association.

21 (d) DISTRIBUTION AND PUBLICATION.—With the national response
22 team—

23 (1) the Director of the Federal Emergency Management Agency
24 shall distribute the curriculum and any updates to the curriculum to
25 the regional response teams and all committees and commissions estab-
26 lished under section 301 of the Emergency Planning and Community
27 Right-To-Know Act of 1986 (42 U.S.C. 11001); and

28 (2) the Secretary of Transportation may publish a list of programs
29 that uses a course developed under this section for training public sec-
30 tor employees to respond to an accident or incident involving the trans-
31 portation of hazardous material.

32 **§5116. Planning and training grants, monitoring, and re-**
33 **view**

34 (a) PLANNING GRANTS.—(1) The Secretary of Transportation shall make
35 grants to States—

36 (A) to develop, improve, and carry out emergency plans under the
37 Emergency Planning and Community Right-To-Know Act of 1986 (42
38 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazard-
39 ous material in a State and between States; and

40 (B) to decide on the need for a regional hazardous material emer-
41 gency response team.

1 (2) The Secretary of Transportation may make a grant to a State under
2 paragraph (1) of this subsection in a fiscal year only if the State—

3 (A) certifies that the total amount the State expends (except
4 amounts of the United States Government) to develop, improve, and
5 carry out emergency plans under the Act will at least equal the average
6 level of expenditure for the last 2 fiscal years; and

7 (B) agrees to make available at least 75 percent of the amount of
8 the grant under paragraph (1) of this subsection in the fiscal year to
9 local emergency planning committees established under section 301(c)
10 of the Act (42 U.S.C. 11001(c)) to develop emergency plans under the
11 Act.

12 (b) TRAINING GRANTS.—(1) The Secretary of Transportation shall make
13 grants to States and Indian tribes to train public sector employees to re-
14 spond to accidents and incidents involving hazardous material.

15 (2) The Secretary of Transportation may make a grant under paragraph
16 (1) of this subsection in a fiscal year—

17 (A) to a State or Indian tribe only if the State or tribe certifies that
18 the total amount the State or tribe expends (except amounts of the
19 Government) to train public sector employees to respond to an accident
20 or incident involving hazardous material will at least equal the average
21 level of expenditure for the last 2 fiscal years;

22 (B) to a State or Indian tribe only if the State or tribe makes an
23 agreement with the Secretary that the State or tribe will use in that
24 fiscal year, for training public sector employees to respond to an acci-
25 dent or incident involving hazardous material—

26 (i) a course developed or identified under section 5115 of this
27 title; or

28 (ii) another course the Secretary decides is consistent with the
29 objectives of this section; and

30 (C) to a State only if the State agrees to make available at least 75
31 percent of the amount of the grant under paragraph (1) of this sub-
32 section in the fiscal year for training public sector employees a political
33 subdivision of the State employs or uses.

34 (3) A grant under this subsection may be used—

35 (A) to pay—

36 (i) the tuition costs of public sector employees being trained;

37 (ii) travel expenses of those employees to and from the training
38 facility;

39 (iii) room and board of those employees when at the training
40 facility; and

41 (iv) travel expenses of individuals providing the training;

1 (B) by the State, political subdivision, or Indian tribe to provide the
2 training; and

3 (C) to make an agreement the Secretary of Transportation approves
4 authorizing a person (including an authority of a State or political sub-
5 division of a State or Indian tribe) to provide the training—

6 (i) if the agreement allows the Secretary and the State or tribe
7 to conduct random examinations, inspections, and audits of the
8 training without prior notice; and

9 (ii) if the State or tribe conducts at least one on-site observation
10 of the training each year.

11 (4) The Secretary of Transportation shall allocate amounts made avail-
12 able for grants under this subsection for a fiscal year among eligible States
13 and Indian tribes based on the needs of the States and tribes for emergency
14 response training. In making a decision about those needs, the Secretary
15 shall consider—

16 (A) the number of hazardous material facilities in the State or on
17 land under the jurisdiction of the tribe;

18 (B) the types and amounts of hazardous material transported in the
19 State or on that land;

20 (C) whether the State or tribe imposes and collects a fee on trans-
21 porting hazardous material;

22 (D) whether the fee is used only to carry out a purpose related to
23 transporting hazardous material; and

24 (E) other factors the Secretary decides are appropriate to carry out
25 this subsection.

26 (c) COMPLIANCE WITH CERTAIN LAW.—The Secretary of Transportation
27 may make a grant to a State under this section in a fiscal year only if the
28 State certifies that the State complies with sections 301 and 303 of the
29 Emergency Planning and Community Right-To-Know Act of 1986 (42
30 U.S.C. 11001, 11003).

31 (d) APPLICATIONS.—A State or Indian tribe interested in receiving a
32 grant under this section shall submit an application to the Secretary of
33 Transportation. The application must be submitted at the time, and contain
34 information, the Secretary requires by regulation to carry out the objectives
35 of this section.

36 (e) GOVERNMENT'S SHARE OF COSTS.—A grant under this section is for
37 80 percent of the cost the State or Indian tribe incurs in the fiscal year
38 to carry out the activity for which the grant is made. Amounts of the State
39 or tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not
40 part of the non-Government share under this subsection.

1 (f) MONITORING AND TECHNICAL ASSISTANCE.—In coordination with the
2 Secretaries of Transportation and Energy, Administrator of the Environ-
3 mental Protection Agency, and Director of the National Institute of Envi-
4 ronmental Health Sciences, the Director of the Federal Emergency Manage-
5 ment Agency shall monitor public sector emergency response planning and
6 training for an accident or incident involving hazardous material. Consider-
7 ing the results of the monitoring, the Secretaries, Administrator, and Direc-
8 tors each shall provide technical assistance to a State, political subdivision
9 of a State, or Indian tribe for carrying out emergency response training and
10 planning for an accident or incident involving hazardous material and shall
11 coordinate the assistance using the existing coordinating mechanisms of the
12 national response team and, for radioactive material, the Federal Radiologi-
13 cal Preparedness Coordinating Committee.

14 (g) DELEGATION OF AUTHORITY.—To minimize administrative costs and
15 to coordinate Government grant programs for emergency response training
16 and planning, the Secretary of Transportation may delegate to the Directors
17 of the Federal Emergency Management Agency and National Institute of
18 Environmental Health Sciences, Chairman of the Nuclear Regulatory Com-
19 mission, Administrator of the Environmental Protection Agency, and Sec-
20 retaries of Labor and Energy any of the following:

- 21 (1) authority to receive applications for grants under this section.
- 22 (2) authority to review applications for technical compliance with this
23 section.
- 24 (3) authority to review applications to recommend approval or dis-
25 approval.
- 26 (4) any other ministerial duty associated with grants under this sec-
27 tion.

28 (h) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Sec-
29 retaries of Transportation, Labor, and Energy, Directors of the Federal
30 Emergency Management Agency and National Institute of Environmental
31 Health Sciences, Chairman of the Nuclear Regulatory Commission, and Ad-
32 ministrator of the Environmental Protection Agency shall review periodi-
33 cally, with the head of each department, agency, or instrumentality of the
34 Government, all emergency response and preparedness training programs of
35 that department, agency, or instrumentality to minimize duplication of ef-
36 fort and expense of the department, agency, or instrumentality in carrying
37 out the programs and shall take necessary action to minimize duplication.

38 (i) ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.—The Sec-
39 retary of the Treasury shall establish an account in the Treasury into which
40 the Secretary of the Treasury shall deposit amounts the Secretary of Trans-
41 portation collects under section 5108(g)(2)(A) of this title and transfers to

1 the Secretary of the Treasury under section 5108(g)(2)(C) of this title.
2 Without further appropriation, amounts in the account are available—

3 (1) to make grants under this section and section 5107(e) of this
4 title;

5 (2) to monitor and provide technical assistance under subsection (f)
6 of this section; and

7 (3) to pay administrative costs of carrying out this section and sec-
8 tions 5107(e), 5108(g)(2), and 5115 of this title, except that not more
9 than 10 percent of the amounts made available from the account in a
10 fiscal year may be used to pay those costs.

11 **§5117. Exemptions and exclusions**

12 (a) AUTHORITY TO EXEMPT.—(1) As provided under procedures pre-
13 scribed by regulation, the Secretary of Transportation may issue an exemp-
14 tion from this chapter or a regulation prescribed under section 5103(b),
15 5104, 5110, or 5112 of this title to a person transporting, or causing to
16 be transported, hazardous material in a way that achieves a safety level—

17 (A) at least equal to the safety level required under this chapter; or

18 (B) consistent with the public interest and this chapter, if a required
19 safety level does not exist.

20 (2) An exemption under this subsection is effective for not more than 2
21 years and may be renewed on application to the Secretary.

22 (b) APPLICATIONS.—When applying for an exemption or renewal of an
23 exemption under this section, the person must provide a safety analysis pre-
24 scribed by the Secretary that justifies the exemption. The Secretary shall
25 publish in the Federal Register notice that an application for an exemption
26 has been filed and shall give the public an opportunity to inspect the safety
27 analysis and comment on the application. This subsection does not require
28 the release of information protected by law from public disclosure.

29 (c) EXCLUSIONS.—(1) The Secretary shall exclude, in any part, from this
30 chapter and regulations prescribed under this chapter—

31 (A) a public vessel (as defined in section 2101 of title 46);

32 (B) a vessel exempted under section 3702 of title 46 from chapter
33 37 of title 46; and

34 (C) a vessel to the extent it is regulated under the Ports and Water-
35 ways Safety Act of 1972 (33 U.S.C. 1221 et seq.).

36 (2) This chapter and regulations prescribed under this chapter do not
37 prohibit—

38 (A) or regulate transportation of a firearm (as defined in section 232
39 of title 18), or ammunition for a firearm, by an individual for personal
40 use; or

41 (B) transportation of a firearm or ammunition in commerce.

1 (d) LIMITATION ON AUTHORITY.—Unless the Secretary decides that an
2 emergency exists, an exemption or renewal granted under this section is the
3 only way a person subject to this chapter may be exempt from this chapter.

4 **§ 5118. Inspectors**

5 (a) GENERAL REQUIREMENT.—The Secretary of Transportation shall
6 maintain the employment of 30 hazardous material safety inspectors more
7 than the total number of safety inspectors authorized for the fiscal year that
8 ended September 30, 1990, for the Federal Railroad Administration, the
9 Federal Highway Administration, and the Research and Special Programs
10 Administration.

11 (b) ALLOCATION TO PROMOTE SAFETY IN TRANSPORTING RADIOACTIVE
12 MATERIAL.—(1) The Secretary shall ensure that 10 of the 30 additional in-
13 spectors focus on promoting safety in transporting radioactive material, as
14 defined by the Secretary, including inspecting—

15 (A) at the place of origin, shipments of high-level radioactive waste
16 or nuclear spent material (as those terms are defined in section
17 5105(a) of this title); and

18 (B) to the maximum extent practicable shipments of radioactive ma-
19 terial that are not high-level radioactive waste or nuclear spent mate-
20 rial.

21 (2) In carrying out their duties, those 10 additional inspectors shall co-
22 operate to the greatest extent possible with safety inspectors of the Nuclear
23 Regulatory Commission and appropriate State and local government offi-
24 cials.

25 (3) Those 10 additional inspectors shall be allocated as follows:

26 (A) one to the Research and Special Programs Administration.

27 (B) 3 to the Federal Railroad Administration.

28 (C) 3 to the Federal Highway Administration.

29 (D) the other 3 among the administrations referred to in clauses
30 (A)–(C) of this paragraph as the Secretary decides.

31 (c) ALLOCATION OF OTHER INSPECTORS.—The Secretary shall allocate,
32 as the Secretary decides, the 20 additional inspectors authorized under this
33 section and not allocated under subsection (b) of this section among the ad-
34 ministrations referred to in subsection (b)(3)(A)–(C) of this section.

35 **§ 5119. Uniform forms and procedures**

36 (a) WORKING GROUP.—The Secretary of Transportation shall establish
37 a working group of State and local government officials, including rep-
38 resentatives of the National Governors' Association, the National Associa-
39 tion of Counties, the National League of Cities, the United States Con-
40 ference of Mayors, and the National Conference of State Legislatures. The
41 purposes of the working group are—

- 1 (1) to establish uniform forms and procedures for a State—
2 (A) to register persons that transport or cause to be transported
3 hazardous material by motor vehicle in the State; and
4 (B) to allow the transportation of hazardous material in the
5 State; and
6 (2) to decide whether to limit the filing of any State registration and
7 permit forms and collection of filing fees to the State in which the per-
8 son resides or has its principal place of business.
- 9 (b) CONSULTATION AND REPORTING.—The working group—
10 (1) shall consult with persons subject to registration and permit re-
11 quirements described in subsection (a) of this section; and
12 (2) not later than November 16, 1993, shall submit to the Secretary,
13 the Committee on Commerce, Science, and Transportation of the Sen-
14 ate, and the Committee on Public Works and Transportation of the
15 House of Representatives a final report that contains—
16 (A) a detailed statement of its findings and conclusions; and
17 (B) its joint recommendations on the matters referred to in sub-
18 section (a) of this section.
- 19 (c) REGULATIONS ON RECOMMENDATIONS.—(1) The Secretary shall pre-
20 scribe regulations to carry out the recommendations contained in the report
21 submitted under subsection (b) of this section with which the Secretary
22 agrees. The regulations shall be prescribed by the later of the last day of
23 the 3-year period beginning on the date the working group submitted its
24 report or the last day of the 90-day period beginning on the date on which
25 at least 26 States adopt all of the recommendations of the report. A regula-
26 tion prescribed under this subsection may not define or limit the amount
27 of a fee a State may impose or collect.
28 (2) A regulation prescribed under this subsection takes effect one year
29 after it is prescribed. The Secretary may extend the one-year period for an
30 additional year for good cause. After a regulation is effective, a State may
31 establish, maintain, or enforce a requirement related to the same subject
32 matter only if the requirement is the same as the regulation.
- 33 (3) In consultation with the working group, the Secretary shall develop
34 a procedure to eliminate differences in how States carry out a regulation
35 prescribed under this subsection.
- 36 (d) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee
37 Act (5 App. U.S.C.) does not apply to the working group.
- 38 **§5120. International uniformity of standards and require-**
39 **ments**
- 40 (a) PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance
41 and direction from the Secretary of State, the Secretary of Transportation

1 shall participate in international forums that establish or recommend man-
2 datory standards and requirements for transporting hazardous material in
3 international commerce.

4 (b) CONSULTATION.—The Secretary of Transportation may consult with
5 interested authorities to ensure that, to the extent practicable, regulations
6 the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of
7 this title are consistent with standards related to transporting hazardous
8 material that international authorities adopt.

9 (c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIRE-
10 MENTS.—This section—

11 (1) does not require the Secretary of Transportation to prescribe a
12 standard identical to a standard adopted by an international authority
13 if the Secretary decides the standard is unnecessary or unsafe; and

14 (2) does not prohibit the Secretary from prescribing a safety require-
15 ment more stringent than a requirement included in a standard adopt-
16 ed by an international authority if the Secretary decides the require-
17 ment is necessary in the public interest.

18 **§ 5121. Administrative**

19 (a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of
20 Transportation may investigate, make reports, issue subpoenas, conduct
21 hearings, require the production of records and property, take depositions,
22 and conduct research, development, demonstration, and training activities.
23 After notice and an opportunity for a hearing, the Secretary may issue an
24 order requiring compliance with this chapter or a regulation prescribed
25 under this chapter.

26 (b) RECORDS, REPORTS, AND INFORMATION.—A person subject to this
27 chapter shall—

28 (1) maintain records, make reports, and provide information the Sec-
29 retary by regulation or order requires; and

30 (2) make the records, reports, and information available when the
31 Secretary requests.

32 (c) INSPECTION.—(1) The Secretary may authorize an officer, employee,
33 or agent to inspect, at a reasonable time and in a reasonable way, records
34 and property related to—

35 (A) manufacturing, fabricating, marking, maintaining, recondition-
36 ing, repairing, testing, or distributing a package or container for use
37 by a person in transporting hazardous material in commerce; or

38 (B) the transportation of hazardous material in commerce.

39 (2) An officer, employee, or agent under this subsection shall display
40 proper credentials when requested.

1 (d) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMER-
2 GENCIES, AND ACTIONS.—(1) The Secretary shall—

3 (A) maintain a facility and technical staff sufficient to provide, with-
4 in the United States Government, the capability of evaluating a risk
5 related to the transportation of hazardous material and material al-
6 leged to be hazardous;

7 (B) maintain a central reporting system and information center ca-
8 pable of providing information and advice to law enforcement and fire-
9 fighting personnel, other interested individuals, and officers and em-
10 ployees of the Government and State and local governments on meeting
11 an emergency related to the transportation of hazardous material; and

12 (C) conduct a continuous review on all aspects of transporting haz-
13 ardous material to decide on and take appropriate actions to ensure
14 safe transportation of hazardous material.

15 (2) Paragraph (1) of this subsection does not prevent the Secretary from
16 making a contract with a private entity for use of a supplemental reporting
17 system and information center operated and maintained by the contractor.

18 (e) ANNUAL REPORT.—The Secretary shall submit to the President, for
19 submission to Congress, not later than June 15th of each year, a report
20 about the transportation of hazardous material during the prior calendar
21 year. The report shall include—

22 (1) a statistical compilation of accidents and casualties related to the
23 transportation of hazardous material;

24 (2) a list and summary of applicable Government regulations, cri-
25 teria, orders, and exemptions;

26 (3) a summary of the basis for each exemption;

27 (4) an evaluation of the effectiveness of enforcement activities and
28 the degree of voluntary compliance with regulations;

29 (5) a summary of outstanding problems in carrying out this chapter
30 in order of priority; and

31 (6) recommendations for appropriate legislation.

32 **§ 5122. Enforcement**

33 (a) GENERAL.—At the request of the Secretary of Transportation, the
34 Attorney General may bring a civil action in an appropriate district court
35 of the United States to enforce this chapter or a regulation prescribed or
36 order issued under this chapter. The court may award appropriate relief,
37 including punitive damages.

38 (b) IMMINENT HAZARDS.—(1) If the Secretary has reason to believe that
39 an imminent hazard exists, the Secretary may bring a civil action in an ap-
40 propriate district court of the United States—

1 (A) to suspend or restrict the transportation of the hazardous mate-
2 rial responsible for the hazard; or

3 (B) to eliminate or ameliorate the hazard.

4 (2) On request of the Secretary, the Attorney General shall bring an ac-
5 tion under paragraph (1) of this subsection.

6 **§ 5123. Civil penalty**

7 (a) PENALTY.—(1) A person that knowingly violates this chapter or a
8 regulation prescribed or order issued under this chapter is liable to the
9 United States Government for a civil penalty of at least \$250 but not more
10 than \$25,000 for each violation. A person acts knowingly when—

11 (A) the person has actual knowledge of the facts giving rise to the
12 violation; or

13 (B) a reasonable person acting in the circumstances and exercising
14 reasonable care would have that knowledge.

15 (2) A separate violation occurs for each day the violation, committed by
16 a person that transports or causes to be transported hazardous material,
17 continues.

18 (b) HEARING REQUIREMENT.—The Secretary of Transportation may find
19 that a person has violated this chapter or a regulation prescribed under this
20 chapter only after notice and an opportunity for a hearing. The Secretary
21 shall impose a penalty under this section by giving the person written notice
22 of the amount of the penalty.

23 (c) PENALTY CONSIDERATIONS.—In determining the amount of a civil
24 penalty under this section, the Secretary shall consider—

25 (1) the nature, circumstances, extent, and gravity of the violation;

26 (2) with respect to the violator, the degree of culpability, any history
27 of prior violations, the ability to pay, and any effect on the ability to
28 continue to do business; and

29 (3) other matters that justice requires.

30 (d) CIVIL ACTIONS TO COLLECT.—The Attorney General may bring a
31 civil action in an appropriate district court of the United States to collect
32 a civil penalty under this section.

33 (e) COMPROMISE.—The Secretary may compromise the amount of a civil
34 penalty imposed under this section before referral to the Attorney General.

35 (f) SETOFF.—The Government may deduct the amount of a civil penalty
36 imposed or compromised under this section from amounts it owes the person
37 liable for the penalty.

38 (g) DEPOSITING AMOUNTS COLLECTED.—Amounts collected under this
39 section shall be deposited in the Treasury as miscellaneous receipts.

1 **§ 5124. Criminal penalty**

2 A person knowingly violating section 5104(b) of this title or willfully vio-
3 lating this chapter or a regulation prescribed or order issued under this
4 chapter shall be fined under title 18, imprisoned for not more than 5 years,
5 or both.

6 **§ 5125. Preemption**

7 (a) GENERAL.—Except as provided in subsections (b), (c), and (e) of this
8 section, a requirement of a State, political subdivision of a State, or Indian
9 tribe is preempted if—

10 (1) complying with a requirement of the State, political subdivision,
11 or tribe and a requirement of this chapter or a regulation prescribed
12 under this chapter is not possible; or

13 (2) the requirement of the State, political subdivision, or tribe, as
14 applied or enforced, is an obstacle to accomplishing and carrying out
15 this chapter or a regulation prescribed under this chapter.

16 (b) SUBSTANTIVE DIFFERENCES.—(1) Except as provided in subsection
17 (c) of this section, a law, regulation, order, or other requirement of a State,
18 political subdivision of a State, or Indian tribe about any of the following
19 subjects, that is not substantively the same as a provision of this chapter
20 or a regulation prescribed under this chapter, is preempted:

21 (A) the designation, description, and classification of hazardous ma-
22 terial.

23 (B) the packing, repacking, handling, labeling, marking, and
24 placarding of hazardous material.

25 (C) the preparation, execution, and use of shipping documents relat-
26 ed to hazardous material and requirements related to the number, con-
27 tents, and placement of those documents.

28 (D) the written notification, recording, and reporting of the uninten-
29 tional release in transportation of hazardous material.

30 (E) the design, manufacturing, fabricating, marking, maintenance,
31 reconditioning, repairing, or testing of a package or container rep-
32 resented, marked, certified, or sold as qualified for use in transporting
33 hazardous material.

34 (2) If the Secretary of Transportation prescribes or has prescribed under
35 section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provi-
36 sion of law a regulation or standard related to a subject referred to in para-
37 graph (1) of this subsection, a State, political subdivision of a State, or In-
38 dian tribe may prescribe, issue, maintain, and enforce only a law, regulation,
39 standard, or order about the subject that is substantively the same as a pro-
40 vision of this chapter or a regulation prescribed or order issued under this
41 chapter. The Secretary shall decide on and publish in the Federal Register

1 the effective date of section 5103(b) of this title for any regulation or stand-
2 ard about any of those subjects that the Secretary prescribes after Novem-
3 ber 16, 1990. However, the effective date may not be earlier than 90 days
4 after the Secretary prescribes the regulation or standard nor later than the
5 last day of the 2-year period beginning on the date the Secretary prescribes
6 the regulation or standard.

7 (3) If a State, political subdivision of a State, or Indian tribe imposes
8 a fine or penalty the Secretary decides is appropriate for a violation related
9 to a subject referred to in paragraph (1) of this subsection, an additional
10 fine or penalty may not be imposed by any other authority.

11 (c) COMPLIANCE WITH SECTION 5112(b) REGULATIONS.—(1) Except as
12 provided in paragraph (2) of this subsection, after the last day of the 2-
13 year period beginning on the date a regulation is prescribed under section
14 5112(b) of this title, a State or Indian tribe may establish, maintain, or en-
15 force a highway routing designation over which hazardous material may or
16 may not be transported by motor vehicles, or a limitation or requirement
17 related to highway routing, only if the designation, limitation, or require-
18 ment complies with section 5112(b).

19 (2)(A) A highway routing designation, limitation, or requirement estab-
20 lished before the date a regulation is prescribed under section 5112(b) of
21 this title does not have to comply with section 5112(b)(1)(B), (C), and (F).

22 (B) This subsection and section 5112 of this title do not require a State
23 or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing
24 designation, limitation, or requirement was established before November 16,
25 1990.

26 (C) The Secretary may allow a highway routing designation, limitation,
27 or requirement to continue in effect until a dispute related to the designa-
28 tion, limitation, or requirement is resolved under section 5112(d) of this
29 title.

30 (d) DECISIONS ON PREEMPTION.—(1) A person (including a State, politi-
31 cal subdivision of a State, or Indian tribe) directly affected by a requirement
32 of a State, political subdivision, or tribe may apply to the Secretary, as pro-
33 vided by regulations prescribed by the Secretary, for a decision on whether
34 the requirement is preempted by subsection (a), (b)(1), or (c) of this sec-
35 tion. The Secretary shall publish notice of the application in the Federal
36 Register. After notice is published, an applicant may not seek judicial relief
37 on the same or substantially the same issue until the Secretary takes final
38 action on the application or until 180 days after the application is filed,
39 whichever occurs first.

1 (2) After consulting with States, political subdivisions of States, and In-
2 dian tribes, the Secretary shall prescribe regulations for carrying out para-
3 graph (1) of this subsection.

4 (3) Subsection (a) of this section does not prevent a State, political sub-
5 division of a State, or Indian tribe, or another person directly affected by
6 a requirement, from seeking a decision on preemption from a court of com-
7 petent jurisdiction instead of applying to the Secretary under paragraph (1)
8 of this subsection.

9 (e) WAIVER OF PREEMPTION.—A State, political subdivision of a State,
10 or Indian tribe may apply to the Secretary for a waiver of preemption of
11 a requirement the State, political subdivision, or tribe acknowledges is pre-
12 empted by subsection (a), (b)(1), or (c) of this section. Under a procedure
13 the Secretary prescribes by regulation, the Secretary may waive preemption
14 on deciding the requirement—

15 (1) provides the public at least as much protection as do require-
16 ments of this chapter and regulations prescribed under this chapter;
17 and

18 (2) is not an unreasonable burden on commerce.

19 (f) JUDICIAL REVIEW.—A party to a proceeding under subsection (d) or
20 (e) of this section may bring a civil action in an appropriate district court
21 of the United States for judicial review of the decision of the Secretary not
22 later than 60 days after the decision becomes final.

23 (g) FEES.—A State, political subdivision of a State, or Indian tribe may
24 impose a fee related to transporting hazardous material only if the fee is
25 fair and used for a purpose related to transporting hazardous material, in-
26 cluding enforcement and planning, developing, and maintaining a capability
27 for emergency response.

28 **§ 5126. Relationship to other laws**

29 (a) CONTRACTS.—A person under contract with a department, agency, or
30 instrumentality of the United States Government that transports or causes
31 to be transported hazardous material, or manufactures, fabricates, marks,
32 maintains, reconditions, repairs, or tests a package or container that the
33 person represents, marks, certifies, or sells as qualified for use in transport-
34 ing hazardous material must comply with this chapter, regulations pre-
35 scribed and orders issued under this chapter, and all other requirements of
36 the Government, State and local governments, and Indian tribes (except a
37 requirement preempted by a law of the United States) in the same way and
38 to the same extent that any person engaging in that transportation, manu-
39 facturing, fabricating, marking, maintenance, reconditioning, repairing, or
40 testing that is in or affects commerce must comply with the provision, regu-
41 lation, order, or requirement.

1 (b) NONAPPLICATION.—This chapter does not apply to—

2 (1) a pipeline subject to regulation under chapter 601 of this title;

3 or

4 (2) any matter that is subject to the postal laws and regulations of
5 the United States under this chapter or title 18 or 39.

6 **§ 5127. Authorization of appropriations**

7 (a) GENERAL.—Not more than \$18,000,000 may be appropriated to the
8 Secretary of Transportation for the fiscal year ending September 30, 1993,
9 to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115,
10 5116, and 5119).

11 (b) HAZMAT EMPLOYEE TRAINING.—Not more than \$250,000 is avail-
12 able to the Director of the National Institute of Environmental Health
13 Sciences from the account established under section 5116(i) of this title for
14 each of the fiscal years ending September 30, 1993–1998, to carry out sec-
15 tion 5107(e) of this title.

16 (c) TRAINING CURRICULUM.—(1) Not more than \$1,000,000 is available
17 to the Secretary of Transportation from the account established under sec-
18 tion 5116(i) of this title for each of the fiscal years ending September 30,
19 1993–1998, to carry out section 5115 of this title.

20 (2) The Secretary of Transportation may transfer to the Director of the
21 Federal Emergency Management Agency from amounts available under this
22 subsection amounts necessary to carry out section 5115(d)(1) of this title.

23 (d) PLANNING AND TRAINING.—(1) Not more than \$5,000,000 is avail-
24 able to the Secretary of Transportation from the account established under
25 section 5116(i) of this title for each of the fiscal years ending September
26 30, 1993–1998, to carry out section 5116(a) of this title.

27 (2) Not more than \$7,800,000 is available to the Secretary of Transpor-
28 tation from the account established under section 5116(i) of this title for
29 each of the fiscal years ending September 30, 1993–1998, to carry out sec-
30 tion 5116(b) of this title.

31 (3) Not more than the following amounts are available from the account
32 established under section 5116(i) of this title for each of the fiscal years
33 ending September 30, 1993–1998, to carry out section 5116(f) of this title:

34 (A) \$750,000 each to the Secretaries of Transportation and Energy,
35 Administrator of the Environmental Protection Agency, and Director of
36 the Federal Emergency Management Agency.

37 (B) \$200,000 to the Director of the National Institute of Environ-
38 mental Health Sciences.

39 (e) UNIFORM FORMS AND PROCEDURES.—Not more than \$400,000 may
40 be appropriated to the Secretary of Transportation for the fiscal year end-
41 ing September 30, 1993, to carry out section 5119 of this title.

1 (f) CREDITS TO APPROPRIATIONS.—The Secretary of Transportation may
 2 credit to any appropriation to carry out this chapter an amount received
 3 from a State, Indian tribe, or other public authority or private entity for
 4 expenses the Secretary incurs in providing training to the State, authority,
 5 or entity.

6 (g) AVAILABILITY OF AMOUNTS.—Amounts available under subsections
 7 (c)–(e) of this section remain available until expended.

8 **CHAPTER 53—MASS TRANSPORTATION**

Sec.

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9 **§ 5301. Policies, findings, and purposes**

10 (a) DEVELOPMENT OF TRANSPORTATION SYSTEMS.—It is in the interest
 11 of the United States to encourage and promote the development of transpor-
 12 tation systems that embrace various modes of transportation and efficiently
 13 maximize mobility of individuals and goods in and through urbanized areas
 14 and minimize transportation-related fuel consumption and air pollution.

15 (b) GENERAL FINDINGS.—Congress finds that—

1 (1) more than 70 percent of the population of the United States is
2 located in rapidly expanding urban areas that generally cross the
3 boundary lines of local jurisdictions and often extend into at least 2
4 States;

5 (2) the welfare and vitality of urban areas, the satisfactory move-
6 ment of people and goods within those areas, and the effectiveness of
7 programs aided by the United States Government are jeopardized by
8 deteriorating or inadequate urban transportation service and facilities,
9 the intensification of traffic congestion, and the lack of coordinated,
10 comprehensive, and continuing development planning;

11 (3) transportation is the lifeblood of an urbanized society, and the
12 health and welfare of an urbanized society depend on providing effi-
13 cient, economical, and convenient transportation in and between urban
14 areas;

15 (4) for many years the mass transportation industry capably and
16 profitably satisfied the transportation needs of the urban areas of the
17 United States but in the early 1970's continuing even minimal mass
18 transportation service in urban areas was threatened because maintain-
19 ing that transportation service was financially burdensome;

20 (5) ending that transportation, or the continued increase in its cost
21 to the user, is undesirable and may affect seriously and adversely the
22 welfare of a substantial number of lower income individuals;

23 (6) some urban areas were developing preliminary plans for, or car-
24 rying out, projects in the early 1970's to revitalize their mass transpor-
25 tation operations;

26 (7) significant mass transportation improvements are necessary to
27 achieve national goals for improved air quality, energy conservation,
28 international competitiveness, and mobility for elderly individuals, indi-
29 viduals with disabilities, and economically disadvantaged individuals in
30 urban and rural areas of the United States;

31 (8) financial assistance by the Government to develop efficient and
32 coordinated mass transportation systems is essential to solve the urban
33 transportation problems referred to in clause (2) of this subsection; and

34 (9) immediate substantial assistance by the Government is needed to
35 enable mass transportation systems to continue providing vital trans-
36 portation service.

37 (c) RAPID URBANIZATION AND CONTINUING POPULATION DISPERSAL.—
38 Rapid urbanization and continuing dispersal of the population and activities
39 in urban areas have made the ability of all citizens to move quickly and at
40 a reasonable cost an urgent problem of the Government.

1 (d) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.—It is
 2 the policy of the Government that elderly individuals and individuals with
 3 disabilities have the same right as other individuals to use mass transpor-
 4 tation service and facilities. Special efforts shall be made in planning and
 5 designing mass transportation service and facilities to ensure that mass
 6 transportation can be used by elderly individuals and individuals with dis-
 7 abilities. All programs of the Government assisting mass transportation
 8 shall carry out this policy.

9 (e) PRESERVING THE ENVIRONMENT.—It is the policy of the Government
 10 that special effort shall be made to preserve the natural beauty of the coun-
 11 tryside, public park and recreation lands, wildlife and waterfowl refuges,
 12 and important historical and cultural assets when planning, designing, and
 13 carrying out an urban mass transportation capital project with assistance
 14 from the Government under sections 5309 and 5310 of this title.

15 (f) GENERAL PURPOSES.—The purposes of this chapter are—

16 (1) to assist in developing improved mass transportation equipment,
 17 facilities, techniques, and methods with the cooperation of public and
 18 private mass transportation companies;

19 (2) to encourage the planning and establishment of areawide urban
 20 mass transportation systems needed for economical and desirable urban
 21 development with the cooperation of public and private mass transpor-
 22 tation companies;

23 (3) to assist States and local governments and their authorities in
 24 financing areawide urban mass transportation systems that are to be
 25 operated by public or private mass transportation companies as decided
 26 by local needs;

27 (4) to provide financial assistance to State and local governments
 28 and their authorities to help carry out national goals related to mobility
 29 for elderly individuals, individuals with disabilities, and economically
 30 disadvantaged individuals; and

31 (5) to establish a partnership that allows a community, with finan-
 32 cial assistance from the Government, to satisfy its urban mass trans-
 33 portation requirements.

34 **§ 5302. Definitions**

35 (a) GENERAL.—In this chapter—

36 (1) “capital project” means a project for—

37 (A) acquiring, constructing, supervising, or inspecting equip-
 38 ment or a facility for use in mass transportation, expenses incidental
 39 to the acquisition or construction (including designing, engi-
 40 neering, location surveying, mapping, and acquiring rights of way),
 41 relocation assistance, acquiring replacement housing sites, and ac-

1 quiring, constructing, relocating, and rehabilitating replacement
2 housing;

3 (B) rehabilitating a bus that extends the economic life of a bus
4 for at least 5 years;

5 (C) remanufacturing a bus that extends the economic life of a
6 bus for at least 8 years; or

7 (D) overhauling rail rolling stock.

8 (2) “chief executive officer of a State” includes the designee of the
9 chief executive officer.

10 (3) “emergency regulation” means a regulation—

11 (A) that is effective temporarily before the expiration of the oth-
12 erwise specified periods of time for public notice and comment
13 under section 5334(b) of this title; and

14 (B) prescribed by the Secretary of Transportation as the result
15 of a finding that a delay in the effective date of the regulation—

16 (i) would injure seriously an important public interest;

17 (ii) would frustrate substantially legislative policy and in-
18 tent; or

19 (iii) would damage seriously a person or class without serv-
20 ing an important public interest.

21 (4) “fixed guideway” means a mass transportation facility—

22 (A) using and occupying a separate right of way or rail for the
23 exclusive use of mass transportation and other high occupancy ve-
24 hicles; or

25 (B) using a fixed catenary system and a right of way usable by
26 other forms of transportation.

27 (5) “handicapped individual” means an individual who, because of
28 illness, injury, age, congenital malfunction, or other incapacity or tem-
29 porary or permanent disability (including an individual who is a wheel-
30 chair user or has semiambulatory capability), cannot use effectively,
31 without special facilities, planning, or design, mass transportation serv-
32 ice or a mass transportation facility.

33 (6) “local governmental authority” includes—

34 (A) a political subdivision of a State;

35 (B) an authority of at least one State or political subdivision of
36 a State;

37 (C) an Indian tribe; and

38 (D) a public corporation, board, or commission established
39 under the laws of a State.

40 (7) “mass transportation” means transportation by a conveyance
41 that provides regular and continuing general or special transportation

1 to the public, but does not include schoolbus, charter, or sightseeing
2 transportation.

3 (8) “net project cost” means the part of a project that reasonably
4 cannot be financed from revenues.

5 (9) “new bus model” means a bus model (including a model using
6 alternative fuel)—

7 (A) that has not been used in mass transportation in the United
8 States before the date of production of the model; or

9 (B) used in mass transportation in the United States but being
10 produced with a major change in configuration or components.

11 (10) “regulation” means any part of a statement of general or par-
12 ticular applicability of the Secretary of Transportation designed to
13 carry out, interpret, or prescribe law or policy in carrying out this
14 chapter.

15 (11) “State” means a State of the United States, the District of Co-
16 lumbia, Puerto Rico, the Northern Mariana Islands, Guam, American
17 Samoa, and the Virgin Islands.

18 (12) “urban area” means an area that includes a municipality or
19 other built-up place that the Secretary of Transportation, after consid-
20 ering local patterns and trends of urban growth, decides is appropriate
21 for a local mass transportation system to serve individuals in the local-
22 ity.

23 (13) “urbanized area” means an area—

24 (A) encompassing at least an urbanized area within a State that
25 the Secretary of Commerce designates; and

26 (B) designated an urbanized area within boundaries fixed by
27 State and local officials and approved by the Secretary of Trans-
28 portation.

29 (b) AUTHORITY TO MODIFY “HANDICAPPED INDIVIDUAL”.—The Sec-
30 retary of Transportation by regulation may modify the definition of sub-
31 section (a)(5) of this section as it applies to section 5307(d)(1)(D) of this
32 title.

33 **§ 5303. Metropolitan planning**

34 (a) DEVELOPMENT REQUIREMENTS.—To carry out section 5301(a) of
35 this title, metropolitan planning organizations designated under subsection
36 (c) of this section, in cooperation with States, shall develop transportation
37 plans and programs for State urbanized areas. The plans and programs for
38 each area shall provide for developing transportation facilities (including pe-
39 destrian walkways and bicycle transportation facilities) that will function as
40 an intermodal transportation system for the State, metropolitan area, and
41 United States. The development process shall provide for consideration of

1 all modes of transportation and shall be continuing, cooperative, and com-
2 prehensive to the degree appropriate, based on the complexity of the trans-
3 portation problems.

4 (b) PLAN AND PROGRAM FACTORS.—In developing plans and programs
5 under this section and sections 5304–5306 of this title, each metropolitan
6 planning organization at least shall consider the following factors:

7 (1) preserving existing transportation facilities and, where practical,
8 ways to meet transportation needs by using existing transportation fa-
9 cilities more efficiently.

10 (2) the consistency of transportation planning with United States
11 Government, State, and local energy conservation programs, goals, and
12 objectives.

13 (3) the need to relieve congestion and prevent congestion from occur-
14 ring.

15 (4) the likely effect of transportation policy decisions on land use
16 and development and the consistency of transportation plans and pro-
17 grams with short- and long-term land use and development plans.

18 (5) programming expenditures on transportation enhancement activi-
19 ties, as required under section 133 of title 23.

20 (6) the effects of all transportation projects to be undertaken in the
21 metropolitan area, without regard to whether the projects are publicly
22 financed.

23 (7) international border crossings and access to ports, airports, inter-
24 modal transportation facilities, major freight distribution routes, na-
25 tional parks, recreation areas, monuments and historic sites, and mili-
26 tary installations.

27 (8) the need for connecting roads in the metropolitan area with
28 roads outside the area.

29 (9) the transportation needs identified by using the management sys-
30 tems required by section 303 of title 23.

31 (10) preserving rights of way for constructing future transportation
32 projects, including identifying—

33 (A) unused rights of way that may be needed for future trans-
34 portation corridors; and

35 (B) corridors where action is needed most to prevent destruction
36 or loss.

37 (11) ways to enhance the efficient movement of freight.

38 (12) using life-cycle costs in designing and engineering bridges, tun-
39 nels, and pavement.

40 (13) the overall social, economic, energy, and environmental effects
41 of transportation decisions.

1 (14) ways to expand and enhance mass transportation services and
2 to increase usage of those services.

3 (15) capital investments that will result in increased security in mass
4 transportation systems.

5 (c) DESIGNATING METROPOLITAN PLANNING ORGANIZATIONS.—(1) To
6 carry out the planning process required by this section, a metropolitan plan-
7 ning organization shall be designated for each urbanized area with a popu-
8 lation of more than 50,000—

9 (A) by agreement of the chief executive officer of a State and units
10 of general local government representing at least 75 percent of the af-
11 fected population (including the central city as defined by the Secretary
12 of Commerce); or

13 (B) under procedures established by State or local law.

14 (2) In a metropolitan area designated as a transportation management
15 area, the designated metropolitan planning organization, if redesignated
16 after December 18, 1991, shall include local elected officials, officials of au-
17 thorities that administer or operate major modes of transportation in the
18 metropolitan area (including all transportation authorities included in the
19 organization on June 1, 1991), and appropriate State officials.

20 (3) More than one metropolitan planning organization may be designated
21 in an urbanized area (as defined by the Secretary of Commerce) only if the
22 chief executive officer decides that the size and complexity of the urbanized
23 area make designation of more than one organization appropriate.

24 (4) A designation is effective until—

25 (A) the organization is redesignated under paragraph (3) of this sub-
26 section; or

27 (B) revoked—

28 (i) by agreement of the chief executive officer and units of gen-
29 eral local government representing at least 75 percent of the af-
30 fected population; or

31 (ii) as otherwise provided by State or local procedures.

32 (5)(A) The chief executive officer and units of general local government
33 representing at least 75 percent of the affected population (including the
34 central city as defined by the Secretary of Commerce) may redesignate by
35 agreement a metropolitan planning organization when appropriate to carry
36 out this section.

37 (B) A metropolitan planning organization shall be redesignated on re-
38 quest of one or more units of general local government representing at least
39 25 percent of the affected population (including the central city as defined
40 by the Secretary of Commerce) in an urbanized area with a population of
41 more than 5,000,000, but less than 10,000,000 or that is an extreme non-

1 attainment area for ozone or carbon monoxide (as defined in the Clean Air
2 Act (42 U.S.C. 7401 et seq.)).

3 (C) A metropolitan planning organization shall be redesignated using pro-
4 cedures established to carry out this paragraph.

5 (6) This subsection does not affect the authority, under State law in ef-
6 fect on December 18, 1991, of a public authority with multimodal transpor-
7 tation responsibilities—

8 (A) to develop plans and programs for a metropolitan planning orga-
9 nization to adopt; and

10 (B) to develop long-range capital plans, coordinate mass transpor-
11 tation services and projects, and carry out other activities under State
12 law.

13 (d) METROPOLITAN AREA BOUNDARIES.—To carry out this section, the
14 metropolitan planning organization and the chief executive officer shall de-
15 cide by agreement on the boundaries of a metropolitan area. The area shall
16 cover at least the existing urbanized area and the contiguous area expected
17 to become urbanized within the 20-year forecast period and may include the
18 Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area,
19 as defined by the Secretary of Commerce. An area designated as an non-
20 attainment area for ozone or carbon monoxide under the Clean Air Act (42
21 U.S.C. 7401 et seq.) shall include at least the boundaries of the nonattain-
22 ment area, except as the chief executive officer and metropolitan planning
23 organization otherwise agree.

24 (e) COORDINATION.—(1) The Secretary of Transportation shall establish
25 requirements the Secretary considers appropriate to encourage chief execu-
26 tive officers and metropolitan planning organizations with responsibility for
27 part of a multi-State metropolitan area to provide coordinated transpor-
28 tation planning for the entire area.

29 (2) Congress consents to at least 2 States making an agreement, not in
30 conflict with a law of the United States, for cooperative efforts and mutual
31 assistance in support of activities authorized under this section related to
32 interstate areas and localities in the States and establishing authorities the
33 States consider desirable for making the agreement effective.

34 (3) If more than one metropolitan planning organization has authority in
35 a metropolitan area or an area designated a nonattainment area for ozone
36 or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each
37 organization shall consult with the other organizations designated for the
38 area and the State to coordinate plans and projects required by this section
39 and sections 5304–5306 of this title.

40 (f) DEVELOPING LONG-RANGE PLANS.—(1) Each metropolitan planning
41 organization shall prepare and update periodically, according to a schedule

1 the Secretary of Transportation decides is appropriate, a long-range plan
2 for its metropolitan area under the requirements of this section. The plan
3 shall be in the form the Secretary considers appropriate and at least shall—

4 (A) identify transportation facilities (including major roadways, mass
5 transportation, and multimodal and intermodal facilities) that should
6 function as an integrated metropolitan transportation system, empha-
7 sizing transportation facilities that serve important United States and
8 regional transportation functions;

9 (B) include a financial plan that—

10 (i) demonstrates how the long-range plan can be carried out;

11 (ii) indicates resources from public and private sources reason-
12 ably expected to be made available to carry out the plan; and

13 (iii) recommends innovative financing techniques, including
14 value capture, tolls, and congestion pricing, to finance needed
15 projects and programs;

16 (C) assess capital investment and other measures necessary—

17 (i) to ensure the preservation of the existing metropolitan trans-
18 portation system, including requirements for operational improve-
19 ments, resurfacing, restoration, and rehabilitation of existing and
20 future major roadways, and operations, maintenance, moderniza-
21 tion, and rehabilitation of existing and future mass transportation
22 facilities; and

23 (ii) to use existing transportation facilities most efficiently to re-
24 lieve vehicular congestion and maximize the mobility of individuals
25 and goods; and

26 (D) indicate appropriate proposed transportation enhancement ac-
27 tivities.

28 (2) When formulating a long-range plan, the metropolitan planning orga-
29 nization shall consider the factors described in subsection (e) of this section
30 as they are related to a 20-year forecast period.

31 (3) In a metropolitan area that is in a nonattainment area for ozone or
32 carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the
33 metropolitan planning organization shall coordinate the development of the
34 long-range plan with the development of the transportation control measures
35 of the State Implementation Plan required by the Act.

36 (4) Before approving a long-range plan, each metropolitan planning orga-
37 nization shall provide citizens, affected public agencies, representatives of
38 mass transportation authority employees, private providers of transpor-
39 tation, and other interested parties with a reasonable opportunity to com-
40 ment on the plan in a way the Secretary of Transportation considers appro-
41 priate.

1 (5) A long-range plan shall be—

2 (A) made readily available for public review; and

3 (B) submitted for information purposes to the chief executive officer
4 of the State at the time and in the way the Secretary of Transportation
5 establishes.

6 (g) GRANTS.—Under criteria the Secretary of Transportation establishes,
7 the Secretary may make contracts for, and grants to, States, local govern-
8 mental authorities, and authorities of the States and governmental authori-
9 ties, or may make agreements with other departments, agencies, and instru-
10 mentalities of the Government, to plan, engineer, design, and evaluate a
11 mass transportation project and for other technical studies, including—

12 (1) studies related to management, operations, capital requirements,
13 and economic feasibility;

14 (2) evaluating previously financed projects; and

15 (3) other similar and related activities preliminary to and in prepara-
16 tion for constructing, acquiring, or improving the operation of facilities
17 and equipment.

18 (h) BALANCED AND COMPREHENSIVE PLANNING.—(1) To the extent
19 practicable, the Secretary of Transportation shall ensure that amounts made
20 available under section 5338(g)(1) of this title to carry out this section and
21 sections 5304–5306 of this title are used to support balanced and com-
22 prehensive transportation planning that considers the relationships among
23 land use and all transportation modes, without regard to the programmatic
24 source of the planning amounts.

25 (2)(A) The Secretary of Transportation shall apportion 80 percent of the
26 amount made available under section 5338(g)(1) of this title to States in
27 a ratio equal to the population in urbanized areas in each State divided by
28 the total population in urbanized areas in all States, as shown by the latest
29 available decennial census. A State may not receive less than .5 percent of
30 the amount apportioned under this subparagraph.

31 (B) Amounts apportioned to a State under subparagraph (A) of this
32 paragraph shall be allocated to metropolitan planning organizations in the
33 State designated under this section under a formula—

34 (i) the State develops in cooperation with the metropolitan planning
35 organizations;

36 (ii) the Secretary of Transportation approves; and

37 (iii) that considers population in urbanized areas and provides an ap-
38 appropriate distribution for urbanized areas to carry out the cooperative
39 processes described in this section.

1 (C) A State shall make amounts available promptly to eligible metropoli-
 2 tan planning organizations according to procedures the Secretary of Trans-
 3 portation approves.

4 (3)(A) The Secretary of Transportation shall apportion 20 percent of the
 5 amount made available under section 5338(g)(1) of this title to States to
 6 supplement allocations made under paragraph (2)(B) of this subsection for
 7 metropolitan planning organizations.

8 (B) Amounts under this paragraph shall be allocated under a formula
 9 that reflects the additional cost of carrying out planning, programming, and
 10 project selection responsibilities under this section and sections 5304–5306
 11 of this title in those areas.

12 (4) To the maximum extent practicable, the Secretary of Transportation
 13 shall ensure that no metropolitan planning organization is allocated less
 14 than the amount it received by administrative formula under this section in
 15 the fiscal year that ended September 30, 1991. To carry out this subsection,
 16 the Secretary may make a proportionate reduction in other amounts made
 17 available to carry out section 5338(g)(1) of this title.

18 (5) Amounts available for an activity under this subsection are for 80
 19 percent of the cost of the activity unless the Secretary of Transportation
 20 decides it is in the interests of the Government not to require a State or
 21 local match.

22 (6) An amount apportioned under this subsection—

23 (A) remains available for 3 years after the fiscal year in which the
 24 amount is apportioned, and

25 (B) that is unobligated at the end of the 3-year period shall be
 26 reapportioned among the States for the next fiscal year.

27 **§ 5304. Transportation improvement program**

28 (a) DEVELOPMENT AND UPDATE.—In cooperation with the State and af-
 29 fected mass transportation operators, a metropolitan planning organization
 30 designated for a metropolitan area shall develop a transportation improve-
 31 ment program for the area. In developing the program, the organization
 32 shall provide citizens, affected public agencies, representatives of transpor-
 33 tation authority employees, other affected employee representatives, private
 34 providers of transportation, and other interested parties with a reasonable
 35 opportunity to comment on the proposed program. The program shall be up-
 36 dated at least once every 2 years and shall be approved by the organization
 37 and the chief executive officer of the State.

38 (b) CONTENTS.—A transportation improvement program for a metropoli-
 39 tan area shall include—

40 (1) a priority list of projects and parts of projects to be carried out
 41 in each 3-year period after the program is adopted; and

1 (2) a financial plan that—

2 (A) demonstrates how the program can be carried out;

3 (B) indicates resources from public and private sources that
4 reasonably are expected to be made available to carry out the plan;
5 and

6 (C) recommends innovative financing techniques, including value
7 capture, tolls, and congestion pricing, to finance needed projects.

8 (c) PROJECT SELECTION.—(1) Except as provided in section 5305(d)(1)
9 of this title, the State, in cooperation with the metropolitan planning organi-
10 zation, shall select projects in a metropolitan area that involves United
11 States Government participation. Selection shall comply with the transpor-
12 tation improvement program for the area.

13 (2) A transportation improvement program for a metropolitan area shall
14 include—

15 (A) projects within the area that are proposed for financing under
16 this chapter and title 23 and that are consistent with the long-range
17 plan developed under section 5303(f) of this title; and

18 (B) a project or an identified phase of a project only if full financing
19 reasonably can be anticipated to be available for the project in the pe-
20 riod estimated for completion.

21 (d) NOTICE AND COMMENT.—Before approving a transportation improve-
22 ment program, a metropolitan planning organization shall provide citizens,
23 affected public agencies, representatives of transportation agency employees,
24 private providers of transportation, and other interested parties with reason-
25 able notice and an opportunity to comment on the proposed program.

26 (e) REGULATORY PROCEEDING.—Not later than June 18, 1992, the Sec-
27 retary of Transportation shall begin a regulatory proceeding to conform re-
28 view requirements for mass transportation projects under the National En-
29 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to comparable re-
30 quirements under that Act applicable to highway projects. This section and
31 sections 5303, 5305, and 5306 of this title do not affect the applicability
32 of the Act to mass transportation or highway projects. A mass transpor-
33 tation project that has an approved draft Environmental Impact Statement
34 is exempt from complying with requirements under the Act applicable to
35 highway projects.

36 **§ 5305. Transportation management areas**

37 (a) DESIGNATION.—The Secretary of Transportation shall designate as a
38 transportation management area—

39 (1) each urbanized area with a population of more than 200,000;
40 and

1 (2) any other area, including the Lake Tahoe Basin as defined in
2 the Act of December 19, 1980 (Public Law 96-551, 94 Stat. 3233),
3 when requested by the chief executive officer and the metropolitan or-
4 ganization designated for the area or the affected local officials.

5 (b) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and
6 programs in a transportation management area shall be based on a continu-
7 ing and comprehensive transportation planning process the metropolitan
8 planning organization carries out in cooperation with the State and mass
9 transportation operators.

10 (c) CONGESTION MANAGEMENT SYSTEM.—The transportation planning
11 process under sections 5303, 5304, and 5306 of this title in a transpor-
12 tation management area shall include a congestion management system pro-
13 viding for effective management, through travel demand reduction and oper-
14 ational management strategies, of new and existing transportation facilities
15 eligible for financing under this chapter and title 23. The Secretary shall
16 establish a phase-in schedule to comply with sections 5303, 5304, and 5306.

17 (d) PROJECT SELECTION.—(1)(A) In consultation with the State, the
18 metropolitan planning organization designated for a transportation manage-
19 ment area shall select the projects to be carried out in the area with United
20 States Government participation under this chapter or title 23, except
21 projects of the National Highway System or under the Bridge and Inter-
22 state Maintenance programs.

23 (B) In cooperation with the metropolitan planning organization desig-
24 nated for a transportation management area, the State shall select the
25 projects to be carried out in the area of the National Highway System or
26 under the Bridge and Interstate Maintenance programs.

27 (2)(A) A selection under this subsection must comply with the transpor-
28 tation improvement program for the area.

29 (B) A selection under paragraph (1)(A) of this subsection must comply
30 with priorities established in the program.

31 (e) CERTIFICATION.—(1) At least once every 3 years, the Secretary shall
32 ensure and certify that each metropolitan planning organization in each
33 transportation management area is carrying out its responsibilities under
34 applicable laws of the United States. The Secretary may make the certifi-
35 cation only if the organization is complying with section 134 of title 23 and
36 other applicable requirements of laws of the United States and the organiza-
37 tion and chief executive officer have approved a transportation improvement
38 program for the area.

39 (2) If the Secretary does not certify before October 1, 1993, that a met-
40 ropolitan planning organization is carrying out its responsibilities, the Sec-
41 retary may withhold any part of the apportionment under section 104(b)(3)

1 of title 23 attributed to the relevant metropolitan area under section
2 133(d)(3) of title 23 and capital amounts apportioned under section 5336
3 of this title. If an organization remains uncertified for more than 2 consecu-
4 tive years after September 30, 1994, 20 percent of that apportionment and
5 capital amounts shall be withheld. The withheld apportionments shall be re-
6 stored when the Secretary certifies the organization.

7 (3) The Secretary may not withhold certification based on the policies
8 and criteria a metropolitan planning organization or mass transportation
9 grant recipient establishes under section 5306(a) of this title for deciding
10 the feasibility of private enterprise participation.

11 (f) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT
12 AREAS.—Government amounts may be made available for a mass transpor-
13 tation project resulting in a significant increase in carrying capacity for sin-
14 gle occupant vehicles in a transportation management area classified as a
15 nonattainment area for ozone or carbon monoxide under the Clean Air Act
16 (42 U.S.C. 7401 et seq.) only if the project is part of an approved conges-
17 tion management system.

18 (g) AREAS NOT DESIGNATED TRANSPORTATION MANAGEMENT AREAS.—

19 (1) The Secretary may provide for the development of abbreviated metro-
20 politan transportation plans and programs the Secretary decides are appro-
21 priate to carry out this section and sections 5303, 5304, and 5306 of this
22 title for metropolitan areas not designated transportation management areas
23 under this section. The Secretary shall consider the complexity of transpor-
24 tation problems in those areas, including transportation-related air quality
25 problems.

26 (2) The Secretary may not provide an abbreviated plan or program for
27 a metropolitan area in a nonattainment area for ozone or carbon monoxide
28 under the Clean Air Act (42 U.S.C. 7401 et seq.).

29 **§ 5306. Private enterprise participation in metropolitan**
30 **planning and transportation improvement pro-**
31 **grams and relationship to other limitations**

32 (a) PRIVATE ENTERPRISE PARTICIPATION.—A plan or program required
33 by section 5303, 5304, or 5305 of this title shall encourage to the maximum
34 extent feasible the participation of private enterprise. If equipment or a fa-
35 cility already being used in an urban area is to be acquired under this chap-
36 ter, the program shall provide that it be improved so that it will better serve
37 the transportation needs of the area.

38 (b) RELATIONSHIP TO OTHER LIMITATIONS.—Sections 5303–5305 of
39 this title do not authorize—

1 (1) a metropolitan planning organization to impose a legal require-
 2 ment on a transportation facility, provider, or project not eligible under
 3 this chapter or title 23; and

4 (2) intervention in the management of a transportation authority.

5 **§ 5307. Block grants**

6 (a) DEFINITIONS.—In this section—

7 (1) “associated capital maintenance items” means equipment, tires,
 8 tubes, and material, each costing at least .5 percent of the current fair
 9 market value of rolling stock comparable to the rolling stock for which
 10 the equipment, tires, tubes, and material are to be used.

11 (2) “designated recipient” means—

12 (A) a person designated, consistent with the planning process
 13 under sections 5303–5306 of this title, by the chief executive offi-
 14 cer of a State, responsible local officials, and publicly owned opera-
 15 tors of mass transportation to receive and apportion amounts
 16 under section 5336 of this title that are attributable to transpor-
 17 tation management areas established under section 5305(a) of this
 18 title;

19 (B) a State or regional authority if the authority is responsible
 20 under the laws of a State for a capital project and for financing
 21 and directly providing mass transportation; or

22 (C) a recipient designated under section 5(b)(1) of the Federal
 23 Transit Act not later than January 5, 1983.

24 (b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may
 25 make grants under this section for capital projects and to finance the plan-
 26 ning, improvement, and operating costs of equipment, facilities, and associ-
 27 ated capital maintenance items for use in mass transportation, including the
 28 renovation and improvement of historic transportation facilities with related
 29 private investment.

30 (2) In a transportation management area designated under section
 31 5305(a) of this title, amounts that cannot be used to pay operating expenses
 32 under this section also are available for a highway project if—

33 (A) that use is approved by the metropolitan planning organization
 34 under section 5303 of this title after appropriate notice and an oppor-
 35 tunity for comment and appeal is provided to affected mass transpor-
 36 tation providers; and

37 (B) the Secretary decides the amounts are not needed for investment
 38 required by the Americans with Disabilities Act of 1990 (42 U.S.C.
 39 12101 et seq.).

40 (3) A grant for a capital project under this section also is available to
 41 finance the leasing of equipment and facilities for use in mass transpor-

1 tation, subject to regulations the Secretary prescribes limiting the grant to
2 leasing arrangements that are more cost effective than acquisition or con-
3 struction.

4 (4) A project for the reconstruction of equipment and material, each of
5 which after reconstruction will have a fair market value of at least .5 per-
6 cent of the current fair market value of rolling stock comparable to the roll-
7 ing stock for which the equipment and material will be used, is a capital
8 project for an associated capital maintenance item under this section.

9 (5) Amounts under this section are available for a highway project under
10 title 23 only if amounts used for the State or local share of the project are
11 eligible to finance either a highway or mass transportation project.

12 (c) PUBLIC PARTICIPATION REQUIREMENTS.—Each recipient of a grant
13 shall—

14 (1) make available to the public information on amounts available to
15 the recipient under this section and the program of projects the recipi-
16 ent proposes to undertake;

17 (2) develop, in consultation with interested parties, including private
18 transportation providers, a proposed program of projects for activities
19 to be financed;

20 (3) publish a proposed program of projects in a way that affected
21 citizens, private transportation providers, and local elected officials
22 have the opportunity to examine the proposed program and submit
23 comments on the proposed program and the performance of the recipi-
24 ent;

25 (4) provide an opportunity for a public hearing in which to obtain
26 the views of citizens on the proposed program of projects;

27 (5) ensure that the proposed program of projects provides for the co-
28 ordination of mass transportation services assisted under section 5336
29 of this title with transportation services assisted from other United
30 States Government sources;

31 (6) consider comments and views received, especially those of private
32 transportation providers, in preparing the final program of projects;
33 and

34 (7) make the final program of projects available to the public.

35 (d) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant
36 in a fiscal year only if—

37 (1) the recipient, within the time the Secretary prescribes, submits
38 a final program of projects prepared under subsection (c) of this sec-
39 tion and a certification for that fiscal year that the recipient (including
40 a person receiving amounts from a chief executive officer of a State
41 under this section)—

1 (A) has or will have the legal, financial, and technical capacity
2 to carry out the program;

3 (B) has or will have satisfactory continuing control over the use
4 of equipment and facilities;

5 (C) will maintain equipment and facilities;

6 (D) will ensure that elderly and handicapped individuals, or an
7 individual presenting a medicare card issued to that individual
8 under title II or XVIII of the Social Security Act (42 U.S.C. 401
9 et seq., 1395 et seq.), will be charged during non-peak hours for
10 transportation using or involving a facility or equipment of a
11 project financed under this chapter not more than 50 percent of
12 the peak hour fare;

13 (E) in carrying out a procurement under this section—

14 (i) will use competitive procurement (as defined or ap-
15 proved by the Secretary);

16 (ii) will not use a procurement that uses exclusionary or
17 discriminatory specifications; and

18 (iii) will comply with applicable Buy-American laws in car-
19 rying out a procurement;

20 (F) has complied with subsection (c) of this section;

21 (G) has available and will provide the required amounts as pro-
22 vided by subsection (e) of this section;

23 (H) will comply with sections 5301(a) and (d), 5303–5306, and
24 5310(a)–(d) of this title;

25 (I) has a locally developed process to solicit and consider public
26 comment before raising a fare or carrying out a major reduction
27 of transportation; and

28 (J)(i) will expend for each fiscal year for mass transportation
29 security projects, including increased lighting in or adjacent to a
30 mass transportation system (including bus stops, subway stations,
31 parking lots, and garages), increased camera surveillance of an
32 area in or adjacent to that system, providing an emergency tele-
33 phone line to contact law enforcement or security personnel in an
34 area in or adjacent to that system, and any other project intended
35 to increase the security and safety of an existing or planned mass
36 transportation system, at least one percent of the amount the re-
37 cipient receives for each fiscal year under section 5336 of this
38 title; or

39 (ii) has decided that the expenditure for security projects is not
40 necessary; and

41 (2) the Secretary accepts the certification.

1 (e) GOVERNMENT'S SHARE OF COSTS.—A grant of the Government for
2 a capital project (including associated capital maintenance items) under this
3 section is for 80 percent of the net project cost of the project. A recipient
4 may provide additional local matching amounts. A grant for operating ex-
5 penses may not be more than 50 percent of the net project cost of the
6 project. The remainder of the net project cost shall be provided in cash from
7 sources other than amounts of the Government or revenues from providing
8 mass transportation (excluding revenues derived from the sale of advertising
9 and concessions that are more than the amount of those revenues in the
10 fiscal year that ended September 30, 1985). Transit system amounts that
11 make up the remainder shall be from an undistributed cash surplus, a re-
12 placement or depreciation cash fund or reserve, or new capital.

13 (f) STATEWIDE OPERATING ASSISTANCE.—(1) A State authority that is
14 a designated recipient and providing mass transportation in at least 2 ur-
15 banized areas may apply for operating assistance in an amount not more
16 than the amount for all urbanized areas in which it provides transportation.

17 (2) When approving an application under paragraph (1) of this sub-
18 section, the Secretary may not reduce the amount of operating assistance
19 approved for another State or a local transportation authority within the af-
20 fected urbanized areas.

21 (g) UNDERTAKING PROJECTS IN ADVANCE.—(1) When a recipient obli-
22 gates all amounts apportioned to it under section 5336 of this title and then
23 carries out a part of a project described in this section (except a project
24 for operating expenses) without amounts of the Government and according
25 to all applicable procedures and requirements (except to the extent the pro-
26 cedures and requirements limit a State to carrying out a project with
27 amounts of the Government previously apportioned to it), the Secretary may
28 pay to the recipient the Government's share of the cost of carrying out that
29 part when additional amounts are apportioned to the recipient under section
30 5336 if—

31 (A) the recipient applies for the payment;
32 (B) the Secretary approves the payment; and
33 (C) before carrying out that part, the Secretary approves the plans
34 and specifications for the part in the same way as for other projects
35 under this section.

36 (2) The Secretary may approve an application under paragraph (1) of
37 this subsection only if an authorization for this section is in effect for the
38 fiscal year to which the application applies. The Secretary may not approve
39 an application if the payment will be more than—

1 (A) the recipient's expected apportionment under section 5336 of
2 this title if the total amount authorized to be appropriated for the fis-
3 cal year to carry out this section is appropriated; less

4 (B) the maximum amount of the apportionment that may be made
5 available for projects for operating expenses under this section.

6 (3) The cost of carrying out that part of a project includes the amount
7 of interest earned and payable on bonds issued by the recipient to the extent
8 proceeds of the bonds are expended in carrying out the part. However, the
9 amount of interest allowed under this paragraph may not be more than the
10 amount by which the estimated cost of carrying out the part (if it would
11 be carried out at the time the part is converted to a regularly financed
12 project) exceeds the actual cost (except interest) of carrying out the part.

13 (4) The Secretary shall consider changes in capital project cost indices
14 when determining the estimated cost under paragraph (3) of this subsection.

15 (h) STREAMLINED ADMINISTRATIVE PROCEDURES.—The Secretary shall
16 prescribe streamlined administrative procedures for complying with the cer-
17 tification requirement under subsection (d)(1)(B) and (C) of this section for
18 track and signal equipment used in existing operations.

19 (i) REVIEWS, AUDITS, AND EVALUATIONS.—(1)(A) At least annually, the
20 Secretary shall carry out, or require a recipient to have carried out inde-
21 pendently, reviews and audits the Secretary considers appropriate to estab-
22 lish whether the recipient has carried out—

23 (i) the activities proposed under subsection (d) of this section in a
24 timely and effective way and can continue to do so; and

25 (ii) those activities and its certifications and has used amounts of the
26 Government in the way required by law.

27 (B) An audit of the use of amounts of the Government shall comply with
28 the auditing procedures of the Comptroller General.

29 (2) At least once every 3 years, the Secretary shall review and evaluate
30 completely the performance of a recipient in carrying out the recipient's pro-
31 gram, specifically referring to compliance with statutory and administrative
32 requirements and the extent to which actual program activities are consist-
33 ent with the activities proposed under subsection (d) of this section and the
34 planning process required under sections 5303–5306 of this title.

35 (3) The Secretary may take appropriate action consistent with a review,
36 audit, and evaluation under this subsection, including making an appro-
37 priate adjustment in the amount of a grant or withdrawing the grant.

38 (j) REPORTS.—A recipient (including a person receiving amounts from a
39 chief executive officer of a State under this section) shall submit annually
40 to the Secretary a report on the revenues the recipient derives from the sale
41 of advertising and concessions.

1 (k) SUBMISSION OF CERTIFICATIONS.—A certification under subsection
 2 (d) of this section and any additional certification required by law to be sub-
 3 mitted to the Secretary may be consolidated into a single document to be
 4 submitted annually as part of the grant application under this section. The
 5 Secretary shall publish annually a list of all certifications required under
 6 this chapter with the publication required under section 5336(e)(2) of this
 7 title.

8 (l) PROCUREMENT SYSTEM APPROVAL.—A recipient may request the Sec-
 9 retary to approve its procurement system. The Secretary shall approve the
 10 system for use for procurements financed under section 5336 of this title
 11 if, after consulting with the Administrator for Federal Procurement Policy,
 12 the Secretary decides the system provides for competitive procurement. Ap-
 13 proval of a system under this subsection does not relieve a recipient of the
 14 duty to certify under subsection (d)(1)(E) of this section.

15 (m) OPERATING FERRIES OUTSIDE URBANIZED AREAS.—A vessel used
 16 in ferryboat operations financed under section 5336 of this title that is part
 17 of a State-operated ferry system may be operated occasionally outside the
 18 urbanized area in which service is provided to accommodate periodic mainte-
 19 nance if existing ferry service is not reduced significantly by operating out-
 20 side the area.

21 (n) RELATIONSHIP TO OTHER LAWS.—(1) Section 1001 of title 18 ap-
 22 plies to a certificate or submission under this section. The Secretary may
 23 end a grant under this section and seek reimbursement, directly or by off-
 24 setting amounts available under section 5336 of this title, when a false or
 25 fraudulent statement or related act within the meaning of section 1001 is
 26 made in connection with a certification or submission.

27 (2) Sections 5302, 5318, 5323(a)(1), (d), and (f), 5332, and 5333 of this
 28 title apply to this section and to a grant made under this section. Except
 29 as provided in this section, no other provision of this chapter applies to this
 30 section or to a grant made under this section.

31 **§ 5308. Mass Transit Account block grants**

32 (a) GENERAL AUTHORITY.—The Secretary of Transportation may make
 33 grants under this section to be used only for capital projects (including cap-
 34 ital maintenance items).

35 (b) APPLICATION OF OTHER SECTIONS.—(1) Sections 5307(a)–(d), (h)–
 36 (l), and (n) and 5336(a)–(c), (f), (g), and (j) of this title apply to amounts
 37 made available under section 5338(a) of this title to carry out this section.

38 (2) Sections 5307(e) and 5336(d) of this title apply to grants under this
 39 section.

1 **§ 5309. Discretionary grants and loans**

2 (a) GENERAL AUTHORITY.—The Secretary of Transportation may make
3 grants and loans under this section to assist State and local governmental
4 authorities in financing—

5 (1) capital projects for new fixed guideway systems, and extensions
6 to existing fixed guideway systems, including the acquisition of real
7 property, the initial acquisition of rolling stock for the systems, alter-
8 natives analysis related to the development of the systems, and the ac-
9 quisition of rights of way, and relocation, for fixed guideway corridor
10 development for projects in the advanced stages of alternatives analysis
11 or preliminary engineering;

12 (2) capital projects, including property and improvements (except
13 public highways other than fixed guideway facilities), needed for an ef-
14 ficient and coordinated mass transportation system;

15 (3) the capital costs of coordinating mass transportation with other
16 transportation;

17 (4) the introduction of new technology, through innovative and im-
18 proved products, into mass transportation;

19 (5) transportation projects that enhance urban economic develop-
20 ment or incorporate private investment, including commercial and resi-
21 dential development, because the projects—

22 (A) enhance the effectiveness of a mass transportation project
23 and are related physically or functionally to that mass transpor-
24 tation project; or

25 (B) establish new or enhanced coordination between mass trans-
26 portation and other transportation;

27 (6) mass transportation projects planned, designed, and carried out
28 to meet the special needs of elderly individuals and individuals with dis-
29 abilities; and

30 (7) the development of corridors to support fixed guideway systems,
31 including protecting rights of way through acquisition, construction of
32 dedicated bus and high occupancy vehicle lanes and park and ride lots,
33 and other nonvehicular capital improvements that the Secretary may
34 decide would result in increased mass transportation usage in the cor-
35 ridor.

36 (b) LOANS FOR REAL PROPERTY INTERESTS.—(1) The Secretary of
37 Transportation may make loans under this section to State and local gov-
38 ernmental authorities to acquire interests in real property for use on urban
39 mass transportation systems as rights of way, station sites, and related pur-
40 poses, including reconstruction, renovation, the net cost of property manage-
41 ment, and relocation payments made under section 5324(a) of this title.

1 (2) The Secretary of Transportation may make a loan under paragraph
2 (1) of this subsection for an approved project only after finding that the
3 property reasonably is expected to be required for a mass transportation
4 system and that it will be used for that system within a reasonable time.

5 (3) An applicant for a loan under this subsection shall provide a copy of
6 the application to the planning agency for the community affected by the
7 project at the same time the application is submitted to the Secretary of
8 Transportation. If the planning agency submits comments to the Secretary
9 not later than 30 days after the application is submitted, or, if the agency
10 requests more time within those 30 days, within a period the Secretary es-
11 tablishes, the Secretary shall consider those comments before taking final
12 action on the application.

13 (4) A loan agreement under this subsection shall provide that a capital
14 project on the property will be started not later than 10 years after the fis-
15 cal year in which the agreement is made. If an interest in property acquired
16 under this subsection is not used for the purpose for which it was acquired,
17 an appraisal of the current value of the property or interest shall be made
18 when a decision is made about the use. The decision shall be made within
19 the 10-year period. Two-thirds of the increase in value shall be paid to the
20 Secretary of Transportation for deposit in the Treasury as miscellaneous re-
21 cepts.

22 (5) A loan under this subsection must be repaid not later than 10 years
23 after the date of the loan agreement or on the date a grant agreement for
24 a capital project on the property is made, whichever is earlier. Payments
25 made to repay the loan shall be deposited in the Treasury as miscellaneous
26 receipts.

27 (c) CONSIDERATION OF DECREASED COMMUTER RAIL TRANSPOR-
28 TATION.—The Secretary of Transportation shall consider the adverse effect
29 of decreased commuter rail transportation when deciding whether to approve
30 a grant or loan under this section to acquire a rail line and all related facili-
31 ties—

32 (1) owned by a rail carrier subject to reorganization under title 11;

33 and

34 (2) used to provide commuter rail transportation.

35 (d) PROJECT AS PART OF APPROVED PROGRAM OF PROJECTS.—Except
36 as provided in subsections (b)(2) and (e) of this section, the Secretary of
37 Transportation may approve a grant or loan for a project under this section
38 only after finding that the project is part of the approved program of
39 projects required under sections 5303–5306 of this title and that an appli-
40 cant—

1 (1) has or will have the legal, financial, and technical capacity to
2 carry out the project, satisfactory continuing control over the use of
3 equipment or facilities, and the capability to maintain the equipment
4 or facilities; and

5 (2) will maintain the equipment or facilities.

6 (e) CRITERIA FOR GRANTS AND LOANS FOR FIXED GUIDEWAY SYS-
7 TEMS.—(1) This subsection applies to a project—

8 (A) for which a letter of intent or contract for the complete amount
9 is issued under subsection (g) of this section after April 1, 1987; or

10 (B) not in the preliminary engineering, final design, or construction
11 stage on January 1, 1987.

12 (2) The Secretary of Transportation may approve a grant or loan under
13 this section for a capital project for a new fixed guideway system or exten-
14 sion of an existing fixed guideway system only if the Secretary decides that
15 the proposed project is—

16 (A) based on the results of an alternatives analysis and preliminary
17 engineering;

18 (B) justified based on a comprehensive review of its mobility im-
19 provements, environmental benefits, cost effectiveness, and operating
20 efficiencies; and

21 (C) supported by an acceptable degree of local financial commitment,
22 including evidence of stable and dependable financing sources to con-
23 struct, maintain, and operate the system or extension.

24 (3) In making a decision under paragraph (2) of this subsection, the Sec-
25 retary of Transportation shall—

26 (A) consider the direct and indirect costs of relevant alternatives;

27 (B) account for costs related to factors such as congestion relief, im-
28 proved mobility, air pollution, noise pollution, congestion, energy con-
29 sumption, and all associated ancillary and mitigation costs necessary to
30 carry out each alternative analyzed;

31 (C) identify and consider mass transportation supportive existing
32 land use policies and future patterns;

33 (D) consider the degree to which the project increases the mobility
34 of the mass transportation dependent population or promotes economic
35 development; and

36 (E) consider other factors the Secretary considers appropriate to
37 carry out this chapter.

38 (4)(A) The Secretary of Transportation shall issue guidelines on how the
39 Secretary will evaluate results of alternatives analysis, project justification,
40 and the degree of local financial commitment.

1 (B) The project justification under paragraph (1)(B) of this subsection
2 shall be adjusted to reflect differences in local land, construction, and oper-
3 ating costs.

4 (C) The degree of local financial commitment is acceptable only if—

5 (i) the proposed project plan provides for the availability of contin-
6 gency amounts the Secretary of Transportation determines to be rea-
7 sonable to cover unanticipated cost overruns;

8 (ii) each proposed local source of capital and operating financing is
9 stable, reliable, and available within the proposed project timetable; and

10 (iii) local resources are available to operate the overall proposed mass
11 transportation system (including essential feeder bus and other services
12 necessary to achieve the projected ridership levels) without requiring a
13 reduction in existing mass transportation services to operate the pro-
14 posed project.

15 (D) In assessing the stability, reliability, and availability of proposed
16 sources of local financing, the Secretary of Transportation shall consider—

17 (i) existing grant commitments;

18 (ii) the degree to which financing sources are dedicated to the pur-
19 poses proposed; and

20 (iii) any debt obligation that exists or is proposed by the recipient
21 for the proposed project or other mass transportation purpose.

22 (5) A proposed project may advance from alternatives analysis to prelimi-
23 nary engineering only if the Secretary of Transportation finds that the
24 project meets the requirements of this section and there is a reasonable
25 chance that the project will continue to meet the requirements at the end
26 of preliminary engineering.

27 (6)(A) A new fixed guideway system or extension of an existing fixed
28 guideway system is not subject to the requirements of this subsection, and
29 the simultaneous evaluation of similar projects in at least 2 corridors in a
30 metropolitan area may not be limited, if—

31 (i) the project is located in an extreme or severe nonattainment area
32 and is a transportation control measure (as defined by the Clean Air
33 Act (42 U.S.C. 7401 et seq.)) required to carry out an approved State
34 Implementation Plan; or

35 (ii) assistance provided under this section is less than \$25,000,000
36 or one-third of the total cost of the project or an appropriate program
37 of projects as decided by the Secretary of Transportation.

38 (B) The simultaneous evaluation of projects in at least 2 corridors in a
39 metropolitan area may not be limited and the Secretary of Transportation
40 shall make decisions under this subsection with expedited procedures that

1 will promote carrying out an approved State Implementation Plan in a time-
2 ly way if a project is—

3 (i) located in a nonattainment area that is not an extreme or severe
4 nonattainment area;

5 (ii) a transportation control measure (as defined by the Clean Air
6 Act (42 U.S.C. 7401 et seq.)); and

7 (iii) required to carry out the State Implementation Plan.

8 (C) This subsection does not apply to a part of a project (including a
9 commuter rail transportation project on an existing right of way) financed
10 completely with amounts for highways made available under part A of title
11 I of the Intermodal Surface Transportation Efficiency Act of 1991 (Public
12 Law 102-240, 105 Stat. 1915).

13 (7) A project financed under this subsection shall be carried out through
14 a full financing grant agreement.

15 (f) REQUIRED PAYMENTS AND ELIGIBLE COSTS OF PROJECTS THAT EN-
16 HANCE URBAN ECONOMIC DEVELOPMENT OR INCORPORATE PRIVATE IN-
17 VESTMENT.—(1) Each grant or loan under subsection (a)(5) of this section
18 shall require that a person making an agreement to occupy space in a facil-
19 ity pay a reasonable share of the costs of the facility through rental pay-
20 ments and other means.

21 (2) Eligible costs for a project under subsection (a)(5) of this section—

22 (A) include property acquisition, demolition of existing structures,
23 site preparation, utilities, building foundations, walkways, open space,
24 and a capital project for, and improving, equipment or a facility for
25 an intermodal transfer facility or transportation mall; but

26 (B) do not include construction of a commercial revenue-producing
27 facility or a part of a public facility not related to mass transportation.

28 (g) LETTERS OF INTENT, FULL FINANCING GRANT AGREEMENTS, AND
29 EARLY SYSTEMS WORK AGREEMENTS.—(1)(A) The Secretary of Transpor-
30 tation may issue a letter of intent to an applicant announcing an intention
31 to obligate, for a project under this section, an amount from future available
32 budget authority specified in law that is not more than the amount stipu-
33 lated as the financial participation of the Secretary in the project. The
34 amount shall be sufficient to complete at least an operable segment when
35 a letter is issued for a fixed guideway project.

36 (B) At least 30 days before issuing a letter under subparagraph (A) of
37 this paragraph, the Secretary of Transportation shall notify in writing the
38 Committee on Public Works and Transportation of the House of Represent-
39 atives and the Committee on Banking, Housing, and Urban Affairs of the
40 Senate of the proposed issuance of the letter.

1 (C) The issuance of a letter is deemed not to be an obligation under sec-
2 tions 1108(c) and (d), 1501, and 1502(a) of title 31 or an administrative
3 commitment.

4 (D) An obligation or administrative commitment may be made only when
5 amounts are appropriated.

6 (2)(A) The Secretary of Transportation may make a full financing grant
7 agreement with an applicant. The agreement shall—

8 (i) establish the terms of participation by the United States Govern-
9 ment in a project under this section;

10 (ii) establish the maximum amount of Government financial assist-
11 ance for the project;

12 (iii) cover the period of time for completing the project, including a
13 period extending beyond the period of an authorization; and

14 (iv) make timely and efficient management of the project easier ac-
15 cording to the law of the United States.

16 (B) An agreement under this paragraph obligates an amount of available
17 budget authority specified in law and may include a commitment, contingent
18 on amounts to be specified in law in advance for commitments under this
19 paragraph, to obligate an additional amount from future available budget
20 authority specified in law. The agreement shall state that the contingent
21 commitment is not an obligation of the Government. Interest and other fi-
22 nancing costs of efficiently carrying out a part of the project within a rea-
23 sonable time are a cost of carrying out the project under a full financing
24 grant agreement, except that eligible costs may not be more than the cost
25 of the most favorable financing terms reasonably available for the project
26 at the time of borrowing. The applicant shall certify, in a way satisfactory
27 to the Secretary of Transportation, that the applicant has shown reasonable
28 diligence in seeking the most favorable financing terms. The amount stipu-
29 lated in an agreement under this paragraph for a fixed guideway project
30 shall be sufficient to complete at least an operable segment.

31 (3)(A) The Secretary of Transportation may make an early systems work
32 agreement with an applicant if a record of decision under the National En-
33 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued
34 on the project and the Secretary finds there is reason to believe—

35 (i) a full financing grant agreement for the project will be made; and

36 (ii) the terms of the work agreement will promote ultimate comple-
37 tion of the project more rapidly and at less cost.

38 (B) A work agreement under this paragraph obligates an amount of avail-
39 able budget authority specified in law and shall provide for reimbursement
40 of preliminary costs of carrying out the project, including land acquisition,
41 timely procurement of system elements for which specifications are decided,

1 and other activities the Secretary of Transportation decides are appropriate
2 to make efficient, long-term project management easier. A work agreement
3 shall cover the period of time the Secretary considers appropriate. The pe-
4 riod may extend beyond the period of current authorization. Interest and
5 other financing costs of efficiently carrying out the work agreement within
6 a reasonable time are a cost of carrying out the agreement, except that eli-
7 gible costs may not be more than the cost of the most favorable financing
8 terms reasonably available for the project at the time of borrowing. The ap-
9 plicant shall certify, in a way satisfactory to the Secretary, that the appli-
10 cant has shown reasonable diligence in seeking the most favorable financing
11 terms. If an applicant does not carry out the project for reasons within the
12 control of the applicant, the applicant shall repay all Government payments
13 made under the work agreement plus reasonable interest and penalty
14 charges the Secretary establishes in the agreement.

15 (4) The total estimated amount of future obligations of the Government
16 and contingent commitments to incur obligations covered by all outstanding
17 letters of intent, full financing grant agreements, and early systems work
18 agreements may be not more than the greater of the amount authorized
19 under section 5338(a) of this title to carry out this section or 50 percent
20 of the uncommitted cash balance remaining in the Mass Transit Account
21 of the Highway Trust Fund (including amounts received from taxes and in-
22 terest earned that are more than amounts previously obligated), less an
23 amount the Secretary of Transportation reasonably estimates is necessary
24 for grants under this section not covered by a letter. The total amount cov-
25 ered by new letters and contingent commitments included in full financing
26 grant agreements and early systems work agreements may be not more than
27 a limitation specified in law.

28 (h) GOVERNMENT'S SHARE OF NET PROJECT COST.—Based on engineer-
29 ing studies, studies of economic feasibility, and information on the expected
30 use of equipment or facilities, the Secretary of Transportation shall estimate
31 the net project cost. A grant for the project is for 80 percent of the net
32 project cost, unless the grant recipient requests a lower grant percentage.
33 The remainder shall be provided in cash from a source other than amounts
34 of the Government. Transit system amounts that make up the remainder
35 must be from an undistributed cash surplus, a replacement or depreciation
36 cash fund or reserve, or new capital. The remainder for a planned extension
37 to a fixed guideway system may include the cost of rolling stock previously
38 purchased if the applicant satisfies the Secretary that only amounts other
39 than amounts of the Government were used and that the purchase was
40 made for use on the extension. A refund or reduction of the remainder may

1 be made only if a refund of a proportional amount of the grant of the Gov-
2 ernment is made at the same time.

3 (i) LOAN TERM REQUIREMENTS.—Except for a loan under subsection (b)
4 of this section, a loan, including a renewal or extension of the loan, may
5 be made, and a security or obligation may be bought, only if it has a matu-
6 rity date of not more than 40 years. Interest on a loan may not be less
7 than—

8 (1) a rate the Secretary of the Treasury establishes, considering the
9 current average yield on outstanding marketable obligations of the Gov-
10 ernment that have remaining periods of maturity comparable to the av-
11 erage maturity of the loan, adjusted to the nearest .125 percent; plus

12 (2) an allowance the Secretary of Transportation considers adequate
13 to cover administrative costs and probable losses.

14 (j) LOAN PAYMENT FORGIVENESS.—A grant agreement for a capital
15 project may forgive repaying the loan and interest in place of a cash grant
16 for the amount forgiven. The amount is part of the grant and part of the
17 contribution of the Government to the cost of the project.

18 (k) LIMITATION ON MAKING LOANS AND GRANTS FOR PROJECTS.—The
19 Secretary of Transportation may not make a loan under this section for a
20 project for which a grant (except a relocation payment grant) is made under
21 this section. However, the Secretary may make a project grant even though
22 real property for the project has been or will be acquired through a loan
23 under subsection (b) of this section.

24 (l) FISCAL CAPACITY CONSIDERATIONS.—If the Secretary of Transpor-
25 tation gives priority consideration to financing projects that include more
26 than the non-Government share required under subsection (h) of this sec-
27 tion, the Secretary shall give equal consideration to differences in the fiscal
28 capacity of State and local governments.

29 (m) ALLOCATING AMOUNTS.—(1) Of the amounts available for grants
30 and loans under this section for each of the fiscal years ending September
31 30, 1993–1997—

32 (A) 40 percent is available for fixed guideway modernization;

33 (B) 40 percent is available for capital projects for new fixed guide-
34 way systems and extensions to existing fixed guideway systems; and

35 (C) 20 percent is available to replace, rehabilitate, and buy buses
36 and related equipment and to construct bus-related facilities.

37 (2) At least 5.5 percent of the amounts available in each fiscal year under
38 paragraph (1)(C) of this subsection is available for areas other than urban-
39 ized areas.

40 (3) Not later than January 20 of each year, the Secretary of Transpor-
41 tation shall submit to the Committee on Public Works and Transportation

1 of the House of Representatives and the Committee on Banking, Housing,
2 and Urban Affairs of the Senate a proposal on the allocation of amounts
3 to be made available to finance grants and loans for capital projects for new
4 fixed guideway systems and extensions to existing fixed guideway systems
5 among applicants for those amounts.

6 (4) A person applying for, or receiving, assistance for a project described
7 in clause (A), (B), or (C) of paragraph (1) of this subsection may receive
8 assistance for a project described in another of those clauses.

9 (n) UNDERTAKING PROJECTS IN ADVANCE.—(1) The Secretary of Trans-
10 portation may pay the Government's share of the net project cost to a State
11 or local governmental authority that carries out any part of a project de-
12 scribed in this section or a substitute transit project described in section
13 103(e)(4) of title 23 without the aid of amounts of the Government and ac-
14 cording to all applicable procedures and requirements if—

15 (A) the State or local governmental authority applies for the pay-
16 ment;

17 (B) the Secretary approves the payment; and

18 (C) before carrying out the part of the project, the Secretary ap-
19 proves the plans and specifications for the part in the same way as
20 other projects under this section or section 103(e)(4) of title 23.

21 (2) The cost of carrying out part of a project includes the amount of in-
22 terest earned and payable on bonds issued by the State or local govern-
23 mental authority to the extent proceeds of the bonds are expended in carry-
24 ing out the part. However, the amount of interest under this paragraph may
25 not be more than the most favorable interest terms reasonably available for
26 the project at the time of borrowing. The applicant shall certify, in a way
27 satisfactory to the Secretary of Transportation, that the applicant has
28 shown reasonable diligence in seeking the most favorable financial terms.

29 (3) The Secretary of Transportation shall consider changes in capital
30 project cost indices when determining the estimated cost under paragraph
31 (2) of this subsection.

32 (o) USE OF DEOBLIGATED AMOUNTS.—An amount available under this
33 section that is deobligated may be used for any purpose under this section.

34 **§ 5310. Grants and loans for special needs of elderly individ-**
35 **uals and individuals with disabilities**

36 (a) GENERAL AUTHORITY.—The Secretary of Transportation may make
37 grants and loans to—

38 (1) State and local governmental authorities to help them provide
39 mass transportation service planned, designed, and carried out to meet
40 the special needs of elderly individuals and individuals with disabilities;
41 and

1 (2) the chief executive officer of each State for allocation to—

2 (A) private nonprofit corporations and associations to help them
3 provide that transportation service when the transportation service
4 provided under clause (1) of this subsection is unavailable, insuffi-
5 cient, or inappropriate; or

6 (B) governmental authorities—

7 (i) approved by the State to coordinate services for elderly
8 individuals and individuals with disabilities; or

9 (ii) that certify to the chief executive officer that no non-
10 profit corporation or association readily is available in an area
11 to provide service under this subsection.

12 (b) APPORTIONING AND TRANSFERRING AMOUNTS.—The Secretary shall
13 apportion amounts made available under section 5338(a) of this title under
14 a formula the Secretary administers that considers the number of elderly
15 individuals and individuals with disabilities in each State. Any State’s ap-
16 portionment remaining available for obligation at the beginning of the 90-
17 day period before the end of the period of availability of the apportionment
18 is available to the chief executive officer of the State for transfer to supple-
19 ment amounts apportioned to the State under section 5311(c) or 5336(a)(1)
20 of this title.

21 (c) STATE PROGRAM OF PROJECTS.—Amounts made available for this
22 section may be used for transportation projects to assist in providing trans-
23 portation services for elderly individuals and individuals with disabilities
24 that are included in a State program of projects. A program shall be sub-
25 mitted annually to the Secretary for approval and shall contain an assur-
26 ance that the program provides for maximum feasible coordination of trans-
27 portation services assisted under this section with transportation services as-
28 sisted by other United States Government sources.

29 (d) ELIGIBLE CAPITAL EXPENSES.—A recipient of amounts under this
30 section may include acquiring transportation services as an eligible capital
31 expense.

32 (e) APPLICATION OF SECTION 5309.—(1) A grant or loan under sub-
33 section (a)(1) of this section is subject to all requirements of a grant or
34 loan under section 5309 of this title, and is deemed to have been made
35 under section 5309.

36 (2) A grant or loan under subsection (a)(2) of this section is subject to
37 requirements similar to those under paragraph (1) of this subsection to the
38 extent the Secretary considers appropriate.

39 (f) MINIMUM REQUIREMENTS AND PROCEDURES FOR RECIPIENTS.—In
40 carrying out section 5301(d) of this title, section 165(b) of the Federal-Aid
41 Highway Act of 1973 (Public Law 93–87, 87 Stat. 282), and section 504

1 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (consistent with Govern-
2 ment-wide standards to carry out section 504), the Secretary shall prescribe
3 regulations establishing minimum criteria a recipient of Government finan-
4 cial assistance under this chapter or a law referred to in section 165(b) shall
5 comply with in providing mass transportation service to elderly individuals
6 and individuals with disabilities and procedures for the Secretary to monitor
7 compliance with the criteria. The regulations shall include provisions for en-
8 suring that organizations and groups representing elderly individuals and
9 individuals with disabilities are given adequate notice of, and an opportunity
10 to comment on, the proposed activity of a recipient to achieve compliance
11 with the regulations.

12 (g) LEASING VEHICLES.—The Secretary shall prescribe guidelines allow-
13 ing vehicles bought under this section to be leased to local governmental au-
14 thorities to improve transportation services designed to meet the special
15 needs of elderly individuals and individuals with disabilities.

16 (h) MEAL DELIVERY SERVICE TO HOMEBOUND INDIVIDUALS.—Mass
17 transportation service providers receiving assistance under this section or
18 section 5311(c) of this title may coordinate and assist in regularly providing
19 meal delivery service for homebound individuals if the delivery service does
20 not conflict with providing mass transportation service or reduce service to
21 mass transportation passengers.

22 (i) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the
23 recipient currently having a facility or equipment acquired with assistance
24 under this section, a State may transfer the facility or equipment to any
25 recipient eligible to receive assistance under this chapter if the facility or
26 equipment will continue to be used as required under this section.

27 (j) FARES NOT REQUIRED.—This chapter does not require that elderly
28 individuals and individuals with disabilities be charged a fare.

29 **§5311. Financial assistance for other than urbanized areas**

30 (a) DEFINITION.—In this section, “recipient” includes a State authority,
31 a local governmental authority, a nonprofit organization, and an operator
32 of mass transportation service.

33 (b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may
34 make grants for transportation projects that are included in a State pro-
35 gram of mass transportation service projects (including service agreements
36 with private providers of mass transportation service) for areas other than
37 urbanized areas. The program shall be submitted annually to the Secretary.
38 The Secretary may approve the program only if the Secretary finds that the
39 program provides a fair distribution of amounts in the State, including In-
40 dian reservations, and the maximum feasible coordination of mass transpor-

1 tation service assisted under this section with transportation service assisted
2 by other United States Government sources.

3 (2) The Secretary of Transportation shall carry out a rural transportation
4 assistance program in nonurbanized areas. In carrying out this paragraph,
5 the Secretary may make grants and contracts for transportation research,
6 technical assistance, training, and related support services in nonurbanized
7 areas.

8 (c) APPORTIONING AMOUNTS.—The Secretary of Transportation shall ap-
9 portion amounts made available under section 5338(a) of this title so that
10 the chief executive officer of each State receives an amount equal to the
11 total amount apportioned multiplied by a ratio equal to the population of
12 areas other than urbanized areas in a State divided by the population of
13 all areas other than urbanized areas in the United States, as shown by the
14 most recent of the following: the latest Government census, the population
15 estimate the Secretary of Commerce prepares after the 4th year after the
16 date the latest census is published, or the population estimate the Secretary
17 of Commerce prepares after the 8th year after the date the latest census
18 is published. The amount may be obligated by the chief executive officer for
19 2 years after the fiscal year in which the amount is apportioned. An amount
20 that is not obligated at the end of that period shall be reapportioned among
21 the States for the next fiscal year.

22 (d) USE FOR LOCAL TRANSPORTATION SERVICE.—A State may use an
23 amount apportioned under this section for a project included in a program
24 under subsection (b) of this section and eligible for assistance under this
25 chapter if the project will provide local transportation service, as defined by
26 the Secretary of Transportation, in an area other than an urbanized area.

27 (e) USE FOR ADMINISTRATION AND TECHNICAL ASSISTANCE.—(1) The
28 Secretary of Transportation may allow a State to use not more than 15 per-
29 cent of the amount apportioned under this section to administer this section
30 and provide technical assistance to a recipient, including project planning,
31 program and management development, coordination of mass transportation
32 programs, and research the State considers appropriate to promote effective
33 delivery of mass transportation to an area other than an urbanized area.

34 (2) Except as provided in this section, a State carrying out a program
35 of operating assistance under this section may not limit the level or extent
36 of use of the Government grant for the payment of operating expenses.

37 (f) INTERCITY BUS TRANSPORTATION.—(1) A State shall expend at least
38 10 percent of the amount made available in the fiscal year ending Septem-
39 ber 30, 1993, and 15 percent of the amount made available in each fiscal
40 year after September 30, 1993, to carry out a program to develop and sup-

1 port intercity bus transportation. Eligible activities under the program in-
2 clude—

3 (A) planning and marketing for intercity bus transportation;

4 (B) capital grants for intercity bus shelters;

5 (C) joint-use stops and depots;

6 (D) operating grants through purchase-of-service agreements, user-
7 side subsidies, and demonstration projects; and

8 (E) coordinating rural connections between small mass transpor-
9 tation operations and intercity bus carriers.

10 (2) A State does not have to comply with paragraph (1) of this subsection
11 in a fiscal year in which the chief executive officer of the State certifies to
12 the Secretary of Transportation that the intercity bus service needs of the
13 State are being met adequately.

14 (g) GOVERNMENT'S SHARE OF COSTS.—(1) In this subsection, “amounts
15 of the Government or revenues” do not include amounts received under a
16 service agreement with a State or local social service agency or a private
17 social service organization.

18 (2) A grant of the Government for a capital project under this section
19 may not be more than 80 percent of the net cost of the project, as deter-
20 mined by the Secretary of Transportation. A grant to pay a subsidy for op-
21 erating expenses may not be more than 50 percent of the net cost of the
22 operating expense project. At least 50 percent of the remainder shall be pro-
23 vided in cash from sources other than amounts of the Government or reve-
24 nues from providing mass transportation. Transit system amounts that
25 make up the remainder shall be from an undistributed cash surplus, a re-
26 placement or depreciation cash fund or reserve, or new capital.

27 (h) AMOUNTS FOR OPERATING ASSISTANCE.—An amount made available
28 under this section may be used for operating assistance.

29 (i) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the
30 recipient currently having a facility or equipment acquired with assistance
31 under this section, a State may transfer the facility or equipment to any
32 recipient eligible to receive assistance under this chapter if the facility or
33 equipment will continue to be used as required under this section.

34 (j) RELATIONSHIP TO OTHER LAWS.—(1) Sections 5323(a)(1)(D) and
35 5333(b) of this title apply to this section but the Secretary of Labor may
36 waive the application of section 5333(b).

37 (2) This subsection does not affect or discharge a responsibility of the
38 Secretary of Transportation under a law of the United States.

1 **§ 5312. Research, development, demonstration, and training**
2 **projects**

3 (a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—The
4 Secretary of Transportation (or the Secretary of Housing and Urban Devel-
5 opment when required by section 5334(i) of this title) may undertake, or
6 make grants or contracts (including agreements with departments, agencies,
7 and instrumentalities of the United States Government) for, research, devel-
8 opment, and demonstration projects related to urban mass transportation
9 that the Secretary decides will help reduce urban transportation needs, im-
10 prove mass transportation service, or help mass transportation service meet
11 the total urban transportation needs at a minimum cost. The Secretary may
12 request and receive appropriate information from any source. This sub-
13 section does not limit the authority of the Secretary under another law.

14 (b) RESEARCH, INVESTIGATIONS, AND TRAINING.—(1) The Secretary of
15 Transportation (or the Secretary of Housing and Urban Development when
16 required by section 5334(i) of this title) may make grants to nonprofit insti-
17 tutions of higher learning—

18 (A) to conduct competent research and investigations into the theo-
19 retical or practical problems of urban transportation; and

20 (B) to train individuals to conduct further research or obtain em-
21 ployment in an organization that plans, builds, operates, or manages
22 an urban transportation system.

23 (2) Research and investigations under this subsection include—

24 (A) the design and use of urban mass transportation systems and
25 urban roads and highways;

26 (B) the interrelationship between various modes of urban and inter-
27 urban transportation;

28 (C) the role of transportation planning in overall urban planning;

29 (D) public preferences in transportation;

30 (E) the economic allocation of transportation resources; and

31 (F) the legal, financial, engineering, and esthetic aspects of urban
32 transportation.

33 (3) When making a grant under this subsection, the appropriate Sec-
34 retary shall give preference to an institution that brings together knowledge
35 and expertise in the various social science and technical disciplines related
36 to urban transportation problems.

37 (c) TRAINING FELLOWSHIPS AND INNOVATIVE TECHNIQUES AND METH-
38 ODS.—(1) The Secretary of Transportation may make grants to States,
39 local governmental authorities, and operators of mass transportation sys-
40 tems to provide fellowships to train personnel employed in managerial, tech-
41 nical, and professional positions in the mass transportation field.

1 (2) The Secretary of Transportation may make grants to State and local
2 governmental authorities for projects that will use innovative techniques and
3 methods in managing and providing mass transportation.

4 (3) A fellowship under this subsection may be for not more than one year
5 of training in an institution that offers a program applicable to the mass
6 transportation industry. The recipient of the grant shall select an individual
7 on the basis of demonstrated ability and for the contribution the individual
8 reasonably can be expected to make to an efficient mass transportation op-
9 eration. A grant for a fellowship may not be more than the lesser of
10 \$24,000 or 75 percent of—

11 (A) tuition and other charges to the fellowship recipient;

12 (B) additional costs incurred by the training institution and billed
13 to the grant recipient; and

14 (C) the regular salary of the fellowship recipient for the period of
15 the fellowship to the extent the salary is actually paid or reimbursed
16 by the grant recipient.

17 **§ 5313. State planning and research programs**

18 (a) COOPERATIVE RESEARCH PROGRAM.—(1) Fifty percent of the
19 amounts made available under section 5338(g)(3) of this title are available
20 for a mass transportation cooperative research program. The Secretary of
21 Transportation shall establish an independent governing board for the pro-
22 gram. The board shall recommend mass transportation research, develop-
23 ment, and technology transfer activities the Secretary considers appropriate.

24 (2) The Secretary may make grants to, and cooperative agreements with,
25 the National Academy of Sciences to carry out activities under this sub-
26 section that the Secretary decides are appropriate.

27 (b) STATE PLANNING AND RESEARCH.—(1) Fifty percent of the amounts
28 made available under section 5338(g)(3) of this title shall be apportioned
29 to States for grants and contracts consistent with the purposes of sections
30 5303–5306, 5312, 5315, 5317, and 5322 of this title. The amounts shall
31 be apportioned so that each State receives an amount equal to the popu-
32 lation in urbanized areas in the State, divided by the population in urban-
33 ized areas in all States, as shown by the latest available decennial census.
34 However, a State must receive at least .5 percent of the amount apportioned
35 under this subsection.

36 (2) A State, as the State considers appropriate, may authorize part of
37 the amount made available under this subsection to be used to supplement
38 amounts available under subsection (a) of this section.

39 (3) An amount apportioned under this subsection—

40 (A) remains available for 3 years after the fiscal year in which the
41 amount is apportioned; and

1 (B) that is unobligated at the end of the 3-year period shall be
2 reapportioned among the States for the next fiscal year.

3 (c) GOVERNMENT'S SHARE.—When there would be a clear and direct fi-
4 nancial benefit to an entity under a grant or contract financed under sub-
5 section (a) of this section, the Secretary shall establish a United States Gov-
6 ernment share consistent with the benefit.

7 **§ 5314. National planning and research programs**

8 (a) PROGRAM.—(1) The amounts made available under section
9 5338(g)(4) of this title are available to the Secretary of Transportation for
10 grants and contracts for the purposes of sections 5303–5306, 5312, 5315,
11 5317, and 5322 of this title, as the Secretary considers appropriate.

12 (2) Of the amounts made available under paragraph (1) of this sub-
13 section, the Secretary shall make available at least \$2,000,000 to provide
14 mass transportation-related technical assistance, demonstration programs,
15 research, public education, and other activities the Secretary considers ap-
16 propriate to help mass transportation providers comply with the Americans
17 with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). To the extent prac-
18 ticable, the Secretary shall carry out this paragraph through a contract with
19 a national nonprofit organization serving individuals with disabilities that
20 has a demonstrated capacity to carry out the activities.

21 (3) Not more than 25 percent of the amounts available under paragraph
22 (1) of this subsection is available to the Secretary for special demonstration
23 initiatives, subject to terms the Secretary considers consistent with this
24 chapter, except that section 5323(a)(1)(D) of this title applies to an oper-
25 ational grant financed in carrying out section 5312(a) of this title. For a
26 nonrenewable grant of not more than \$100,000, the Secretary shall provide
27 expedited procedures on complying with the requirements of this chapter.

28 (4)(A) The Secretary may undertake a program of mass transportation
29 technology development in coordination with affected entities.

30 (B) The Secretary shall establish an Industry Technical Panel composed
31 of representatives of transportation suppliers and operators and others in-
32 volved in technology development. A majority of the Panel members shall
33 represent the supply industry. The Panel shall assist the Secretary in identi-
34 fying priority technology development areas and in establishing guidelines
35 for project development, project cost sharing, and project execution.

36 (C) The Secretary shall develop guidelines for cost sharing in technology
37 development projects financed under this paragraph. The guidelines shall be
38 flexible and reflect the extent of technical risk, market risk, and anticipated
39 supplier benefits and payback periods.

1 (5) The Secretary may use amounts appropriated under this subsection
2 to supplement amounts available under section 5313(a) of this title, as the
3 Secretary considers appropriate.

4 (b) GOVERNMENT'S SHARE.—When there would be a clear and direct fi-
5 nancial benefit to an entity under a grant or contract financed under sub-
6 section (a) of this section, the Secretary shall establish a United States Gov-
7 ernment share consistent with the benefit.

8 **§ 5315. National mass transportation institute**

9 (a) ESTABLISHMENT AND DUTIES.—The Secretary of Transportation
10 shall make grants to Rutgers University to establish a national mass trans-
11 portation institute. In cooperation with the Federal Transit Administration,
12 State transportation departments, public mass transportation authorities,
13 and national and international entities, the institute shall develop and con-
14 duct training programs of instruction for United States Government, State,
15 and local transportation employees, United States citizens, and foreign na-
16 tionals engaged or to be engaged in Government-aid mass transportation
17 work. The programs may include courses in recent developments, tech-
18 niques, and procedures related to—

19 (1) mass transportation planning;

20 (2) management;

21 (3) environmental factors;

22 (4) acquisition and joint use of rights of way;

23 (5) engineering;

24 (6) procurement strategies for mass transportation systems;

25 (7) turnkey approaches to carrying out mass transportation systems;

26 (8) new technologies;

27 (9) emission reduction technologies;

28 (10) ways to make mass transportation accessible to individuals with
29 disabilities;

30 (11) construction;

31 (12) maintenance;

32 (13) contract administration; and

33 (14) inspection.

34 (b) RELATED EDUCATIONAL AND TRAINING PROGRAMS.—The Secretary
35 shall delegate to the institute the authority of the Secretary to develop and
36 conduct educational and training programs related to mass transportation.

37 (c) PROVIDING EDUCATION AND TRAINING.—Education and training of
38 Government, State, and local transportation employees under this section
39 shall be provided—

40 (1) by the Secretary at no cost to the States and local governments
41 for subjects that are a Government program responsibility; or

1 (2) when the education and training are paid under subsection (d)
 2 of this section, by the State, with the approval of the Secretary,
 3 through grants and contracts with public and private agencies, other
 4 institutions, individuals, and the institute.

5 (d) AVAILABILITY OF AMOUNTS.—Not more than .5 percent of the
 6 amounts made available for a fiscal year beginning after September 30,
 7 1991, to a State or public mass transportation authority in the State to
 8 carry out sections 5304 and 5306 of this title is available for expenditure
 9 by the State and public mass transportation authorities in the State, with
 10 the approval of the Secretary, to pay not more than 80 percent of the cost
 11 of tuition and direct educational expenses related to educating and training
 12 State and local transportation employees under this section.

13 **§ 5316. University research institutes**

14 (a) INSTITUTE FOR NATIONAL SURFACE TRANSPORTATION POLICY.—
 15 The Secretary of Transportation shall make grants to San Jose State Uni-
 16 versity to establish and operate an institute for national surface transpor-
 17 tation policy studies. The institute shall—

18 (1) include male and female students of diverse socioeconomic and
 19 ethnic backgrounds who are seeking careers in developing and operat-
 20 ing surface transportation programs; and

21 (2) conduct research and development activities to analyze ways of
 22 improving aspects of developing and operating surface transportation
 23 programs of the United States.

24 (b) INFRASTRUCTURE TECHNOLOGY INSTITUTE.—The Secretary shall
 25 make grants to Northwestern University to establish and operate an insti-
 26 tute to study techniques—

27 (1) to evaluate and monitor infrastructure conditions;

28 (2) to improve information systems for infrastructure construction
 29 and management; and

30 (3) to study advanced materials and automated processes for con-
 31 structing and rehabilitating public works facilities.

32 (c) URBAN TRANSIT INSTITUTE.—The Secretary shall make grants to
 33 North Carolina A. and T. State University through the Institute for Trans-
 34 portation Research and Education, the University of South Florida, and a
 35 consortium of Florida A. and M., Florida State University, and Florida
 36 International University to establish and operate an interdisciplinary insti-
 37 tute to study and disseminate techniques on the diverse transportation prob-
 38 lems of urban areas experiencing significant and rapid growth.

39 (d) INSTITUTE FOR INTELLIGENT VEHICLE-HIGHWAY CONCEPTS.—The
 40 Secretary shall make grants to the University of Minnesota, Center for
 41 Transportation Studies, to establish and operate a national institute for in-

1 telligent vehicle-highway concepts. The institute shall conduct research and
2 recommend development activities that focus on methods to increase road-
3 way capacity, enhance safety, and reduce negative environmental effects of
4 transportation facilities by using intelligent vehicle-highway systems tech-
5 nologies.

6 (e) INSTITUTE FOR TRANSPORTATION RESEARCH AND EDUCATION.—The
7 Secretary shall make grants to the University of North Carolina to conduct
8 research and development and to direct technology transfer and training for
9 State and local transportation authorities to improve the overall surface
10 transportation infrastructure.

11 (f) APPLICABILITY OF TITLE 23.—Amounts authorized by section
12 5338(d) of this title may be obligated in the same way as amounts are ap-
13 portioned under chapter 1 of title 23.

14 **§ 5317. Transportation centers**

15 (a) GRANTS FOR REGIONAL TRANSPORTATION CENTERS.—(1) The Sec-
16 retary of Transportation shall make grants to nonprofit institutions of high-
17 er learning to establish and operate regional transportation centers in each
18 of the 10 United States Government regions that comprise the Standard
19 Federal Regional Boundary System.

20 (2) A nonprofit institution of higher learning interested in receiving a
21 grant under this subsection shall submit an application to the Secretary in
22 the way and containing the information the Secretary prescribes. The Sec-
23 retary shall select each recipient on the basis of the following:

24 (A) the regional transportation center is located in a State that is
25 representative of the needs of the Government region for improved
26 transportation and facilities.

27 (B) the demonstrated research and extension resources available to
28 the recipient to carry out this subsection.

29 (C) the capability of the recipient to provide leadership in making
30 national and regional contributions to the solution of immediate and
31 long-range transportation problems.

32 (D) the recipient has an established transportation program encom-
33 passing several modes of transportation.

34 (E) the recipient has a demonstrated commitment of at least
35 \$200,000 in regularly budgeted institutional amounts each year to sup-
36 port ongoing transportation research programs.

37 (F) the recipient has a demonstrated ability to disseminate results
38 of transportation research and educational programs through a state-
39 wide or regionwide continuing educational program.

40 (G) the projects the recipient proposes to carry out under the grant.

1 (3)(A) At each regional transportation center, the following shall be car-
2 ried out:

3 (i) infrastructure research on transportation.

4 (ii) research and training on transportation safety and the transpor-
5 tation of passengers and property and the interpretation, publication,
6 and dissemination of the results of the research.

7 (B) Each transportation center—

8 (i) should carry out research on more than one mode of transpor-
9 tation; and

10 (ii) should consider the proportion of amounts for this subsection
11 from amounts available to carry out urban mass transportation projects
12 under this chapter and from the Highway Trust Fund.

13 (C) At one of the transportation centers, research may be carried out on
14 the testing of new bus models.

15 (4) Before making a grant under this subsection, the Secretary may re-
16 quire the recipient to make an agreement with the Secretary to ensure that
17 the recipient will maintain total expenditures from all other sources to es-
18 tablish and operate a regional transportation center and related research ac-
19 tivities at a level at least equal to the average level of those expenditures
20 in its 2 fiscal years prior to April 2, 1987.

21 (5) A grant under this subsection is for 50 percent of the cost of estab-
22 lishing and operating the regional transportation center and related research
23 activities the recipient carries out.

24 (b) GRANTS FOR UNIVERSITY TRANSPORTATION CENTERS.—(1) To ac-
25 celerate the involvement and participation of minority individuals and
26 women in transportation-related professions, particularly in the science,
27 technology, and engineering disciplines, the Secretary shall make grants to
28 Morgan State University to establish a national center for transportation
29 management, research, and development. The center shall give special atten-
30 tion to designing, developing, and carrying out research, training, and tech-
31 nology transfer activities to increase the number of highly skilled minority
32 individuals and women entering the transportation workforce.

33 (2) The Secretary shall make grants to the New Jersey Institute of Tech-
34 nology to establish and operate a center for transportation and industrial
35 productivity. The center shall conduct research and development activities
36 that focus on ways to increase surface transportation capacity, reduce con-
37 gestion, and reduce costs for transportation system users and providers
38 through the use of transportation management systems.

39 (3) The Secretary shall make a grant to Monmouth College, West Long
40 Branch, New Jersey, to modify and rebuild Building Number 500 at Mon-
41 mouth College. Before making the grant, the Secretary shall receive assur-

1 ances from Monmouth College that the building will be known and des-
2 ignated as the James and Marlene Howard Transportation Information
3 Center and that transportation-related instruction and research in computer
4 science, electronic engineering, mathematics, and software engineering con-
5 ducted at the building will be coordinated with the Center for Transpor-
6 tation and Industrial Productivity at the New Jersey Institute of Tech-
7 nology.

8 (4) The Secretary shall make grants to the University of Arkansas to es-
9 tablish a national rural transportation center. The center shall conduct re-
10 search, training, and technology transfer activities in the development, man-
11 agement, and operation of intermodal transportation systems in rural areas.

12 (5)(A) The Secretary shall make grants to the University of Idaho to es-
13 tablish a National Center for Advanced Transportation Technology. The
14 Center shall be established and operated in partnership with private indus-
15 try and shall conduct industry-driven research and development activities
16 that focus on transportation-related manufacturing and engineering proc-
17 esses, materials, and equipment.

18 (B) The Secretary shall make grants to the University of Idaho to plan,
19 design, and construct a building in which to conduct the research and devel-
20 opment activities of the Center.

21 (C) Amounts authorized by section 5338(e)(2) of this title may be obli-
22 gated in the same way as amounts apportioned under chapter 1 of title 23
23 (except that the Government share of the cost of the activities conducted
24 under this paragraph is 80 percent and the amounts remain available until
25 expended) and are not subject to an obligational limitation.

26 (D) A grant made under this paragraph is not subject to the require-
27 ments of this section (except this paragraph).

28 (c) PROGRAM COORDINATION.—The Secretary shall provide for coordinat-
29 ing research, education, training, and technology transfer activities that
30 grant recipients carry out under this section, the dissemination of the re-
31 sults of the research, and the establishment and operation of a clearing-
32 house between the centers and the transportation industry. At least annu-
33 ally, the Secretary shall review and evaluate programs the grant recipients
34 carry out. The Secretary may use not more than one percent of amounts
35 made available from Government sources to carry out this section to carry
36 out this subsection.

37 (d) OBLIGATION CEILING.—Amounts authorized to carry out this section
38 (except subsection (b)(3)) are subject to obligational limitations established
39 under section 1002 of the Intermodal Surface Transportation Efficiency Act
40 of 1991 (Public Law 102–240, 105 Stat. 1916).

1 (e) AMOUNTS AVAILABLE FOR TECHNOLOGY TRANSFER ACTIVITIES.—At
2 least 5 percent of the amounts made available to carry out this section in
3 a fiscal year are available to carry out technology transfer activities.

4 (f) ALLOCATION AMONG GOVERNMENT REGIONS.—The Secretary shall
5 allocate amounts available to carry out this section equitably among the
6 Government regions.

7 **§ 5318. Bus testing facility**

8 (a) ESTABLISHMENT.—The Secretary of Transportation shall establish
9 one facility for testing a new bus model for maintainability, reliability, safe-
10 ty, performance (including braking performance), structural integrity, fuel
11 economy, emissions, and noise. The facility shall be established by renovat-
12 ing a facility built with assistance of the United States Government to train
13 rail personnel.

14 (b) OPERATION AND MAINTENANCE.—The Secretary shall make a con-
15 tract with a qualified person to operate and maintain the facility. The con-
16 tract may provide for the testing of rail cars and other vehicles at the facil-
17 ity.

18 (c) FEES.—The person operating and maintaining the facility shall estab-
19 lish and collect fees for the testing of vehicles at the facility. The Secretary
20 must approve the fees.

21 (d) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.—The Secretary
22 shall make a contract with the operator of the facility under which the Sec-
23 retary shall pay 80 percent of the cost of testing a vehicle at the facility
24 from amounts available under section 5338(j)(5) of this title. The entity
25 having the vehicle tested shall pay 20 percent of the cost.

26 (e) REVOLVING LOAN FUND.—The Secretary has a bus testing revolving
27 loan fund consisting of amounts authorized for the fund under section
28 317(b)(5) of the Surface Transportation and Relocation Assistance Act of
29 1987. The Secretary shall make available as repayable advances from the
30 fund to the person operating and maintaining the facility amounts to oper-
31 ate and maintain the facility.

32 **§ 5319. Bicycle facilities**

33 A project to provide access for bicycles to mass transportation facilities,
34 to provide shelters and parking facilities for bicycles in or around mass
35 transportation facilities, or to install equipment for transporting bicycles on
36 mass transportation vehicles is a capital project eligible for assistance under
37 sections 5307, 5309, and 5311 of this title. Notwithstanding sections
38 5307(e), 5309(h), and 5311(g) of this title, a grant of the United States
39 Government under this chapter for a project under this section is for 90
40 percent of the cost of the project.

1 **§ 5320. Suspended light rail system technology pilot project**

2 (a) PURPOSE.—The purpose of this section is to provide for the construc-
3 tion by a public entity of a suspended light rail system technology pilot
4 project—

5 (1) to assess the state of new technology for a suspended light rail
6 system; and

7 (2) to establish the feasibility, costs, and benefits of using the system
8 to transport passengers.

9 (b) GENERAL REQUIREMENTS.—The project shall—

10 (1) use new rail technology with individual vehicles on a prefab-
11 ricated elevated steel guideway;

12 (2) be stability-seeking with a center of gravity for the detachable
13 passenger vehicles located below the point of wheel-rail contact; and

14 (3) use vehicles that are driven by overhead bogies with high effi-
15 ciency, low maintenance electric motors for each wheel, operating in a
16 slightly sloped plane from vertical for the wheels and the running rails,
17 to further increase stability, acceleration, and braking performance.

18 (c) COMPETITION.—(1) The Secretary of Transportation shall conduct a
19 national competition to select a public entity with which to make a full fi-
20 nancing grant agreement to construct the project. Not later than April 16,
21 1992, the Secretary shall select 3 public entities to be finalists in the com-
22 petition. In conducting the competition and selecting public entities, the
23 Secretary shall consider—

24 (A) the public entity's demonstrated understanding and knowledge of
25 the project and its technical, managerial, and financial capacity to con-
26 struct, manage, and operate the project; and

27 (B) maximizing potential contributions to the cost of the project by
28 State, local, and private sector entities, including donation of in-kind
29 services and materials.

30 (2) The Secretary shall award a grant to each finalist to be used to par-
31 ticipate in the final phase of the competition under procedures the Secretary
32 prescribes. A grant may not be more than 80 percent of the cost of partici-
33 pating. A finalist may not receive more than one-third of the amount made
34 available under subsection (h)(1)(A) of this section.

35 (3) Not later than July 15, 1992, the Secretary shall select from among
36 the 3 finalists a public entity with which to make a full financing grant
37 agreement.

38 (d) ENVIRONMENTAL IMPACT.—Not later than 270 days after a public
39 entity is selected under subsection (c) of this section, the Secretary shall
40 approve and publish in the Federal Register a notice announcing either a
41 finding of no significant impact or a draft environmental impact statement

1 for the project. The alternatives analysis for the project shall include a deci-
2 sion on whether to construct the project. If a draft statement is published,
3 the Secretary, not later than 180 days after publication, shall approve and
4 publish in the Federal Register a notice of completion of a final environ-
5 mental impact statement.

6 (e) FULL FINANCING GRANT AGREEMENT.—Not later than 60 days after
7 carrying out the requirements of subsection (d) of this section, the Secretary
8 shall make a full financing grant agreement under section 5309 of this title
9 with the public entity selected under subsection (c) of this section to con-
10 struct the project. The agreement shall provide that the system vendor for
11 the project shall finance—

12 (1) 100 percent of any deficit incurred in operating the project in
13 the first 2 years of revenue operations of the project; and

14 (2) 50 percent of any deficit incurred in operating the project in the
15 3d year of revenue operations of the project.

16 (f) NOTICE TO PROCEED.—Not later than 30 days after making the full
17 financing grant agreement, the Secretary shall issue a notice to proceed
18 with construction.

19 (g) OPTION NOT TO CONSTRUCT AND REAWARDING THE GRANT.—(1)
20 Not later than 30 days after completing preliminary engineering and design,
21 the selected public entity shall decide whether to proceed to constructing the
22 project. If the entity decides not to proceed—

23 (A) the Secretary shall not make the full financing grant agreement;

24 (B) remaining amounts received shall be returned to the Secretary
25 and credited to the Mass Transit Account of the Highway Trust Fund;
26 and

27 (C) the Secretary shall use the credited amount and other amounts
28 to be provided under this section to award to another entity selected
29 under subsection (c)(1) of this section a grant under section 5309 of
30 this title to construct the project.

31 (2) Not later than 60 days after a decision is made under paragraph (1)
32 of this subsection, a grant shall be awarded under paragraph (1)(C) of this
33 section after completing a competitive process for selecting the grant recipi-
34 ent.

35 (h) FINANCING.—(1) The Secretary shall pay from amounts provided
36 under section 5309 of this title the following:

37 (A) at least \$1,000,000 for the fiscal year ending September 30,
38 1992, for grants under subsection (c)(2) of this section.

39 (B) at least \$4,000,000 for the fiscal year ending September 30,
40 1993, for the United States Government share of the costs (as deter-
41 mined under section 5309 of this title) if the systems planning, alter-

1 natives analysis, preliminary engineering, and design and environ-
2 mental impact statement are required by law for the project.

3 (C) at least \$30,000,000 for the fiscal year ending September 30,
4 1994, as provided in the grant agreement under subsection (e) of this
5 section, for the Government share of the construction costs of the
6 project.

7 (2) The grant agreement under subsection (e) of this section shall provide
8 that for the 3d year of revenue operations of the project, the Secretary shall
9 pay from amounts provided under this section the Government share of op-
10 erating costs in an amount equal to the lesser of 50 percent of the deficit
11 incurred in operating the project in that year or \$300,000.

12 (3) Amounts not expended under paragraph (1)(A) of this subsection are
13 available for the Government share of costs described in paragraph (1)(B)
14 and (C) of this subsection.

15 (4) Amounts under paragraph (1)(B) and (C) of this subsection remain
16 available until expended.

17 (i) GOVERNMENT'S SHARE OF COSTS.—The Government share of the
18 cost of constructing the project is 80 percent of the net cost of the project.

19 (j) PROJECT NOT SUBJECT TO MAJOR CAPITAL INVESTMENT POLICY.—
20 The project is not subject to the major capital investment policy of the Fed-
21 eral Transit Administration.

22 (k) REPORT.—Not later than January 30, 1993, and each year after that
23 date, the Secretary shall submit to Congress a report on the progress and
24 results of the project.

25 **§ 5321. Crime prevention and security**

26 The Secretary of Transportation may make capital grants from amounts
27 available under section 5338 of this title to mass transportation systems for
28 crime prevention and security. This chapter does not prevent the financing
29 of a project under this section when a local governmental authority other
30 than the grant applicant has law enforcement responsibilities.

31 **§ 5322. Human resource programs**

32 The Secretary of Transportation may undertake, or make grants and con-
33 tracts for, programs that address human resource needs as they apply to
34 mass transportation activities. A program may include—

35 (1) an employment training program;

36 (2) an outreach program to increase minority and female employ-
37 ment in mass transportation activities;

38 (3) research on mass transportation personnel and training needs;
39 and

40 (4) training and assistance for minority business opportunities.

1 **§ 5323. General provisions on assistance**

2 (a) INTERESTS IN PROPERTY.—(1) Financial assistance provided under
3 this chapter to a State or a local governmental authority may be used to
4 acquire an interest in, or buy property of, a private mass transportation
5 company, for a capital project for property acquired from a private mass
6 transportation company after July 9, 1964, or to operate mass transpor-
7 tation equipment or a mass transportation facility in competition with, or
8 in addition to, transportation service provided by an existing mass transpor-
9 tation company, only if—

10 (A) the Secretary of Transportation finds the assistance is essential
11 to a program of projects required under sections 5303–5306 of this
12 title;

13 (B) the Secretary of Transportation finds that the program, to the
14 maximum extent feasible, provides for the participation of private mass
15 transportation companies;

16 (C) just compensation under State or local law will be paid to the
17 company for its franchise or property; and

18 (D) the Secretary of Labor certifies that the assistance complies with
19 section 5333(b) of this title.

20 (2) A governmental authority may not use financial assistance of the
21 United States Government to acquire land, equipment, or a facility used in
22 mass transportation from another governmental authority in the same geo-
23 graphic area.

24 (b) NOTICE AND PUBLIC HEARING.—(1) An application for a grant or
25 loan under this chapter (except section 5307) for a capital project that will
26 affect substantially a community, or the mass transportation service of a
27 community, must include a certificate of the applicant that the applicant
28 has—

29 (A) provided an adequate opportunity for a public hearing with ade-
30 quate prior notice;

31 (B) held that hearing unless no one with a significant economic, so-
32 cial, or environmental interest requested one;

33 (C) considered the economic, social, and environmental effects of the
34 project; and

35 (D) found that the project is consistent with official plans for devel-
36 oping the urban area.

37 (2) Notice of a hearing under this subsection shall include a concise de-
38 scription of the proposed project and shall be published in a newspaper of
39 general circulation in the geographic area the project will serve. If a hearing
40 is held, a copy of the transcript of the hearing shall be submitted with the
41 application.

1 (c) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made
2 available under this chapter (except section 5307) after September 30,
3 1989, may be obligated or expended to acquire a new bus model only if a
4 bus of the model has been tested at the facility established under section
5 5318 of this title.

6 (d) BUYING AND OPERATING BUSES.—(1) Financial assistance under
7 this chapter may be used to buy or operate a bus only if the applicant, gov-
8 ernmental authority, or publicly owned operator that receives the assistance
9 agrees that, except as provided in the agreement, the governmental author-
10 ity or an operator of mass transportation for the governmental authority
11 will not provide charter bus transportation service outside the urban area
12 in which it provides regularly scheduled mass transportation service. An
13 agreement shall provide for a fair arrangement the Secretary of Transporta-
14 tion considers appropriate to ensure that the assistance will not enable a
15 governmental authority or an operator for a governmental authority to fore-
16 close a private operator from providing intercity charter bus service if the
17 private operator can provide the service.

18 (2) On receiving a complaint about a violation of an agreement, the Sec-
19 retary of Transportation shall investigate and decide whether a violation has
20 occurred. If the Secretary decides that a violation has occurred, the Sec-
21 retary shall correct the violation under terms of the agreement. In addition
22 to a remedy specified in the agreement, the Secretary may bar a recipient
23 under this subsection or an operator from receiving further assistance when
24 the Secretary finds a continuing pattern of violations of the agreement.

25 (e) BUS PASSENGER SEAT FUNCTIONAL SPECIFICATIONS.—The initial
26 advertising by a State or local governmental authority for bids to acquire
27 buses using financial assistance under this chapter (except section 5307)
28 may include passenger seat functional specifications that are at least equal
29 to performance specifications the Secretary of Transportation prescribes.
30 The specifications shall be based on a finding by the State or local govern-
31 mental authority of local requirements for safety, comfort, maintenance, and
32 life cycle costs.

33 (f) SCHOOLBUS TRANSPORTATION.—(1) Financial assistance under this
34 chapter may be used for a capital project, or to operate mass transportation
35 equipment or a mass transportation facility, only if the applicant agrees not
36 to provide schoolbus transportation that exclusively transports students and
37 school personnel in competition with a private schoolbus operator. This sub-
38 section does not apply—

39 (A) to an applicant that operates a school system in the area to be
40 served and a separate and exclusive schoolbus program for the school
41 system;

1 (B) unless a private schoolbus operator can provide adequate trans-
2 portation that complies with applicable safety standards at reasonable
3 rates; and

4 (C) to a State or local governmental authority if it or a direct prede-
5 cessor in interest from which it acquired the duty of transporting
6 school children and personnel, and facilities to transport them, provided
7 schoolbus transportation at any time after November 25, 1973, but be-
8 fore November 26, 1974.

9 (2) An applicant violating an agreement under this subsection may not
10 receive other financial assistance under this chapter.

11 (g) BUYING BUSES UNDER OTHER LAWS.—Subsections (d) and (f) of
12 this section apply to financial assistance to buy a bus under sections
13 103(e)(4) and 142(a) or (c) of title 23. However, subsection (f)(1)(C) of
14 this section applies to sections 103(e)(4) and 142(a) or (c) only if schoolbus
15 transportation was provided at any time after August 12, 1972, but before
16 August 13, 1973.

17 (h) GRANT AND LOAN PROHIBITIONS.—A grant or loan may not be used
18 to—

19 (1) pay ordinary governmental or nonproject operating expenses; or

20 (2) support a procurement that uses an exclusionary or discrimina-
21 tory specification.

22 (i) GOVERNMENT'S SHARE OF COSTS FOR CERTAIN PROJECTS.—A Gov-
23 ernment grant for a project to be assisted under this chapter that involves
24 acquiring vehicle-related equipment required by the Clean Air Act (42
25 U.S.C. 7401 et seq.) or the Americans with Disabilities Act of 1990 (42
26 U.S.C. 12101 et seq.) is for 90 percent of the net project cost of the equip-
27 ment that is attributable to complying with those Acts. The Secretary of
28 Transportation, through practicable administrative procedures, may deter-
29 mine the costs attributable to that equipment.

30 (j) BUY AMERICAN.—(1) The Secretary of Transportation may obligate
31 an amount that may be appropriated to carry out this chapter for a project
32 only if the steel, iron, and manufactured goods used in the project are pro-
33 duced in the United States.

34 (2) The Secretary of Transportation may waive paragraph (1) of this sub-
35 section if the Secretary finds that—

36 (A) applying paragraph (1) would be inconsistent with the public in-
37 terest;

38 (B) the steel, iron, and goods produced in the United States are not
39 produced in a sufficient and reasonably available amount or are not of
40 a satisfactory quality;

1 (C) when procuring rolling stock (including train control, commu-
2 nication, and traction power equipment) under this chapter—

3 (i) the cost of components and subcomponents produced in the
4 United States is more than 60 percent of the cost of all compo-
5 nents of the rolling stock; and

6 (ii) final assembly of the rolling stock has occurred in the Unit-
7 ed States; or

8 (D) including domestic material will increase the cost of the overall
9 project by more than 25 percent.

10 (3) In this subsection, labor costs involved in final assembly are not in-
11 cluded in calculating the cost of components.

12 (4) The Secretary of Transportation may not make a waiver under para-
13 graph (2) of this subsection for goods produced in a foreign country if the
14 Secretary, in consultation with the United States Trade Representative, de-
15 cides that the government of that foreign country—

16 (A) has an agreement with the United States Government under
17 which the Secretary has waived the requirement of this subsection; and

18 (B) has violated the agreement by discriminating against goods to
19 which this subsection applies that are produced in the United States
20 and to which the agreement applies.

21 (5) A person is ineligible under subpart 9.4 of chapter 1 of title 48, Code
22 of Federal Regulations, to receive a contract or subcontract made with
23 amounts authorized under the Intermodal Surface Transportation Efficiency
24 Act of 1991 (Public Law 102-240, 105 Stat. 1914) if a court or depart-
25 ment, agency, or instrumentality of the Government decides the person in-
26 tentiously—

27 (A) affixed a “Made in America” label, or a label with an inscription
28 having the same meaning, to goods sold in or shipped to the United
29 States that are used in a project to which this subsection applies but
30 not produced in the United States; or

31 (B) represented that goods described in clause (A) of this paragraph
32 were produced in the United States.

33 (6) The Secretary of Transportation may not impose any limitation on
34 assistance provided under this chapter that restricts a State from imposing
35 more stringent requirements than this subsection on the use of articles, ma-
36 terials, and supplies mined, produced, or manufactured in foreign countries
37 in projects carried out with that assistance or restricts a recipient of that
38 assistance from complying with those State-imposed requirements.

39 (7) Not later than January 1, 1995, the Secretary of Transportation shall
40 submit to Congress a report on purchases from foreign entities waived
41 under paragraph (2) of this subsection in the fiscal years ending September

1 30, 1992, and September 30, 1993. The report shall indicate the dollar
2 value of items for which waivers were granted.

3 (k) APPLICATION OF SECTION 135 OF TITLE 23.—The planning and pro-
4 gramming requirements of section 135 of title 23 apply to a grant made
5 under sections 5307–5311 of this title.

6 **§5324. Limitations on discretionary and special needs**
7 **grants and loans**

8 (a) RELOCATION PROGRAM REQUIREMENTS.—Financial assistance may
9 be provided under section 5309 of this title only if the Secretary of Trans-
10 portation decides that—

11 (1) an adequate relocation program is being carried out for families
12 displaced by a project; and

13 (2) an equal number of decent, safe, and sanitary dwellings are
14 being, or will be, provided to those families in the same area or in an-
15 other area generally not less desirable for public utilities and public and
16 commercial facilities, at rents or prices within the financial means of
17 those families, and with reasonable access to their places of employ-
18 ment.

19 (b) ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—(1) In car-
20 rying out section 5301(e) of this title, the Secretary of Transportation shall
21 cooperate and consult with the Secretaries of Agriculture, Health and
22 Human Services, Housing and Urban Development, and the Interior and
23 the Council on Environmental Quality on each project that may have a sub-
24 stantial impact on the environment.

25 (2) In carrying out section 5309 of this title, the Secretary of Transpor-
26 tation shall review each transcript of a hearing submitted under section
27 5323(b) of this title to establish that an adequate opportunity to present
28 views was given to all parties with a significant economic, social, or environ-
29 mental interest and that the project application includes a statement on—

30 (A) the environmental impact of the proposal;

31 (B) adverse environmental effects that cannot be avoided;

32 (C) alternatives to the proposal; and

33 (D) irreversible and irretrievable impacts on the environment.

34 (3)(A) The Secretary of Transportation may approve an application for
35 financial assistance under section 5309 of this title only if the Secretary
36 makes written findings, after reviewing the application and any hearings
37 held before a State or local governmental authority under section 5323(b)
38 of this title, that—

39 (i) an adequate opportunity to present views was given to all parties
40 with a significant economic, social, or environmental interest;

1 (ii) the preservation and enhancement of the environment, and the
2 interest of the community in which a project is located, were consid-
3 ered; and

4 (iii) no adverse environmental effect is likely to result from the
5 project, or no feasible and prudent alternative to the effect exists and
6 all reasonable steps have been taken to minimize the effect.

7 (B) If a hearing has not been conducted or the Secretary of Transpor-
8 tation decides that the record of the hearing is inadequate for making the
9 findings required by this subsection, the Secretary shall conduct a hearing
10 on an environmental issue raised by the application after giving adequate
11 notice to interested persons.

12 (C) A finding of the Secretary of Transportation under subparagraph (A)
13 of this paragraph shall be made a matter of public record.

14 (c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—
15 The Secretary of Transportation may not regulate the operation of a mass
16 transportation system for which a grant is made under section 5309 of this
17 title and, after a grant is made, may not regulate any charge for the system.
18 However, the Secretary may require the local governmental authority, cor-
19 poration, or association to comply with any undertaking provided by it relat-
20 ed to its grant application.

21 **§ 5325. Contract requirements**

22 (a) NONCOMPETITIVE BIDDING.—A capital project or improvement con-
23 tract for which a grant or loan is made under this chapter, if the contract
24 is not made through competitive bidding, shall provide that records related
25 to the contract shall be made available to the Secretary of Transportation
26 and the Comptroller General, or an officer or employee of the Secretary or
27 Comptroller General, when conducting an audit and inspection.

28 (b) ACQUIRING ROLLING STOCK.—A recipient of financial assistance of
29 the United States Government under this chapter may make a contract to
30 expend that assistance to acquire rolling stock—

31 (1) based on—

32 (A) initial capital costs; or

33 (B) performance, standardization, life cycle costs, and other fac-
34 tors; or

35 (2) with a party selected through a competitive procurement process.

36 (c) PROCURING ASSOCIATED CAPITAL MAINTENANCE ITEMS.—A recipi-
37 ent of a grant under section 5307 of this title procuring an associated cap-
38 ital maintenance item under section 5307(b) may make a contract directly
39 with the original manufacturer or supplier of the item to be replaced, with-
40 out receiving prior approval of the Secretary, if the recipient first certifies
41 in writing to the Secretary that—

- 1 (1) the manufacturer or supplier is the only source for the item; and
2 (2) the price of the item is no more than the price similar customers
3 pay for the item.

4 (d) MANAGEMENT, ARCHITECTURAL, AND ENGINEERING CONTRACTS.—
5 A contract for program management, construction management, a feasibility
6 study, and preliminary engineering, design, architectural, engineering, sur-
7 veying, mapping, or related services for a project for which a grant or loan
8 is made under this chapter shall be awarded in the same way as a contract
9 for architectural and engineering services is negotiated under title IX of the
10 Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541
11 et seq.) or an equivalent qualifications-based requirement of a State. This
12 subsection does not apply to the extent a State has adopted or adopts by
13 law a formal procedure for procuring those services.

14 **§ 5326. Special procurements**

15 (a) TURNKEY SYSTEM PROJECTS.—(1) In this subsection, “turnkey sys-
16 tem project” means a project under which a recipient makes a contract with
17 a seller, firm, or consortium of firms to construct a mass transportation sys-
18 tem that meets specific performance criteria and that the seller operates for
19 a period of time.

20 (2) To advance new technologies and lower the cost of a capital project
21 for a new mass transportation system, the Secretary of Transportation shall
22 allow solicitation for a turnkey system project to be financed under this
23 chapter to be awarded conditionally before United States Government re-
24 quirements have been met on the project if the award is made without prej-
25 udice to carrying out those requirements. Government financial assistance
26 under this chapter may be made available for the project after the recipient
27 complies with Government requirements.

28 (3) To develop regulations applying generally to turnkey system projects,
29 the Secretary may approve at least 2 projects for an initial demonstration
30 phase. The results of the demonstration projects (and other projects using
31 this procurement method on December 18, 1991) shall be considered in de-
32 veloping guidelines to carry out this subsection.

33 (b) MULTIYEAR ROLLING STOCK.—(1) A recipient procuring rolling stock
34 with Government financial assistance under this chapter may make a
35 multiyear contract to buy the rolling stock and replacement parts under
36 which the recipient has an option to buy additional rolling stock or replace-
37 ment parts for not more than 5 years after the date of the original contract.

38 (2) The Secretary shall allow at least 2 recipients to act on a cooperative
39 basis to procure rolling stock in compliance with this subsection and other
40 Government procurement requirements.

1 (c) EFFICIENT PROCUREMENT.—A recipient may award a procurement
2 contract under this chapter to other than the lowest bidder when the award
3 furthers an objective consistent with the purposes of this chapter, including
4 improved long-term operating efficiency and lower long-term costs. Not later
5 than March 17, 1992, the Secretary shall—

6 (1) make appropriate changes in existing procedures to make the
7 policy stated in this subsection readily practicable for all mass trans-
8 portation authorities; and

9 (2) prescribe guidance that clarifies and carries out the policy.

10 **§ 5327. Project management oversight**

11 (a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive United
12 States Government financial assistance for a major capital project under
13 this chapter or the National Capital Transportation Act of 1969 (Public
14 Law 91-143, 83 Stat. 320), a recipient must prepare and carry out a
15 project management plan approved by the Secretary of Transportation. The
16 plan shall provide for—

17 (1) adequate recipient staff organization with well-defined reporting
18 relationships, statements of functional responsibilities, job descriptions,
19 and job qualifications;

20 (2) a budget covering the project management organization, appro-
21 priate consultants, property acquisition, utility relocation, systems dem-
22 onstration staff, audits, and miscellaneous payments the recipient may
23 be prepared to justify;

24 (3) a construction schedule for the project;

25 (4) a document control procedure and recordkeeping system;

26 (5) a change order procedure that includes a documented, systematic
27 approach to the handling of construction change orders;

28 (6) organizational structures, management skills, and staffing levels
29 required throughout the construction phase;

30 (7) quality control and quality assurance functions, procedures, and
31 responsibilities for construction, system installation, and integration of
32 system components;

33 (8) material testing policies and procedures;

34 (9) internal plan implementation and reporting requirements;

35 (10) criteria and procedures to be used for testing the operational
36 system or its major components;

37 (11) periodic updates of the plan, especially related to project budget
38 and project schedule, financing, ridership estimates, and the status of
39 local efforts to enhance ridership where ridership estimates partly de-
40 pend on the success of those efforts; and

1 (12) the recipient's commitment to submit a project budget and
2 project schedule to the Secretary each month.

3 (b) PLAN APPROVAL.—(1) The Secretary shall approve a plan not later
4 than 60 days after it is submitted. If the approval cannot be completed
5 within 60 days, the Secretary shall notify the recipient, explain the reasons
6 for the delay, and estimate the additional time that will be required.

7 (2) The Secretary shall inform the recipient of the reasons when a plan
8 is disapproved.

9 (c) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—(1) The Secretary
10 may use not more than .5 percent of amounts made available for a fiscal
11 year to carry out section 5307, 5309, or 5311 of this title, an interstate
12 transfer mass transportation project under section 103(e)(4) of title 23 as
13 in effect on September 30, 1991, or a project under the National Capital
14 Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320) to make
15 a contract to oversee the construction of a major project under section
16 5307, 5309, 5311, or 103(e)(4) of that Act. The Secretary may use when
17 necessary not more than an additional .25 percent of amounts made avail-
18 able in a fiscal year to carry out a major project under section 5307 to
19 make a contract to oversee the construction of the project.

20 (2) The Secretary may use amounts available under paragraph (1) of this
21 subsection to make contracts for safety, procurement, management, and fi-
22 nancial compliance reviews and audits of a recipient of amounts under para-
23 graph (1). Subsections (a), (b), and (e) of this section do not apply to con-
24 tracts under this paragraph.

25 (3) The Government shall pay the entire cost of carrying out a contract
26 under this subsection.

27 (d) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under
28 this chapter or section 14(b) of the National Capital Transportation Act of
29 1969 (Public Law 91–143, 83 Stat. 320), as added by section 2 of the Na-
30 tional Capital Transportation Amendments of 1979 (Public Law 96–184, 93
31 Stat. 1320), shall provide the Secretary and a contractor the Secretary
32 chooses under subsection (c) of this section with access to the construction
33 sites and records of the recipient when reasonably necessary.

34 (e) REGULATIONS.—The Secretary shall prescribe regulations necessary
35 to carry out this section. The regulations shall include—

36 (1) a definition of “major capital project” for subsection (c) of this
37 section that excludes a project to acquire rolling stock or to maintain
38 or rehabilitate a vehicle; and

39 (2) a requirement that oversight begin during the preliminary engi-
40 neering stage of a project, unless the Secretary finds it more appro-
41 priate to begin the oversight during another stage of the project, to

1 maximize the transportation benefits and cost savings associated with
2 project management oversight.

3 **§ 5328. Project review**

4 (a) SCHEDULE.—(1) When the Secretary of Transportation allows a new
5 fixed guideway project to advance into the alternatives analysis stage of
6 project review, the Secretary shall cooperate with the applicant in alter-
7 natives analysis and in preparing a draft environmental impact statement
8 and shall approve the draft for circulation not later than 45 days after the
9 applicant submits the draft to the Secretary.

10 (2) After the draft is circulated and not later than 30 days after the ap-
11 plicant selects a locally preferred alternative, the Secretary shall allow the
12 project to advance to the preliminary engineering stage if the Secretary
13 finds the project is consistent with section 5309(e)(1)–(6) of this title.

14 (3) The Secretary shall issue a record of decision and allow a project to
15 advance to the final design stage of construction not later than 120 days
16 after the final environmental impact statement for the project is completed.

17 (4) The Secretary shall make a full financing grant agreement under sec-
18 tion 5309 of this title for a project not later than 120 days after the project
19 enters the final design stage of construction. The agreement shall provide
20 for a United States Government share of the construction cost at least equal
21 to the Government share estimated in the Secretary's most recent report re-
22 quired under section 5309(m)(2) of this title or an update of the report un-
23 less the applicant requests otherwise.

24 (b) ALLOWED DELAYS.—(1) Advancement of a project under the time re-
25 quirements of subsection (a) of this section may be delayed only—

26 (A) for the time the applicant may request; or

27 (B) during the time the Secretary finds, after reasonable notice and
28 an opportunity for comment, that the applicant, for reasons attrib-
29 utable only to the applicant, has not complied substantially with the
30 provisions of this chapter applicable to the project.

31 (2) Not more than 10 days after imposing a delay under paragraph
32 (1)(B) of this subsection, the Secretary shall give the applicant a written
33 statement explaining the reasons for the delay and describing actions the
34 applicant must take to end the delay.

35 (3) At least once every 6 months, the Secretary shall report to the Com-
36 mittee on Public Works and Transportation of the House of Representatives
37 and the Committee on Banking, Housing, and Urban Affairs of the Senate
38 on each situation in which the Secretary has not met a time requirement
39 of subsection (a) of this section or delayed a time requirement under para-
40 graph (1)(B) of this subsection. The report shall explain the reasons for the

1 delay and include a plan for achieving timely completion of the Secretary's
2 review.

3 (c) PROGRAM OF INTERRELATED PROJECTS.—(1) In this subsection, a
4 program of interrelated projects includes the following:

5 (A) the New Jersey Urban Core Project (as defined in title III of
6 the Intermodal Surface Transportation Efficiency Act of 1991 (Public
7 Law 102–240, 105 Stat. 2087)).

8 (B) the San Francisco Bay Area Rail Extension Program, consisting
9 of at least an extension of the San Francisco Bay Area Rapid Transit
10 District to the San Francisco International Airport (Phase 1a to Colma
11 and Phase 1b to San Francisco Airport), the Santa Clara County
12 Transit District Tasman Corridor Project, a program element des-
13 ignated by a change to the Metropolitan Transportation Commission
14 Resolution No. 1876, and a program element financed completely with
15 non-Government amounts, including the BART Warm Springs Exten-
16 sion, Dublin Extension, and West Pittsburg Extension.

17 (C) the Los Angeles Metro Rail Minimum Operable Segment-3 Pro-
18 gram, consisting of 7 stations and approximately 11.6 miles of heavy
19 rail subway on the following lines:

20 (i) one line running west and northwest from the Hollywood/
21 Vine station to the North Hollywood station, with 2 intermediate
22 stations.

23 (ii) one line running west from the Wilshire/Western station to
24 the Pico/San Vicente station, with one intermediate station.

25 (iii) the East Side Extension, consisting of an initial line of ap-
26 proximately 3 miles, with at least 2 stations, beginning at Union
27 Station and running generally east.

28 (D) the Baltimore-Washington Transportation Improvement Pro-
29 gram, consisting of 3 extensions of the Baltimore Light Rail to Hunt
30 Valley, Penn Station, and Baltimore-Washington Airport, MARC exten-
31 sions to Frederick and Waldorf, Maryland, and an extension of the
32 Washington Subway system to Largo, Maryland.

33 (E) the Tri-County Metropolitan Transportation District of Oregon
34 Westside Light Rail Program, consisting of the locally preferred alter-
35 native for the Westside Light Rail Project, including system related
36 costs, contained in the Department of Transportation and Related
37 Agencies Appropriations Act, 1991 (Public Law 101–516, 104 Stat.
38 2155), and defined in House Report 101–584, and the Hillsboro exten-
39 sion to the Westside Light Rail Project contained in that Act.

40 (F) the Queens Local/Express Connector Program, consisting of the
41 locally preferred alternative for the connection of the 63d Street tunnel

1 extension to the Queens Boulevard lines, the bell-mouth part of the
2 connector that will allow for future access by commuter rail trains and
3 other subway lines to the 63d Street tunnel extension, planning ele-
4 ments for connecting the upper and lower levels to commuter and sub-
5 way lines in Long Island City, and planning elements for providing a
6 connector for commuter rail transportation to the East side of Manhat-
7 tan and subway lines to the proposed Second Avenue subway.

8 (G) the Dallas Area Rapid Transit Authority light rail elements of
9 the New System Plan, consisting of the locally preferred alternative for
10 the South Oak Cliff corridor, the South Oak Cliff corridor extension-
11 Camp Wisdom, the West Oak Cliff corridor-Westmoreland, the North
12 Central corridor-Park Lane, the North Central corridor-Richardson,
13 Plano, and Garland extensions, the Pleasant Grove corridor-Buckner,
14 and the Carrollton corridors-Farmers Branch and Las Colinas termi-
15 nal.

16 (H) other programs designated by law or the Secretary.

17 (2) Consistent with the time requirements of subsection (a) of this section
18 or as otherwise provided by law, the Secretary shall make at least one full
19 financing grant agreement for each program described in paragraph (1) of
20 this subsection. The agreement shall include commitments to advance each
21 of the applicant's program elements (in the program of interrelated
22 projects) through the appropriate program review stages as provided in sub-
23 section (a) or as otherwise provided by law and to provide Government fi-
24 nancing for each element. The agreement may be changed to include design
25 and construction of a particular element.

26 (3) When reviewing a project in a program of interrelated projects, the
27 Secretary shall consider the local financial commitment, transportation ef-
28 fectiveness, and other assessment factors of all program elements to the ex-
29 tent consideration expedites carrying out the project.

30 (4) Including a program element not financed by the Government in a
31 program of interrelated projects does not impose Government requirements
32 that otherwise would not apply to the element.

33 **§ 5329. Investigation of safety hazards**

34 (a) GENERAL.—The Secretary of Transportation may investigate a condi-
35 tion in equipment, a facility, or an operation financed under this chapter
36 that the Secretary believes causes a serious hazard of death or injury to es-
37 tablish the nature and extent of the condition and how to eliminate or cor-
38 rect it. If the Secretary establishes that a condition causes a hazard, the
39 Secretary shall require the local governmental authority receiving amounts
40 under this chapter to submit a plan for correcting it. The Secretary may

1 withhold further financial assistance under this chapter until a plan is ap-
2 proved and carried out.

3 (b) REPORT.—Not later than June 15, 1992, the Secretary shall submit
4 to Congress a report containing—

5 (1) a description of actions taken to identify and investigate condi-
6 tions in a facility, equipment, or way of operating as part of the find-
7 ings and decisions required of the Secretary in providing a grant or
8 loan under this chapter;

9 (2) a description of actions of the Secretary to correct or eliminate,
10 as a requirement for making an amount available through a grant or
11 loan under this chapter, a condition found to create a serious hazard
12 of death or injury;

13 (3) a summary of all passenger-related deaths and injuries resulting
14 from an unsafe condition in a facility, equipment, or way of operating
15 a facility or equipment at least partly financed under this chapter;

16 (4) a summary of all employee-related deaths and injuries resulting
17 from an unsafe condition in a facility, equipment, or way of operating
18 a facility or equipment at least partly financed under this chapter;

19 (5) a summary of action of the Secretary to correct or eliminate the
20 unsafe condition to which the deaths and injuries referred to in clauses
21 (3) and (4) of this subsection were attributed;

22 (6) a summary of actions of the Secretary to alert mass transpor-
23 tation operators of the nature of the unsafe condition found to create
24 a serious hazard of death or injury; and

25 (7) recommendations of the Secretary to Congress of any legislative
26 or administrative actions necessary to ensure that all recipients of
27 amounts under this chapter will undertake the best way available to
28 correct or eliminate hazards of death or injury, including—

29 (A) a timetable for undertaking actions;

30 (B) an estimate of the capital and operating cost to take the
31 actions; and

32 (C) minimum standards for establishing and carrying out safety
33 plans by recipients of amounts under this chapter.

34 **§ 5330. Withholding amounts for noncompliance with safety**
35 **requirements**

36 (a) APPLICATION.—This section applies only to States that have rail fixed
37 guideway mass transportation systems not subject to regulation by the Fed-
38 eral Railroad Administration.

39 (b) GENERAL AUTHORITY.—The Secretary of Transportation may with-
40 hold not more than 5 percent of the amount required to be appropriated
41 for use in a State or urbanized area in the State under section 5307 of this

1 title for a fiscal year beginning after September 30, 1994, if the State in
2 the prior fiscal year has not met the requirements of subsection (c) of this
3 section and the Secretary decides the State is not making an adequate effort
4 to comply with subsection (c).

5 (c) STATE REQUIREMENTS.—A State meets the requirements of this sec-
6 tion if the State—

7 (1) establishes and is carrying out a safety program plan for each
8 fixed guideway mass transportation system in the State that establishes
9 at least safety requirements, lines of authority, levels of responsibility
10 and accountability, and methods of documentation for the system; and

11 (2) designates a State authority as having responsibility—

12 (A) to require, review, approve, and monitor the carrying out of
13 each plan;

14 (B) to investigate hazardous conditions and accidents on the
15 systems; and

16 (C) to require corrective action to correct or eliminate those
17 conditions.

18 (d) MULTISTATE INVOLVEMENT.—When more than one State is subject
19 to this section in connection with a single mass transportation authority, the
20 affected States may designate an entity (except the mass transportation au-
21 thority) to ensure uniform safety standards and enforcement and to meet
22 the requirements of subsection (c) of this section.

23 (e) AVAILABILITY OF WITHHELD AMOUNTS.—(1) An amount withheld
24 under subsection (b) of this section remains available for apportionment for
25 use in the State until the end of the 2d fiscal year after the fiscal year for
26 which the amount may be appropriated.

27 (2) If a State meets the requirements of subsection (c) of this section be-
28 fore the last day of the period for which an amount withheld under sub-
29 section (b) of this section remains available under paragraph (1) of this sub-
30 section, the Secretary, on the first day on which the State meets the re-
31 quirements, shall apportion to the State the amount withheld that remains
32 available for apportionment for use in the State. An amount apportioned
33 under this paragraph remains available until the end of the 3d fiscal year
34 after the fiscal year in which the amount is apportioned. An amount not
35 obligated at the end of the 3-year period shall be apportioned for use in
36 other States under section 5336 of this title.

37 (3) If a State does not meet the requirements of subsection (c) of this
38 section at the end of the period for which an amount withheld under sub-
39 section (b) of this section remains available under paragraph (1) of this sub-
40 section, the amount shall be apportioned for use in other States under sec-
41 tion 5336 of this title.

1 (f) REGULATIONS.—Not later than December 18, 1992, the Secretary
2 shall prescribe regulations stating the requirements for complying with sub-
3 section (c) of this section.

4 **§ 5331. Alcohol and controlled substances testing**

5 (a) DEFINITIONS.—In this section—

6 (1) “controlled substance” means any substance under section 102
7 of the Comprehensive Drug Abuse Prevention and Control Act of 1970
8 (21 U.S.C. 802) whose use the Secretary of Transportation decides has
9 a risk to transportation safety.

10 (2) “person” includes any entity organized or existing under the laws
11 of the United States, a State, territory, or possession of the United
12 States, or a foreign country.

13 (3) “mass transportation” means any form of mass transportation,
14 except a form the Secretary decides is covered adequately, for employee
15 alcohol and controlled substances testing purposes, under subchapter
16 III of chapter 201 or section 31306 of this title.

17 (b) TESTING PROGRAM FOR MASS TRANSPORTATION EMPLOYEES.—

18 (1)(A) In the interest of mass transportation safety, the Secretary of Trans-
19 portation shall prescribe regulations not later than October 28, 1992, that
20 establish a program requiring mass transportation operations that receive
21 financial assistance under section 5307, 5309, or 5311 of this title or sec-
22 tion 103(e)(4) of title 23 to conduct preemployment, reasonable suspicion,
23 random, and post-accident testing of mass transportation employees respon-
24 sible for safety-sensitive functions (as decided by the Secretary) for the use
25 of alcohol or a controlled substance in violation of law or a United States
26 Government regulation.

27 (B) When the Secretary of Transportation considers it appropriate in the
28 interest of safety, the Secretary may prescribe regulations for conducting
29 periodic recurring testing of mass transportation employees responsible for
30 safety-sensitive functions (as decided by the Secretary) for the use of alcohol
31 or a controlled substance in violation of law or a Government regulation.

32 (2) In prescribing regulations under this subsection, the Secretary of
33 Transportation—

34 (A) shall require that post-accident testing of such a mass transpor-
35 tation employee be conducted when loss of human life occurs in an ac-
36 cident involving mass transportation; and

37 (B) may require that post-accident testing of such a mass transpor-
38 tation employee be conducted when bodily injury or significant property
39 damage occurs in any other serious accident involving mass transpor-
40 tation.

1 (c) DISQUALIFICATIONS FOR USE.—(1) When the Secretary of Transpor-
2 tation considers it appropriate, the Secretary shall require disqualification
3 for an established period of time or dismissal of any employee referred to
4 in subsection (b)(1) of this section who is found—

5 (A) to have used or been impaired by alcohol when on duty; or

6 (B) to have used a controlled substance, whether or not on duty, ex-
7 cept as allowed for medical purposes by law or regulation.

8 (2) This section does not supersede any penalty applicable to a mass
9 transportation employee under another law.

10 (d) TESTING AND LABORATORY REQUIREMENTS.—In carrying out sub-
11 section (b) of this section, the Secretary of Transportation shall develop re-
12 quirements that shall—

13 (1) promote, to the maximum extent practicable, individual privacy
14 in the collection of specimens;

15 (2) for laboratories and testing procedures for controlled substances,
16 incorporate the Department of Health and Human Services scientific
17 and technical guidelines dated April 11, 1988, and any amendments to
18 those guidelines, including mandatory guidelines establishing—

19 (A) comprehensive standards for every aspect of laboratory con-
20 trolled substances testing and laboratory procedures to be applied
21 in carrying out this section, including standards requiring the use
22 of the best available technology to ensure the complete reliability
23 and accuracy of controlled substances tests and strict procedures
24 governing the chain of custody of specimens collected for con-
25 trolled substances testing;

26 (B) the minimum list of controlled substances for which individ-
27 uals may be tested; and

28 (C) appropriate standards and procedures for periodic review of
29 laboratories and criteria for certification and revocation of certifi-
30 cation of laboratories to perform controlled substances testing in
31 carrying out this section;

32 (3) require that a laboratory involved in controlled substances testing
33 under this section have the capability and facility, at the laboratory,
34 of performing screening and confirmation tests;

35 (4) provide that all tests indicating the use of alcohol or a controlled
36 substance in violation of law or a Government regulation be confirmed
37 by a scientifically recognized method of testing capable of providing
38 quantitative information about alcohol or a controlled substance;

39 (5) provide that each specimen be subdivided, secured, and labeled
40 in the presence of the tested individual and that a part of the specimen
41 be retained in a secure manner to prevent the possibility of tampering,

1 so that if the individual's confirmation test results are positive the indi-
2 vidual has an opportunity to have the retained part tested by a 2d con-
3 firmation test done independently at another certified laboratory if the
4 individual requests the 2d confirmation test not later than 3 days after
5 being advised of the results of the first confirmation test;

6 (6) ensure appropriate safeguards for testing to detect and quantify
7 alcohol in breath and body fluid samples, including urine and blood,
8 through the development of regulations that may be necessary and in
9 consultation with the Secretary of Health and Human Services;

10 (7) provide for the confidentiality of test results and medical infor-
11 mation (except information about alcohol or a controlled substance) of
12 employees, except that this clause does not prevent the use of test re-
13 sults for the orderly imposition of appropriate sanctions under this sec-
14 tion; and

15 (8) ensure that employees are selected for tests by nondiscriminatory
16 and impartial methods, so that no employee is harassed by being treat-
17 ed differently from other employees in similar circumstances.

18 (e) REHABILITATION.—The Secretary of Transportation shall prescribe
19 regulations establishing requirements for rehabilitation programs that pro-
20 vide for the identification and opportunity for treatment of any mass trans-
21 portation employee referred to in subsection (b)(1) of this section who is
22 found to have used alcohol or a controlled substance in violation of law or
23 a Government regulation. The Secretary shall decide on the circumstances
24 under which employees shall be required to participate in a program. This
25 subsection does not prevent a mass transportation operation from establish-
26 ing a program under this section in cooperation with another mass trans-
27 portation operation.

28 (f) RELATIONSHIP TO OTHER LAWS, REGULATIONS, STANDARDS, AND
29 ORDERS.—(1) A State or local government may not prescribe, issue, or con-
30 tinue in effect a law, regulation, standard, or order that is inconsistent with
31 regulations prescribed under this section. However, a regulation prescribed
32 under this section does not preempt a State criminal law that imposes sanc-
33 tions for reckless conduct leading to loss of life, injury, or damage to prop-
34 erty.

35 (2) In prescribing regulations under this section, the Secretary of Trans-
36 portation—

37 (A) shall establish only requirements that are consistent with inter-
38 national obligations of the United States; and

39 (B) shall consider applicable laws and regulations of foreign coun-
40 tries.

1 (3) This section does not prevent the Secretary of Transportation from
2 continuing in effect, amending, or further supplementing a regulation pre-
3 scribed before October 28, 1991, governing the use of alcohol or a controlled
4 substance by mass transportation employees.

5 (g) INELIGIBILITY FOR ASSISTANCE.—A person is not eligible for finan-
6 cial assistance under section 5307, 5309, or 5311 of this title or section
7 103(e)(4) of title 23 if the person is required, under regulations the Sec-
8 retary of Transportation prescribes under this section, to establish a pro-
9 gram of alcohol and controlled substances testing and does not establish the
10 program.

11 **§ 5332. Nondiscrimination**

12 (a) DEFINITION.—In this section, “person” includes a governmental au-
13 thority, political subdivision, authority, legal representative, trust, unincor-
14 porated organization, trustee, trustee in bankruptcy, and receiver.

15 (b) PROHIBITIONS.—A person may not be excluded from participating in,
16 denied a benefit of, or discriminated against under, a project, program, or
17 activity receiving financial assistance under this chapter because of race,
18 color, creed, national origin, sex, or age.

19 (c) COMPLIANCE.—(1) The Secretary of Transportation shall take affirm-
20 ative action to ensure compliance with subsection (b) of this section.

21 (2) When the Secretary decides that a person receiving financial assist-
22 ance under this chapter is not complying with subsection (b) of this section,
23 a civil rights law of the United States, or a regulation or order under that
24 law, the Secretary shall notify the person of the decision and require action
25 be taken to ensure compliance with subsection (b).

26 (d) AUTHORITY OF SECRETARY FOR NONCOMPLIANCE.—If a person does
27 not comply with subsection (b) of this section within a reasonable time after
28 receiving notice, the Secretary shall—

29 (1) direct that no further financial assistance of the United States
30 Government under this chapter be provided to the person;

31 (2) refer the matter to the Attorney General with a recommendation
32 that a civil action be brought;

33 (3) proceed under title VI of the Civil Rights Act of 1964 (42 U.S.C.
34 2000d et seq.); and

35 (4) take any other action provided by law.

36 (e) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may
37 bring a civil action for appropriate relief when—

38 (1) a matter is referred to the Attorney General under subsection
39 (d)(2) of this section; or

40 (2) the Attorney General believes a person is engaged in a pattern
41 or practice in violation of this section.

1 (f) APPLICATION AND RELATIONSHIP TO OTHER LAWS.—This section ap-
2 plies to an employment or business opportunity and is in addition to title
3 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

4 **§ 5333. Labor standards**

5 (a) PREVAILING WAGES REQUIREMENT.—The Secretary of Transpor-
6 tation shall ensure that laborers and mechanics employed by contractors
7 and subcontractors in construction work financed with a grant or loan
8 under this chapter be paid wages not less than those prevailing on similar
9 construction in the locality, as determined by the Secretary of Labor under
10 the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C.
11 276a—276a-5). The Secretary of Transportation may approve a grant or
12 loan only after being assured that required labor standards will be main-
13 tained on the construction work. For a labor standard under this subsection,
14 the Secretary of Labor has the same duties and powers stated in Reorga-
15 nization Plan No. 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and sec-
16 tion 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

17 (b) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) As a condition of fi-
18 nancial assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d),
19 and (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees
20 affected by the assistance shall be protected under arrangements the Sec-
21 retary of Labor concludes are fair and equitable. The agreement granting
22 the assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and
23 (e), 5328, 5337, and 5338(j)(5) shall specify the arrangements.

24 (2) Arrangements under this subsection shall include provisions that may
25 be necessary for—

26 (A) the preservation of rights, privileges, and benefits (including con-
27 tinuation of pension rights and benefits) under existing collective bar-
28 gaining agreements or otherwise;

29 (B) the continuation of collective bargaining rights;

30 (C) the protection of individual employees against a worsening of
31 their positions related to employment;

32 (D) assurances of employment to employees of acquired mass trans-
33 portation systems;

34 (E) assurances of priority of reemployment of employees whose em-
35 ployment is ended or who are laid off; and

36 (F) paid training or retraining programs.

37 (3) Arrangements under this subsection shall provide benefits at least
38 equal to benefits established under section 11347 of this title.

39 **§ 5334. Administrative**

40 (a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary
41 of Transportation may—

1 (1) prescribe terms for a project under sections 5307 and 5309–
2 5311 of this title (except terms the Secretary of Labor prescribes under
3 section 5333(b) of this title);

4 (2) sue and be sued;

5 (3) foreclose on property or bring a civil action to protect or enforce
6 a right conferred on the Secretary of Transportation by law or agree-
7 ment;

8 (4) buy property related to a loan under this chapter;

9 (5) agree to pay an annual amount in place of a State or local tax
10 on real property acquired or owned under this chapter;

11 (6) sell, exchange, or lease property, a security, or an obligation;

12 (7) obtain loss insurance for property and assets the Secretary of
13 Transportation holds;

14 (8) consent to a modification in an agreement under this chapter;
15 and

16 (9) include in an agreement or instrument under this chapter a cov-
17 enant or term the Secretary of Transportation considers necessary to
18 carry out this chapter.

19 (b) PROCEDURES FOR PRESCRIBING REGULATIONS.—(1) The Secretary
20 of Transportation shall prepare an agenda listing all areas in which the Sec-
21 retary intends to propose regulations governing activities under this chapter
22 within the following 12 months. The Secretary shall publish the proposed
23 agenda in the Federal Register as part of the Secretary's semiannual regu-
24 latory agenda that lists regulatory activities of the Federal Transit Adminis-
25 tration. The Secretary shall submit the agenda to the Committees on Public
26 Works and Transportation and Appropriations of the House of Representa-
27 tives and the Committees on Banking, Housing, and Urban Affairs and Ap-
28 propriations of the Senate on the day the agenda is published.

29 (2) Except for emergency regulations, the Secretary of Transportation
30 shall give interested parties at least 60 days to participate in a regulatory
31 proceeding under this chapter by submitting written information, views, or
32 arguments, with or without an oral presentation, except when the Secretary
33 for good cause finds that public notice and comment are unnecessary be-
34 cause of the routine nature or insignificant impact of the regulation or that
35 an emergency regulation should be issued. The Secretary may extend the
36 60-day period if the Secretary decides the period is insufficient to allow dili-
37 gent individuals to prepare comments or that other circumstances justify an
38 extension.

39 (3) An emergency regulation ends 120 days after it is issued.

40 (4) The Secretary of Transportation shall comply with this section (except
41 subsections (h) and (i)) and sections 5323(a)(2), (c) and (e), 5324(c), and

1 5325 of this title when proposing or carrying out a regulation governing an
2 activity under this chapter, except for a routine matter or a matter with
3 no significant impact.

4 (c) BUDGET PROGRAM AND SET OF ACCOUNTS.—The Secretary of
5 Transportation shall—

6 (1) submit each year a budget program as provided in section 9103
7 of title 31; and

8 (2) maintain a set of accounts the Comptroller General shall audit
9 under chapter 35 of title 31.

10 (d) DEPOSITORY AND AVAILABILITY OF AMOUNTS.—The Secretary of
11 Transportation shall deposit amounts made available to the Secretary under
12 this chapter in a checking account in the Treasury. Receipts, assets, and
13 amounts obtained or held by the Secretary to carry out this chapter are
14 available for administrative expenses to carry out this chapter.

15 (e) BINDING EFFECT OF FINANCIAL TRANSACTION.—A financial trans-
16 action of the Secretary of Transportation under this chapter and a related
17 voucher are binding on all officers and employees of the United States Gov-
18 ernment.

19 (f) DEALING WITH ACQUIRED PROPERTY.—Notwithstanding another law
20 related to the Government acquiring, using, or disposing of real property,
21 the Secretary of Transportation may deal with property acquired under sub-
22 section (a)(3) or (4) of this section in any way. However, this subsection
23 does not—

24 (1) deprive a State or political subdivision of a State of jurisdiction
25 of the property; or

26 (2) impair the civil rights, under the laws of a State or political sub-
27 division of a State, of an inhabitant of the property.

28 (g) TRANSFER OF ASSETS NO LONGER NEEDED.—(1) If a recipient of
29 assistance under this chapter decides an asset acquired under this chapter
30 at least in part with that assistance is no longer needed for the purpose
31 for which it was acquired, the Secretary of Transportation may authorize
32 the recipient to transfer the asset to a local governmental authority to be
33 used for a public purpose with no further obligation to the Government. The
34 Secretary may authorize a transfer for a public purpose other than mass
35 transportation only if the Secretary decides—

36 (A) the asset will remain in public use for at least 5 years after the
37 date the asset is transferred;

38 (B) there is no purpose eligible for assistance under this chapter for
39 which the asset should be used;

40 (C) the overall benefit of allowing the transfer is greater than the
41 interest of the Government in liquidation and return of the financial

1 interest of the Government in the asset, after considering fair market
2 value and other factors; and

3 (D) through an appropriate screening or survey process, that there
4 is no interest in acquiring the asset for Government use if the asset
5 is a facility or land.

6 (2) A decision under paragraph (1) of this section must be in writing and
7 include the reason for the decision.

8 (3) This subsection is in addition to another law related to using and dis-
9 posing of a facility or equipment under an assistance agreement.

10 (h) TRANSFER OF AMOUNTS AND NON-GOVERNMENT SHARE.—(1)
11 Amounts made available for a mass transportation project under title 23
12 shall be transferred to and administered by the Secretary of Transportation
13 under this chapter. Amounts made available for a highway project under
14 this chapter shall be transferred to and administered by the Secretary under
15 title 23.

16 (2) The provisions of title 23 related to the non-Government share apply
17 to amounts under title 23 used for mass transportation projects. The provi-
18 sions of this chapter related to the non-Government share apply to amounts
19 under this chapter used for highway projects.

20 (i) AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOP-
21 MENT.—The Secretary of Housing and Urban Development shall—

22 (1) carry out section 5312(a) and (b)(1) of this title related to—

23 (A) urban transportation systems and planned development of
24 urban areas; and

25 (B) the role of transportation planning in overall urban plan-
26 ning; and

27 (2) advise and assist the Secretary of Transportation in making find-
28 ings under section 5323(a)(1)(A) of this title.

29 (j) RELATIONSHIP TO OTHER LAWS.—(1) Section 9107(a) of title 31 ap-
30 plies to the Secretary of Transportation under this chapter.

31 (2) Section 3709 of the Revised Statutes (41 U.S.C. 5) applies to a con-
32 tract for more than \$1,000 for services or supplies related to property ac-
33 quired under this chapter.

34 **§ 5335. Reports and audits**

35 (a) REPORTING SYSTEM AND UNIFORM SYSTEM OF ACCOUNTS AND
36 RECORDS.—(1) To help meet the needs of individual mass transportation
37 systems, the United States Government, State and local governments, and
38 the public for information on which to base mass transportation service
39 planning, the Secretary of Transportation shall maintain a reporting sys-
40 tem, by uniform categories, to accumulate mass transportation financial and
41 operating information and a uniform system of accounts and records. The

1 reporting and uniform systems shall contain appropriate information to help
2 any level of government make a public sector investment decision. The Sec-
3 retary may request and receive appropriate information from any source.

4 (2) The Secretary may make a grant under section 5307 of this title only
5 if the applicant, and any person that will receive benefits directly from the
6 grant, are subject to the reporting and uniform systems.

7 (b) QUARTERLY REPORTS.—Not later than 30 days after the last day of
8 each calendar quarter, the Secretary shall submit to the Committees on
9 Public Works and Transportation and Appropriations of the House of Rep-
10 resentatives and the Committees on Banking, Housing, and Urban Affairs
11 and Appropriations of the Senate a report on—

12 (1) obligations by State, designated recipient, and applicant made
13 under this chapter during the quarter;

14 (2) the balance of unobligated apportionments under this chapter on
15 the last day of the quarter;

16 (3) the balance of unobligated amounts under this chapter on the
17 last day of the quarter that the Secretary may expend;

18 (4) letters of intent issued during the quarter;

19 (5) letters of intent outstanding on the last day of the quarter; and

20 (6) grant contracts executed and reimbursement authority estab-
21 lished for amounts obligated for each State, designated recipient, and
22 applicant.

23 (c) BIENNIAL NEEDS REPORT.—In January 1993 and in January of
24 every 2d year after 1993, the Comptroller General shall submit to the Com-
25 mittee on Public Works and Transportation of the House of Representatives
26 and the Committee on Banking, Housing, and Urban Affairs of the Senate
27 a report containing an evaluation of the extent to which current mass trans-
28 portation needs are addressed adequately and an estimate of the future
29 mass transportation needs of the United States, including mass transpor-
30 tation needs in rural areas (particularly access to health care facilities). The
31 report shall include—

32 (1) an assessment of needs related to rail modernization, guideway
33 modernization, replacing, rehabilitating, and buying buses and related
34 equipment, constructing bus related facilities, and constructing new
35 fixed guideway systems and extensions to existing fixed guideway sys-
36 tems;

37 (2) a 5-year projection of maintenance and modernization needs re-
38 sulting from aging of existing equipment and facilities, including the
39 need to overhaul or replace existing bus fleets and rolling stock used
40 on fixed guideway systems;

1 (3) a 5-year projection of the need to invest in the expansion of ex-
2 isting mass transportation systems to meet changing economic, com-
3 muter, and residential patterns;

4 (4) an estimate of the level of expenditure needed to satisfy the
5 needs identified in clauses (1)–(3) of this paragraph;

6 (5) an examination of existing Government, State, local, and private
7 resources that are or reasonably can be expected to be made available
8 to support public mass transportation; and

9 (6) the gap between the level of expenditure estimated under clause
10 (4) of this paragraph and the level of resources identified under clause
11 (5) of this paragraph that are available to meet the needs.

12 (d) BIENNIAL TRANSFERABILITY REPORT.—In January 1993 and in
13 January of every 2d year after 1993, the Comptroller General shall submit
14 to the Committee on Public Works and Transportation of the House of Rep-
15 resentatives and the Committee on Banking, Housing, and Urban Affairs
16 of the Senate a report on carrying out section 5307(b)(5) of this title. The
17 report shall—

18 (1) identify, by State, the amount of mass transportation money
19 transferred for non-mass transportation purposes under section
20 5307(b)(5) of this title during the prior fiscal year;

21 (2) include an assessment of the impact of the transfers on the mass
22 transportation needs of individuals and communities in the State, in-
23 cluding the impact on—

24 (A) the State's ability to meet the mass transportation needs of
25 elderly individuals and individuals with disabilities;

26 (B) efforts to meet the objectives of the Clean Air Act (42
27 U.S.C. 7401 et seq.) and the Americans With Disabilities Act of
28 1990 (42 U.S.C. 12101 et seq.); and

29 (C) the State's efforts to extend public mass transportation
30 services to unserved rural areas; and

31 (3) examine the relative levels of Government mass transportation
32 assistance and services in urban and rural areas in the fiscal year that
33 ended September 30, 1991, and the extent to which the assistance and
34 service has changed in later fiscal years because of mass transportation
35 resources made available under this chapter and the Intermodal Sur-
36 face Transportation Efficiency Act of 1991 (Public Law 102-240, 105
37 Stat. 1914).

38 **§ 5336. Apportionment of appropriations for block grants**

39 (a) BASED ON URBANIZED AREA POPULATION.—Of the amount made
40 available or appropriated under section 5338(f) of this title—

1 (1) 9.32 percent shall be apportioned each fiscal year only in urban-
2 ized areas with a population of less than 200,000 so that each of those
3 areas is entitled to receive an amount equal to—

4 (A) 50 percent of the total amount apportioned multiplied by
5 a ratio equal to the population of the area divided by the total
6 population of all urbanized areas with populations of less than
7 200,000 as shown in the latest United States Government census;
8 and

9 (B) 50 percent of the total amount apportioned multiplied by
10 a ratio for the area based on population weighted by a factor, es-
11 tablished by the Secretary of Transportation, of the number of in-
12 habitants in each square mile; and

13 (2) 90.68 percent shall be apportioned each fiscal year only in urban-
14 ized areas with populations of at least 200,000 as provided in sub-
15 sections (b) and (c) of this section.

16 (b) BASED ON FIXED GUIDEWAY REVENUE VEHICLE-MILES, ROUTE-
17 MILES, AND PASSENGER-MILES.—(1) In this subsection, “fixed guideway
18 revenue vehicle-miles” and “fixed guideway route-miles” include ferry boat
19 operations directly or under contract by the designated recipient.

20 (2) Of the amount apportioned under subsection (a)(2) of this section,
21 33.29 percent shall be apportioned as follows:

22 (A) 95.61 percent of the total amount apportioned under this sub-
23 section shall be apportioned so that each urbanized area with a popu-
24 lation of at least 200,000 is entitled to receive an amount equal to—

25 (i) 60 percent of the 95.61 percent apportioned under this sub-
26 paragraph multiplied by a ratio equal to the number of fixed
27 guideway revenue vehicle-miles attributable to the area, as estab-
28 lished by the Secretary of Transportation, divided by the total
29 number of all fixed guideway revenue vehicle-miles attributable to
30 all areas; and

31 (ii) 40 percent of the 95.61 percent apportioned under this sub-
32 paragraph multiplied by a ratio equal to the number of fixed
33 guideway route-miles attributable to the area, established by the
34 Secretary, divided by the total number of all fixed guideway route-
35 miles attributable to all areas.

36 (B) 4.39 percent of the total amount apportioned under this sub-
37 section shall be apportioned so that each urbanized area with a popu-
38 lation of at least 200,000 is entitled to receive an amount equal to—

39 (i) the number of fixed guideway vehicle passenger-miles trav-
40 eled multiplied by the number of fixed guideway vehicle passenger-

1 miles traveled for each dollar of operating cost in an area; divided
2 by

3 (ii) the total number of fixed guideway vehicle passenger-miles
4 traveled multiplied by the total number of fixed guideway vehicle
5 passenger-miles traveled for each dollar of operating cost in all
6 areas.

7 (C) An urbanized area with a population of at least 750,000 in
8 which commuter rail transportation is provided shall receive at least
9 .75 percent of the total amount apportioned under this subsection.

10 (D) Under subparagraph (A) of this paragraph, fixed guideway reve-
11 nue vehicle- or route-miles, and passengers served on those miles, in
12 an urbanized area with a population of less than 200,000, where the
13 miles and passengers served otherwise would be attributable to an ur-
14 banized area with a population of at least 1,000,000 in an adjacent
15 State, are attributable to the governmental authority in the State in
16 which the urbanized area with a population of less than 200,000 is lo-
17 cated. The authority is deemed an urbanized area with a population of
18 at least 200,000 if the authority makes a contract for the service.

19 (E) A recipient's apportionment under subparagraph (A)(i) of this
20 paragraph may not be reduced if the recipient, after satisfying the Sec-
21 retary of Transportation that energy or operating efficiencies would be
22 achieved, reduces revenue vehicle-miles but provides the same frequency
23 of revenue service to the same number of riders.

24 (c) BASED ON BUS REVENUE VEHICLE-MILES AND PASSENGER-
25 MILES.—Of the amount apportioned under subsection (a)(2) of this section,
26 66.71 percent shall be apportioned as follows:

27 (1) 90.8 percent of the total amount apportioned under this sub-
28 section shall be apportioned as follows:

29 (A) 73.39 percent of the 90.8 percent apportioned under this
30 paragraph shall be apportioned so that each urbanized area with
31 a population of at least 1,000,000 is entitled to receive an amount
32 equal to—

33 (i) 50 percent of the 73.39 percent apportioned under this
34 subparagraph multiplied by a ratio equal to the total bus reve-
35 nue vehicle-miles operated in or directly serving the urban-
36 ized area divided by the total bus revenue vehicle-miles attrib-
37 utable to all areas;

38 (ii) 25 percent of the 73.39 percent apportioned under this
39 subparagraph multiplied by a ratio equal to the population of
40 the area divided by the total population of all areas, as shown
41 by the latest Government census; and

1 (iii) 25 percent of the 73.39 percent apportioned under this
2 subparagraph multiplied by a ratio for the area based on pop-
3 ulation weighted by a factor, established by the Secretary of
4 Transportation, of the number of inhabitants in each square
5 mile.

6 (B) 26.61 percent of the 90.8 percent apportioned under this
7 paragraph shall be apportioned so that each urbanized area with
8 a population of at least 200,000 but not more than 999,999 is en-
9 titled to receive an amount equal to—

10 (i) 50 percent of the 26.61 percent apportioned under this
11 subparagraph multiplied by a ratio equal to the total bus rev-
12 enue vehicle-miles operated in or directly serving the urban-
13 ized area divided by the total bus revenue vehicle-miles attrib-
14 utable to all areas;

15 (ii) 25 percent of the 26.61 percent apportioned under this
16 subparagraph multiplied by a ratio equal to the population of
17 the area divided by the total population of all areas, as shown
18 by the latest Government census; and

19 (iii) 25 percent of the 26.61 percent apportioned under this
20 subparagraph multiplied by a ratio for the area based on pop-
21 ulation weighted by a factor, established by the Secretary of
22 Transportation, of the number of inhabitants in each square
23 mile.

24 (2) 9.2 percent of the total amount apportioned under this sub-
25 section shall be apportioned so that each urbanized area with a popu-
26 lation of at least 200,000 is entitled to receive an amount equal to—

27 (A) the number of bus passenger-miles traveled multiplied by
28 the number of bus passenger-miles traveled for each dollar of oper-
29 ating cost in an area; divided by

30 (B) the total number of bus passenger-miles traveled multiplied
31 by the total number of bus passenger-miles traveled for each dollar
32 of operating cost in all areas.

33 (d) OPERATING ASSISTANCE.—(1) The total amount apportioned under
34 this section that may be used for operating assistance may not be more
35 than—

36 (A) 80 percent of the total amount apportioned in the fiscal year
37 ending September 30, 1982, under section 5(a)(1)(A), (2)(A), and
38 (3)(A) of the Urban Mass Transportation Act of 1964 to urbanized
39 areas with populations of at least 1,000,000;

1 (B) 90 percent of the total amount apportioned in that year under
2 section 5(a)(1)(A), (2)(A), and (3)(A) to urbanized areas with popu-
3 lations of at least 200,000 but not more than 999,999;

4 (C) 95 percent of the total amount apportioned in that year under
5 section 5(a)(1)(A), (2)(A), and (3)(A) to urbanized areas with popu-
6 lations of less than 200,000; or

7 (D) two-thirds of the total amount apportioned under this section
8 during the first complete year an urbanized area received amounts
9 under this section if the area first became an urbanized area under the
10 1980 Government census or later.

11 (2) Amounts apportioned under paragraph (1) of this subsection shall be
12 increased on October 1 of each year by an amount equal to the amount ap-
13 plicable to each urbanized area under paragraph (1) (except increases under
14 this paragraph), multiplied by the percentage increase in the Consumer
15 Price Index for all-urban consumers published by the Secretary of Labor
16 during the most recent calendar year. However, the increase may not be
17 more than the percentage increase of amounts made available under section
18 5338(f) of this title in the current fiscal year and amounts made available
19 under section 5338(f) in the prior fiscal year.

20 (e) DATE OF APPORTIONMENT.—The Secretary of Transportation shall—

21 (1) apportion amounts appropriated under section 5338(f) of this
22 title to carry out section 5307 of this title not later than the 10th day
23 after the date the amounts are appropriated or October 1 of the fiscal
24 year for which the amounts are appropriated, whichever is later; and

25 (2) publish apportionments of the amounts, including amounts at-
26 tributable to each urbanized area with a population of more than
27 50,000 and amounts attributable to each State of a multistate urban-
28 ized area, on the apportionment date.

29 (f) AMOUNTS NOT APPORTIONED TO DESIGNATED RECIPIENTS.—The
30 chief executive officer of a State may expend in an urbanized area with a
31 population of less than 200,000 an amount apportioned under this section
32 that is not apportioned to a designated recipient as defined in section
33 5307(a) of this title.

34 (g) TRANSFERS OF APPORTIONMENTS.—(1) The chief executive officer of
35 a State may transfer any part of the State's apportionment under sub-
36 section (a)(1) of this section to supplement amounts apportioned to the
37 State under section 5311(c) of this title or amounts apportioned to urban-
38 ized areas under this subsection. The chief executive officer may make a
39 transfer only after consulting with responsible local officials and publicly
40 owned operators of mass transportation in each area for which the amount
41 originally was apportioned under this section.

1 (2) The chief executive officer of a State may transfer any part of the
2 State's apportionment under section 5311(c) of this title to supplement
3 amounts apportioned to the State under subsection (a)(1) of this section.

4 (3) The chief executive officer of a State may use throughout the State
5 amounts of a State's apportionment remaining available for obligation at
6 the beginning of the 90-day period before the period of the availability of
7 the amounts expires.

8 (4) A designated recipient for an urbanized area with a population of at
9 least 200,000 may transfer a part of its apportionment under this section
10 to the chief executive officer of a State. The chief executive officer shall dis-
11 tribute the transferred amounts to urbanized areas under this section.

12 (5) Capital and operating assistance limitations applicable to the original
13 apportionment apply to amounts transferred under this subsection.

14 (h) CHANGES OF APPORTIONMENTS.—If sufficient amounts are available,
15 the Secretary of Transportation shall change apportionments under this sec-
16 tion between the Mass Transit Account of the Highway Trust Fund and
17 the general fund to ensure that each recipient receives from the general
18 fund at least as much operating assistance made available each fiscal year
19 under this section as the recipient is eligible to receive.

20 (i) PERIOD OF AVAILABILITY TO RECIPIENTS.—An amount apportioned
21 under this section may be obligated by the recipient for 3 years after the
22 fiscal year in which the amount is apportioned. Not later than 30 days after
23 the end of the 3-year period, an amount that is not obligated at the end
24 of that period shall be added to the amount that may be apportioned under
25 this section in the next fiscal year.

26 (j) APPLICATION OF OTHER SECTIONS.—Sections 5302, 5318,
27 5323(a)(1), (d), and (f), 5332, and 5333 of this title apply to this section
28 and to a grant made under this section. Except as provided in this section,
29 no other provision of this chapter applies to this section or to a grant made
30 under this section.

31 (k) CERTAIN URBANIZED AREAS GRANDFATHERED.—An area designated
32 an urbanized area under the 1980 census and not designated an urbanized
33 area under the 1990 census for the fiscal year ending September 30, 1993,
34 is eligible to receive—

35 (1) 50 percent of the amount the area would have received if the
36 area had been an urbanized area as defined by section 5302(a)(13) of
37 this title; and

38 (2) an amount equal to 50 percent of the amount that the State in
39 which the area is located would have received if the area had been an
40 area other than an urbanized area.

1 **§ 5337. Apportionment of appropriations for fixed guideway**
2 **modernization**

3 (a) PERCENTAGE DISTRIBUTION.—The Secretary of Transportation shall
4 apportion amounts made available for fixed guideway modernization under
5 section 5309 of this title for each of the fiscal years ending September 30,
6 1993–1997, as follows:

7 (1) The first \$455,000,000 shall be apportioned in the following ur-
8 banized areas as follows:

9 (A) Baltimore, 1.84 percent.

10 (B) Boston, 8.56 percent.

11 (C) Chicago/Northwestern Indiana, 17.18 percent.

12 (D) Cleveland, 2.09 percent.

13 (E) New York, 35.57 percent.

14 (F) Northeastern New Jersey, 9.04 percent.

15 (G) Philadelphia/Southern New Jersey, 12.41 percent.

16 (H) San Francisco, 7.21 percent.

17 (I) Southwestern Connecticut, 6.10 percent.

18 (2) The next \$42,700,000 shall be apportioned in the following ur-
19 banized areas as follows:

20 (A) New York, 33.2341 percent.

21 (B) Northeastern New Jersey, 22.1842 percent.

22 (C) Philadelphia/Southern New Jersey, 5.7594 percent.

23 (D) San Francisco, 2.7730 percent.

24 (E) Pittsburgh, 31.9964 percent.

25 (F) New Orleans, 4.0529 percent.

26 (3) The next \$70,000,000 shall be apportioned as follows:

27 (A) 50 percent in the urbanized areas listed in paragraphs (1)
28 and (2) as provided in section 5336(b)(2)(A) of this title.

29 (B) 50 percent in other urbanized areas eligible for assistance
30 under section 5336(b)(2)(A) of this title if the areas contain fixed
31 guideway systems placed in revenue service at least 7 years before
32 the fiscal year in which amounts are made available and in any
33 other urbanized area if, before the first day of the fiscal year, the
34 area satisfies the Secretary that the area has modernization needs
35 that cannot be met adequately with amounts received as provided
36 in section 5336(b)(2)(A).

37 (4) Remaining amounts shall be apportioned in each urbanized area
38 eligible for assistance under paragraphs (1)–(3) of this subsection as
39 provided in section 5336(B)(2)(A).

40 (b) TOTAL AMOUNTS NOT AVAILABLE.—In a fiscal year in which the
41 total amounts authorized under subsection (a)(1) and (2) of this section are

1 not available, the Secretary shall reduce on a proportionate basis the appor-
 2 tionments of all urbanized areas eligible under subsection (a)(1) or (2) to
 3 adjust for the amount not available.

4 (c) NEW JERSEY TRANSIT CORPORATION.—Rail modernization amounts
 5 allocated to the New Jersey Transit Corporation under this section may be
 6 spent in any urbanized area in which the New Jersey Transit Corporation
 7 operates rail transportation, regardless of which urbanized area generates
 8 the financing.

9 (d) AVAILABILITY OF AMOUNTS.—An amount apportioned under this sec-
 10 tion—

11 (1) remains available for 3 years after the fiscal year in which the
 12 amount is apportioned; and

13 (2) that is unobligated at the end of the 3-year period shall be
 14 reapportioned for the next fiscal year among urbanized areas eligible
 15 under subsection (a)(1)–(3) of this section using the apportionment
 16 formula of this section.

17 **§ 5338. Authorizations**

18 (a) FOR SECTIONS 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317,
 19 5320, 5327, AND 5334(a) AND (c) AND SECTION 103(e)(4) OF TITLE 23.—

20 (1) Not more than the following amounts are available from the Mass Tran-
 21 sit Account of the Highway Trust Fund for the Secretary of Transportation
 22 to carry out sections 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317,
 23 5320, 5327, and 5334(a) and (c) of this title:

24 (A) \$1,150,000,000 for the fiscal year ending September 30, 1993.

25 (B) \$1,190,000,000 for the fiscal year ending September 30, 1994.

26 (C) \$1,150,000,000 for the fiscal year ending September 30, 1995.

27 (D) \$1,110,000,000 for the fiscal year ending September 30, 1996.

28 (E) \$1,920,000,000 for the fiscal year ending September 30, 1997.

29 (2) In addition to amounts made available under paragraph (1) of this
 30 subsection, not more than the following amounts may be appropriated to the
 31 Secretary to carry out sections 5303–5306, 5308, 5310, 5311, 5313, 5314,
 32 5317, 5320, 5327, and 5334(a) and (c) of this title and substitute transit
 33 projects under section 103(e)(4) of title 23:

34 (A) \$2,055,000,000 for the fiscal year ending September 30, 1993.

35 (B) \$1,885,000,000 for the fiscal year ending September 30, 1994.

36 (C) \$1,925,000,000 for the fiscal year ending September 30, 1995.

37 (D) \$1,965,000,000 for the fiscal year ending September 30, 1996.

38 (E) \$2,430,000,000 for the fiscal year ending September 30, 1997.

39 (b) SECTION 5309.—(1) Not more than the following amounts are avail-
 40 able from the Account for the Secretary to carry out section 5309 of this
 41 title:

- 1 (A) \$1,725,000,000 for the fiscal year ending September 30, 1993.
2 (B) \$1,785,000,000 for the fiscal year ending September 30, 1994.
3 (C) \$1,725,000,000 for the fiscal year ending September 30, 1995.
4 (D) \$1,665,000,000 for the fiscal year ending September 30, 1996.
5 (E) \$2,880,000,000 for the fiscal year ending September 30, 1997.

6 (2) In addition to amounts made available under paragraph (1) of this
7 subsection, not more than the following amounts may be appropriated to the
8 Secretary to carry out section 5309 of this title:

- 9 (A) \$305,000,000 for the fiscal year ending September 30, 1993.
10 (B) \$265,000,000 for the fiscal year ending September 30, 1994.
11 (C) \$325,000,000 for the fiscal year ending September 30, 1995.
12 (D) \$385,000,000 for the fiscal year ending September 30, 1996.
13 (E) \$20,000,000 for the fiscal year ending September 30, 1997.

14 (c) SECTION 5315.—The Secretary shall make available in equal amounts
15 from amounts provided under subsections (f) and (g) of this section not
16 more than \$3,000,000 for each of the fiscal years ending September 30,
17 1993–1997, to carry out section 5315 of this title.

18 (d) SECTION 5316.—Not more than the following amounts may be appro-
19 priated to the Secretary from the Fund (except the Account) for each of
20 the fiscal years ending September 30, 1993–1997:

- 21 (1) \$250,000 to carry out section 5316(a) of this title.
22 (2) \$3,000,000 to carry out section 5316(b) of this title.
23 (3) \$1,000,000 to carry out section 5316(c) of this title.
24 (4) \$1,000,000 to carry out section 5316(d) of this title.
25 (5) \$1,000,000 to carry out section 5316(e) of this title.

26 (e) SECTION 5317.—(1) Not more than \$6,000,000 is available from the
27 Fund (except the Account) for the Secretary for each of the fiscal years
28 ending September 30, 1993–1997, to carry out section 5317 of this title.

29 (2) Not more than the following amounts may be appropriated to the Sec-
30 retary from the Fund (except the Account) for making grants under section
31 5317(b)(5)(B) of this title:

- 32 (A) \$3,000,000 for the fiscal year ending September 30, 1993.
33 (B) \$2,500,000 for the fiscal year ending September 30, 1994.

34 (f) SECTION 5307.—Amounts remaining available each fiscal year under
35 subsection (a)(1) of this section, after allocation under subsections (g)–(i)
36 and (j)(4) of this section, are available under section 5307 of this title.

37 (g) PLANNING, PROGRAMMING, AND RESEARCH.—Before apportioning in
38 each fiscal year amounts made available or appropriated under subsection
39 (a) of this section, an amount equal to 3 percent of amounts made available
40 or appropriated under subsections (a) and (b) of this section is available as
41 follows:

1 (1) 45 percent for metropolitan planning activities under section
2 5303(g) of this title.

3 (2) 5 percent to carry out section 5308(b)(2) of this title.

4 (3) 20 percent to carry out State programs under section 5313 of
5 this title.

6 (4) 30 percent to carry out the national program under section 5314
7 of this title.

8 (h) OTHER SET-ASIDES.—Before apportioning in each fiscal year
9 amounts made available or appropriated under subsection (a) of this section,
10 of amounts made available or appropriated under subsections (a) and (b)
11 of this section—

12 (1) not more than .96 percent is available for administrative ex-
13 penses to carry out section 5334(a) and (c)–(f) of this title;

14 (2) not more than 1.34 percent is available for transportation serv-
15 ices to elderly individuals and individuals with disabilities under the
16 formula under section 5310(a) of this title; and

17 (3) \$7,000,000 is available for section 5317 for each of the fiscal
18 years ending September 30, 1993–1997.

19 (i) COMPLETING INTERSTATE TRANSFER TRANSIT PROJECTS.—Of the
20 amounts remaining available each year under subsections (a) and (b) of this
21 section, after allocation under subsections (g) and (h) of this section, not
22 more than \$164,843,000 for the fiscal year ending September 30, 1993, is
23 available for substitute transit projects under section 103(e)(4) of title 23.

24 (j) LIMITATIONS.—Of the amounts available—

25 (1) under subsection (a)(2) of this section, 3.5 percent is available
26 to finance programs and activities, including administrative costs,
27 under section 5310 of this title;

28 (2) 1.5 percent of the amounts available to finance research, develop-
29 ment, and demonstration projects under section 5312(a) of this title is
30 available to increase the information and technology available to pro-
31 vide improved mass transportation service and facilities planned and
32 designed to meet the special needs of elderly individuals and individuals
33 with disabilities;

34 (3) not more than 12.5 percent is available for grants to any one
35 State under section 5312(c)(2) of this title;

36 (4) 5.5 percent of the amount remaining available each year under
37 subsection (a)(1) of this section, after allocation under subsections (g)–
38 (i) of this section, is available under the formula under section 5311
39 of this title; and

40 (5) under section 5309(m)(1)(C) of this title—

1 (A) \$2,000,000 is available for the fiscal year ending September
2 30, 1993;

3 (B) the lesser of \$2,000,000 or an amount the Secretary deter-
4 mines is necessary for each fiscal year is available for each of the
5 fiscal years ending September 30, 1994–1996; and

6 (C) the lesser of \$3,000,000 or an amount the Secretary deter-
7 mines is necessary is available for the fiscal year ending Septem-
8 ber 30, 1997.

9 (k) GRANTS AS CONTRACTUAL OBLIGATIONS.—(1) A grant or contract
10 approved by the Secretary, that is financed with amounts made available
11 under subsection (a)(1), (b)(1), (c), or (e) of this section, is a contractual
12 obligation of the United States Government to pay the Government's share
13 of the cost of the project.

14 (2) A grant or contract, approved by the Secretary, that is financed with
15 amounts made available under subsection (a)(2) or (b)(2) of this section,
16 is a contractual obligation of the Government to pay the Government's
17 share of the cost of the project only to the extent amounts are provided in
18 advance in an appropriations law.

19 (l) EARLY APPROPRIATIONS AND AVAILABILITY OF AMOUNTS.—(1)
20 Amounts appropriated under subsection (a)(2) of this section to carry out
21 section 5311 of this title may be appropriated in the fiscal year before the
22 fiscal year in which the appropriation is available for obligation.

23 (2) Amounts made available or appropriated under subsections (a), (b),
24 (g), (h)(1) and (2), and (j)(4) of this section remain available until ex-
25 pended.

26 (3) An amount apportioned under section 5308 of this title—

27 (A) remains available for 3 years after the fiscal year in which the
28 amount is apportioned; and

29 (B) that is unobligated at the end of the 3-year period shall be added
30 to the amount available for apportionment for the next fiscal year not
31 later than 30 days after the end of the 3-year period.

32 **CHAPTER 55—INTERMODAL TRANSPORTATION**

SUBCHAPTER I—GENERAL

Sec.

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1 SUBCHAPTER I—GENERAL

2 **§ 5501. National Intermodal Transportation System policy**

3 (a) GENERAL.—It is the policy of the United States Government to de-
4 velop a National Intermodal Transportation System that is economically ef-
5 ficient and environmentally sound, provides the foundation for the United
6 States to compete in the global economy, and will move individuals and
7 property in an energy efficient way.

8 (b) SYSTEM CHARACTERISTICS.—(1) The National Intermodal Transpor-
9 tation System shall consist of all forms of transportation in a unified, inter-
10 connected manner, including the transportation systems of the future, to re-
11 duce energy consumption and air pollution while promoting economic devel-
12 opment and supporting the United States' preeminent position in inter-
13 national commerce.

14 (2) The National Intermodal Transportation System shall include a Na-
15 tional Highway System consisting of the Dwight D. Eisenhower System of
16 Interstate and Defense Highways and those principal arterial roads that are
17 essential for interstate and regional commerce and travel, national defense,
18 intermodal transfer facilities, and international commerce and border cross-
19 ings.

20 (3) The National Intermodal Transportation System shall include signifi-
21 cant improvements in public transportation necessary to achieve national
22 goals for improved air quality, energy conservation, international competi-
23 tiveness, and mobility for elderly individuals, individuals with disabilities,
24 and economically disadvantaged individuals in urban and rural areas of the
25 United States.

26 (4) The National Intermodal Transportation System shall provide im-
27 proved access to ports and airports, the Nation's link to commerce.

28 (5) The National Intermodal Transportation System shall give special
29 emphasis to the contributions of the transportation sectors to increased pro-
30 ductivity growth. Social benefits must be considered with particular atten-
31 tion to the external benefits of reduced air pollution, reduced traffic conges-
32 tion, and other aspects of the quality of life in the United States.

33 (6) The National Intermodal Transportation System must be operated
34 and maintained with insistent attention to the concepts of innovation, com-
35 petition, energy efficiency, productivity, growth, and accountability. Prac-
36 tices that resulted in the lengthy and overly costly construction of the
37 Dwight D. Eisenhower System of Interstate and Defense Highways must
38 be confronted and stopped.

39 (7) The National Intermodal Transportation System shall be adapted to
40 "intelligent vehicles", "magnetic levitation systems", and other new tech-

1 nologies, wherever feasible and economical, with benefit cost estimates given
2 special emphasis on safety considerations and techniques for cost allocation.

3 (8) When appropriate, the National Intermodal Transportation System
4 will be financed, as regards Government apportionments and reimburse-
5 ments, by the Highway Trust Fund. Financial assistance will be provided
6 to State and local governments and their instrumentalities to help carry out
7 national goals related to mobility for elderly individuals, individuals with dis-
8 abilities, and economically disadvantaged individuals.

9 (9) The National Intermodal Transportation System must be the center-
10 piece of a national investment commitment to create the new wealth of the
11 United States for the 21st century.

12 (c) DISTRIBUTION AND POSTING.—The Secretary of Transportation shall
13 distribute copies of the policy in subsections (a) and (b) of this section to
14 each employee of the Department of Transportation and ensure that the
15 policy is posted in all offices of the Department.

16 **§ 5502. Intermodal Transportation Advisory Board**

17 (a) ORGANIZATION.—The Intermodal Transportation Advisory Board is a
18 board in the Office of the Secretary of Transportation.

19 (b) MEMBERSHIP.—The Board consists of the Secretary, who serves as
20 chairman, and the Administrator, or the Administrator's designee, of—

- 21 (1) the Federal Highway Administration;
- 22 (2) the Federal Aviation Administration;
- 23 (3) the Maritime Administration;
- 24 (4) the Federal Railroad Administration; and
- 25 (5) the Federal Transit Administration.

26 (c) DUTIES AND POWERS.—The Board shall provide recommendations for
27 carrying out the duties of the Secretary described in section 301(3) of this
28 title.

29 **§ 5503. Office of Intermodalism**

30 (a) ESTABLISHMENT.—The Secretary of Transportation shall establish in
31 the Office of the Secretary an Office of Intermodalism.

32 (b) DIRECTOR.—The head of the Office is a Director who shall be ap-
33 pointed by the Secretary.

34 (c) DUTIES AND POWERS.—The Director shall carry out the duties of the
35 Secretary described in section 301(3) of this title.

36 (d) INTERMODAL TRANSPORTATION DATA BASE.—(1) The Director shall
37 develop, maintain, and disseminate intermodal transportation data through
38 the Bureau of Transportation Statistics. The Director shall coordinate the
39 collection of data for the data base with the States and metropolitan plan-
40 ning organizations. The data base shall include information on—

1 (A) the volume of property and number of individuals carried in
2 intermodal transportation by relevant classification;

3 (B) patterns of movement of property and individuals in intermodal
4 transportation by relevant classification by origin and destination; and

5 (C) public and private investment in intermodal transportation facili-
6 ties and services.

7 (2) The Director shall make information from the data base available to
8 the public.

9 (e) RESEARCH.—The Director shall—

10 (1) coordinate United States Government research on intermodal
11 transportation as provided in the plan developed under section 6009(b)
12 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub-
13 lic Law 102–240, 105 Stat. 2177); and

14 (2) carry out additional research needs identified by the Director.

15 (f) TECHNICAL ASSISTANCE.—The Director shall provide technical assist-
16 ance to States and to metropolitan planning organizations for urban areas
17 having a population of at least 1,000,000 in collecting data related to inter-
18 modal transportation to facilitate the collection of the data by States and
19 metropolitan planning organizations.

20 (g) ADMINISTRATIVE AND CLERICAL SUPPORT.—The Director shall pro-
21 vide administrative and clerical support to the Intermodal Transportation
22 Advisory Board.

23 **§ 5504. Model intermodal transportation plans**

24 (a) GRANTS.—The Secretary of Transportation shall make grants to
25 States to develop model State intermodal transportation plans that are con-
26 sistent with the policy set forth in section 302(e) of this title. The model
27 plans shall include systems for collecting data related to intermodal trans-
28 portation.

29 (b) DISTRIBUTION.—The Secretary shall award grants to States under
30 this section that represent a variety of geographic regions and transpor-
31 tation needs, patterns, and modes.

32 (c) PLAN SUBMISSION.—As a condition to a State receiving a grant
33 under this section, the Secretary shall require that the State provide assur-
34 ances that the State will submit to the Secretary a State intermodal trans-
35 portation plan not later than 18 months after the date of receipt of the
36 grant.

37 (d) GRANT AMOUNTS.—The Secretary shall reserve, from amounts de-
38 ducted under section 104(a) of title 23, \$3,000,000 to make grants under
39 this section. The total amount that a State may receive in grants under this
40 section may not be more than \$500,000.

SUBCHAPTER II—TERMINALS

§ 5561. Definition

In this chapter, “civic and cultural activities” includes libraries, musical and dramatic presentations, art exhibits, adult education programs, public meeting places, and other facilities for carrying on an activity any part of which is supported under a law of the United States.

§ 5562. Assistance projects

(a) REQUIREMENTS TO PROVIDE ASSISTANCE.—The Secretary of Transportation shall provide financial, technical, and advisory assistance under this chapter to—

(1) promote, on a feasibility demonstration basis, the conversion of at least 3 rail passenger terminals into intermodal transportation terminals;

(2) preserve rail passenger terminals that reasonably are likely to be converted or maintained pending preparation of plans for their reuse;

(3) acquire and use space in suitable buildings of historic or architectural significance but only if use of the space is feasible and prudent when compared to available alternatives; and

(4) encourage State and local governments, local and regional transportation authorities, common carriers, philanthropic organizations, and other responsible persons to develop plans to convert rail passenger terminals into intermodal transportation terminals and civic and cultural activity centers.

(b) EFFECT ON ELIGIBILITY.—This chapter does not affect the eligibility of any rail passenger terminal for preservation or reuse assistance under another program or law.

(c) ACQUIRING SPACE.—The Secretary may acquire space under subsection (a)(3) of this section only after consulting with the Advisory Council on Historic Preservation and the Chairman of the National Endowment for the Arts.

§ 5563. Conversion of certain rail passenger terminals

(a) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of Transportation may provide financial assistance to convert a rail passenger terminal to an intermodal transportation terminal under section 5562(a)(1) of this title only if—

(1) the terminal can be converted to accommodate other modes of transportation the Secretary of Transportation decides are appropriate, including—

(A) motorbus transportation;

(B) mass transit (rail or rubber tire); and

1 (C) airline ticket offices and passenger terminals providing di-
2 rect transportation to area airports;

3 (2) the terminal is listed on the National Register of Historic Places
4 maintained by the Secretary of the Interior;

5 (3) the architectural integrity of the terminal will be preserved;

6 (4) to the extent practicable, the use of the terminal facilities for
7 transportation may be combined with use of those facilities for other
8 civic and cultural activities, especially when another activity is rec-
9 ommended by—

10 (A) the Advisory Council on Historic Preservation;

11 (B) the Chairman of the National Endowment for the Arts; or

12 (C) consultants retained under subsection (b) of this section;

13 and

14 (5) the terminal and the conversion project meet other criteria pre-
15 scribed by the Secretary of Transportation after consultation with the
16 Council and Chairman.

17 (b) ARCHITECTURAL INTEGRITY.—The Secretary of Transportation must
18 employ consultants on whether the architectural integrity of the rail pas-
19 senger terminal will be preserved under subsection (a)(3) of this section.
20 The Secretary may decide that the architectural integrity will be preserved
21 only if the consultants concur. The Council and Chairman shall recommend
22 consultants to be employed by the Secretary. The consultants also may
23 make recommendations referred to in subsection (a)(4) of this section.

24 (c) GOVERNMENT'S SHARE OF COSTS.—The Secretary of Transportation
25 may not make a grant under this section for more than 80 percent of the
26 total cost of converting a rail passenger terminal into an intermodal trans-
27 portation terminal.

28 **§ 5564. Interim preservation of certain rail passenger termi-**
29 **nals**

30 (a) GENERAL GRANT AUTHORITY.—Subject to subsection (b) of this sec-
31 tion, the Secretary of Transportation may make a grant of financial assist-
32 ance to a responsible person (including a governmental authority) to pre-
33 serve a rail passenger terminal under section 5562(a)(2) of this title. To
34 receive assistance under this section, the person must be qualified, prepared,
35 committed, and authorized by law to maintain (and prevent the demolition,
36 dismantling, or further deterioration of) the terminal until plans for its
37 reuse are prepared.

38 (b) GRANT REQUIREMENTS.—The Secretary of Transportation may make
39 a grant of financial assistance under this section only if—

40 (1) the Secretary decides the rail passenger terminal has a reason-
41 able likelihood of being converted to, or conditioned for reuse as, an

1 intermodal transportation terminal, a civic or cultural activities center,
2 or both; and

3 (2) planning activity directed toward conversion or reuse has begun
4 and is proceeding in a competent way.

5 (c) MAXIMIZING PRESERVATION OF TERMINALS.—(1) Amounts appro-
6 priated to carry out this section and section 5562(a)(2) of this title shall
7 be expended in the way most likely to maximize the preservation of rail pas-
8 senger terminals that are—

9 (A) reasonably capable of conversion to intermodal transportation
10 terminals;

11 (B) listed in the National Register of Historic Places maintained by
12 the Secretary of the Interior; or

13 (C) recommended (on the basis of architectural integrity and quality)
14 by the Advisory Council on Historic Preservation or the Chairman of
15 the National Endowment for the Arts.

16 (2) The Secretary of Transportation may not make a grant under this
17 section for more than 80 percent of the total cost of maintaining the termi-
18 nal for an interim period of not more than 5 years.

19 **§ 5565. Encouraging the development of plans for convert-**
20 **ing rail passenger terminals**

21 (a) GENERAL GRANT AUTHORITY.—The Secretary of Transportation may
22 make a grant of financial assistance to a qualified person (including a gov-
23 ernmental authority) to encourage the development of plans for converting
24 a rail passenger terminal under section 5562(a)(4) of this title. To receive
25 assistance under this section, the person must—

26 (1) be prepared to develop practicable plans that meet zoning, land
27 use, and other requirements of the applicable State and local jurisdic-
28 tions in which the terminal is located;

29 (2) incorporate into the designs and plans proposed for converting
30 the terminal, features that reasonably appear likely to attract private
31 investors willing to carry out the planned conversion and its subsequent
32 maintenance and operation; and

33 (3) complete the designs and plans for the conversion within the pe-
34 riod of time prescribed by the Secretary.

35 (b) PREFERENCE.—In making a grant under this section, the Secretary
36 of Transportation shall give preferential consideration to an applicant whose
37 completed designs and plans will be carried out within 3 years after their
38 completion.

39 (c) MAXIMIZING CONVERSION AND CONTINUED PUBLIC USE.—(1)
40 Amounts appropriated to carry out this section and section 5562(a)(4) of

1 this title shall be expended in the way most likely to maximize the conver-
2 sion and continued public use of rail passenger terminals that are—

3 (A) listed in the National Register of Historic Places maintained by
4 the Secretary of the Interior; or

5 (B) recommended (on the basis of architectural integrity and qual-
6 ity) by the Advisory Council on Historic Preservation or the Chairman
7 of the National Endowment for the Arts.

8 (2) The Secretary of Transportation may not make a grant under this
9 section for more than 80 percent of the total cost of the project for which
10 the financial assistance is provided.

11 **§ 5566. Records and audits**

12 (a) RECORD REQUIREMENTS.—Each recipient of financial assistance
13 under this chapter shall keep records required by the Secretary of Transpor-
14 tation. The records shall disclose—

15 (1) the amount, and disposition by the recipient, of the proceeds of
16 the assistance;

17 (2) the total cost of the project for which the assistance was given
18 or used;

19 (3) the amount of that part of the cost of the project supplied by
20 other sources; and

21 (4) any other records that will make an effective audit easier.

22 (b) AUDITS AND INSPECTIONS.—For 3 years after a project is completed,
23 the Secretary and the Comptroller General may audit and inspect records
24 of a recipient that the Secretary or Comptroller General decides may be re-
25 lated or pertinent to the financial assistance.

26 **§ 5567. Preference for preserving buildings of historic or ar-
27 chitectural significance**

28 Amtrak shall give preference to the use of rail passenger terminal facili-
29 ties that will preserve buildings of historic or architectural significance.

30 **§ 5568. Authorization of appropriations**

31 (a) GENERAL.—The following amounts may be appropriated to the Sec-
32 retary of Transportation:

33 (1) not more than \$15,000,000 to carry out section 5562(a)(1) and
34 (3) of this title.

35 (2) not more than \$2,500,000 to carry out section 5562(a)(2) of this
36 title.

37 (3) not more than \$2,500,000 to carry out section 5562(a)(4) of this
38 title.

39 (b) AVAILABILITY OF AMOUNTS.—Amounts appropriated to carry out this
40 chapter remain available until expended.

1 **CHAPTER 57—SANITARY FOOD TRANSPORTATION**

Sec.

- 5701. Findings.
- 5702. Definitions.
- 5703. General regulation.
- 5704. Tank trucks, rail tank cars, and cargo tanks.
- 5705. Motor and rail transportation of nonfood products.
- 5706. Dedicated vehicles.
- 5707. Waiver authority.
- 5708. Food transportation inspections.
- 5709. Consultation.
- 5710. Administrative.
- 5711. Enforcement and penalties.
- 5712. Relationship to other laws.
- 5713. Application of sections 5711 and 5712.
- 5714. Coordination procedures.

2 **§ 5701. Findings**

3 Congress finds that—

4 (1) the United States public is entitled to receive food and other
5 consumer products that are not made unsafe because of certain trans-
6 portation practices;

7 (2) the United States public is threatened by the transportation of
8 products potentially harmful to consumers in motor vehicles and rail
9 vehicles that are used to transport food and other consumer products;
10 and

11 (3) the risks to consumers by those transportation practices are un-
12 necessary and those practices must be ended.

13 **§ 5702. Definitions**

14 In this chapter—

15 (1) “cosmetic”, “device”, “drug”, “food”, and “food additive” have
16 the same meanings given those terms in section 201 of the Federal
17 Food, Drug, and Cosmetic Act (21 U.S.C. 321).

18 (2) “nonfood product” means (individually or by class) a material,
19 substance, or product that is not a cosmetic, device, drug, food, or food
20 additive, or is deemed a nonfood product under section 5703(a)(2) of
21 this title, including refuse and solid waste (as defined in section 1004
22 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

23 (3) “refuse” means discarded material that is, or is required by law,
24 to be transported to or disposed of in a landfill or incinerator.

25 (4) “State” means a State of the United States, the District of Co-
26 lumbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands,
27 American Samoa, Guam, and any other territory or possession of the
28 United States.

29 (5) “transports” and “transportation” mean any movement of prop-
30 erty in commerce (including intrastate commerce) by motor vehicle or
31 rail vehicle.

32 (6) “United States” means all of the States.

1 **§ 5703. General regulation**

2 (a) GENERAL REQUIREMENTS.—(1) Not later than July 31, 1991, the
3 Secretary of Transportation, after consultation required by section 5709 of
4 this title, shall prescribe regulations on the transportation of cosmetics, de-
5 vices, drugs, food, and food additives in motor vehicles and rail vehicles that
6 are used to transport nonfood products that would make the cosmetics, de-
7 vices, drugs, food, or food additives unsafe to humans or animals.

8 (2) The Secretary shall deem a cosmetic, device, or drug to be a nonfood
9 product if—

10 (A) the cosmetic, device, or drug is transported in a motor vehicle
11 or rail vehicle before, or at the same time as, a food or food additive;
12 and

13 (B) transportation of the cosmetic, device, or drug would make the
14 food or food additive unsafe to humans or animals.

15 (b) SPECIAL REQUIREMENTS.—In prescribing regulations under sub-
16 section (a)(1) of this section, the Secretary, after consultation required by
17 section 5709 of this title, shall establish requirements for appropriate—

18 (1) recordkeeping, identification, marking, certification, or other
19 means of verification to comply with sections 5704–5706 of this title;

20 (2) decontamination, removal, disposal, and isolation to comply with
21 regulations carrying out sections 5704 and 5705 of this title; and

22 (3) material for the construction of tank trucks, rail tank cars, cargo
23 tanks, and accessory equipment to comply with regulations carrying out
24 section 5704 of this title.

25 (c) CONSIDERATIONS AND ADDITIONAL REQUIREMENTS.—In prescribing
26 regulations under subsection (a)(1) of this section, the Secretary, after con-
27 sultation required by section 5709 of this title, shall consider, and may es-
28 tablish requirements related to, each of the following:

29 (1) the extent to which packaging or similar means of protecting and
30 isolating commodities are adequate to eliminate or ameliorate the po-
31 tential risks of transporting cosmetics, devices, drugs, food, or food ad-
32 ditives in motor vehicles or rail vehicles used to transport nonfood
33 products.

34 (2) appropriate compliance and enforcement measures to carry out
35 this chapter.

36 (3) appropriate minimum insurance or other liability requirements
37 for a person to whom this chapter applies.

38 (d) PACKAGES MEETING PACKAGING STANDARDS.—If the Secretary finds
39 packaging standards to be adequate, regulations under subsection (a)(1) of
40 this section may not apply to cosmetics, devices, drugs, food, food additives,
41 or nonfood products packaged in packages that meet the standards.

1 **§ 5704. Tank trucks, rail tank cars, and cargo tanks**

2 (a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1)
3 of this title shall include provisions prohibiting a person from—

4 (1) using, offering for use, or arranging for the use of a tank truck,
5 rail tank car, or cargo tank used in motor vehicle or rail transportation
6 of cosmetics, devices, drugs, food, or food additives if the tank truck,
7 rail tank car, or cargo tank is used to transport a nonfood product,
8 except a nonfood product included in a list published under subsection
9 (b) of this section;

10 (2) using, offering for use, or arranging for the use of a tank truck
11 or cargo tank to provide motor vehicle transportation of cosmetics, de-
12 vices, drugs, food, food additives, or nonfood products included in the
13 list published under subsection (b) of this section unless the tank truck
14 or cargo tank is identified, by a permanent marking on the tank truck
15 or cargo tank, as transporting only cosmetics, devices, drugs, food, food
16 additives, or nonfood products included in the list;

17 (3) using, offering for use, or arranging for the use of a tank truck
18 or cargo tank to provide motor vehicle transportation of a nonfood
19 product that is not included in the list published under subsection (b)
20 of this section if the tank truck or cargo tank is identified, as provided
21 in clause (2) of this subsection, as a tank truck or cargo tank trans-
22 porting only cosmetics, devices, drugs, food, food additives, or nonfood
23 products included in the list; or

24 (4) receiving, except for lawful disposal purposes, any cosmetic, de-
25 vice, drug, food, food additive, or nonfood product that has been trans-
26 ported in a tank truck or cargo tank in violation of clause (2) or (3)
27 of this subsection.

28 (b) LIST OF NONFOOD PRODUCTS NOT UNSAFE.—After consultation re-
29 quired by section 5709 of this title, the Secretary of Transportation shall
30 publish in the Federal Register a list of nonfood products the Secretary de-
31 cides do not make cosmetics, devices, drugs, food, or food additives unsafe
32 to humans or animals because of transportation of the nonfood products in
33 a tank truck, rail tank car, or cargo tank used to transport cosmetics, de-
34 vices, drugs, food, or food additives. The Secretary may amend the list peri-
35 odically by publication in the Federal Register.

36 (c) DISCLOSURE.—A person that arranges for the use of a tank truck or
37 cargo tank used in motor vehicle transportation for the transportation of
38 a cosmetic, device, drug, food, food additive, or nonfood product shall dis-
39 close to the motor carrier or other appropriate person if the cosmetic, de-
40 vice, drug, food, food additive, or nonfood product being transported is to
41 be used—

1 (1) as, or in the preparation of, a food or food additive; or

2 (2) as a nonfood product included in the list published under sub-
3 section (b) of this section.

4 **§ 5705. Motor and rail transportation of nonfood products**

5 (a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1)
6 of this title shall include provisions prohibiting a person from using, offering
7 for use, or arranging for the use of a motor vehicle or rail vehicle (except
8 a tank truck, rail tank car, or cargo tank described in section 5704 of this
9 title) to transport cosmetics, devices, drugs, food, or food additives if the
10 vehicle is used to transport nonfood products included in a list published
11 under subsection (b) of this section.

12 (b) LIST OF UNSAFE NONFOOD PRODUCTS.—(1) After consultation re-
13 quired by section 5709 of this title, the Secretary of Transportation shall
14 publish in the Federal Register a list of nonfood products the Secretary de-
15 cides would make cosmetics, devices, drugs, food, or food additives unsafe
16 to humans or animals because of transportation of the nonfood products in
17 a motor vehicle or rail vehicle used to transport cosmetics, devices, drugs,
18 food, or food additives. The Secretary may amend the list periodically by
19 publication in the Federal Register.

20 (2) The list published under paragraph (1) of this subsection may not
21 include cardboard, pallets, beverage containers, and other food packaging
22 except to the extent the Secretary decides that the transportation of card-
23 board, pallets, beverage containers, or other food packaging in a motor vehi-
24 cle or rail vehicle used to transport cosmetics, devices, drugs, food, or food
25 additives would make the cosmetics, devices, drugs, food, or food additives
26 unsafe to humans or animals.

27 **§ 5706. Dedicated vehicles**

28 (a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1)
29 of this title shall include provisions prohibiting a person from using, offering
30 for use, or arranging for the use of a motor vehicle or rail vehicle to trans-
31 port asbestos, in forms or quantities the Secretary of Transportation decides
32 are necessary, or products that present an extreme danger to humans or
33 animals, despite any decontamination, removal, disposal, packaging, or other
34 isolation procedures, unless the motor vehicle or rail vehicle is used only to
35 transport one or more of the following: asbestos, those extremely dangerous
36 products, or refuse.

37 (b) LIST OF APPLICABLE PRODUCTS.—After consultation required by
38 section 5709 of this title, the Secretary shall publish in the Federal Register
39 a list of the products to which this section applies. The Secretary may
40 amend the list periodically by publication in the Federal Register.

1 **§ 5707. Waiver authority**

2 (a) GENERAL AUTHORITY.—After consultation required by section 5709
3 of this title, the Secretary of Transportation may waive any part of this
4 chapter or regulations prescribed under this chapter for a class of persons,
5 motor vehicles, rail vehicles, cosmetics, devices, drugs, food, food additives,
6 or nonfood products, if the Secretary decides that the waiver—

7 (1) would not result in the transportation of cosmetics, devices,
8 drugs, food, or food additives that would be unsafe to humans or ani-
9 mals; and

10 (2) would not be contrary to the public interest and this chapter.

11 (b) PUBLICATION OF WAIVERS.—The Secretary shall publish in the Fed-
12 eral Register any waiver and the reasons for the waiver.

13 **§ 5708. Food transportation inspections**

14 (a) GENERAL AUTHORITY.—For commercial motor vehicles, the Secretary
15 of Transportation may carry out this chapter and assist in carrying out
16 compatible State laws and regulations through means that include inspec-
17 tions conducted by State employees that are paid for with money authorized
18 under section 31104 of this title, if the recipient State agrees to assist in
19 the enforcement of this chapter or is enforcing compatible State laws and
20 regulations.

21 (b) PROVIDING ASSISTANCE.—On the request of the Secretary of Trans-
22 portation, the Secretaries of Agriculture and Health and Human Services,
23 the Administrator of the Environmental Protection Agency, and the heads
24 of other appropriate departments, agencies, and instrumentalities of the
25 United States Government shall provide assistance, to the extent available,
26 to the Secretary of Transportation to carry out this chapter, including as-
27 sistance in the training of personnel under a program established under sub-
28 section (c) of this section.

29 (c) TRAINING PROGRAM.—After consultation required by section 5709 of
30 this title and consultation with the heads of appropriate State transpor-
31 tation and food safety authorities, the Secretary of Transportation shall de-
32 velop and carry out a training program for inspectors to conduct vigorous
33 enforcement of this chapter and regulations prescribed under this chapter
34 or compatible State laws and regulations. As part of the training program,
35 the inspectors, including State inspectors or personnel paid with money au-
36 thorized under section 31104 of this title, shall be trained in the recognition
37 of adulteration problems associated with the transportation of cosmetics, de-
38 vices, drugs, food, and food additives and in the procedures for obtaining
39 assistance of the appropriate departments, agencies, and instrumentalities
40 of the Government and State authorities to support the enforcement.

1 **§ 5709. Consultation**

2 As provided by sections 5703–5708 of this title, the Secretary of Trans-
3 portation shall consult with the Secretaries of Agriculture and Health and
4 Human Services and the Administrator of the Environmental Protection
5 Agency.

6 **§ 5710. Administrative**

7 The Secretary of Transportation has the same duties and powers in regu-
8 lating transportation under this chapter as the Secretary has under section
9 5121(a)–(c) (except subsection (c)(1)(A)) of this title in regulating trans-
10 portation under chapter 51 of this title.

11 **§ 5711. Enforcement and penalties**

12 (a) ACTIONS.—The Secretary of Transportation shall request that a civil
13 action be brought and take action to eliminate or ameliorate an imminent
14 hazard related to a violation of a regulation prescribed or order issued under
15 this chapter in the same way and to the same extent as authorized by sec-
16 tion 5122 of this title.

17 (b) APPLICABLE PENALTIES AND PROCEDURES.—The penalties and pro-
18 cedures in sections 5123 and 5124 of this title apply to a violation of a reg-
19 ulation prescribed or order issued under this chapter.

20 **§ 5712. Relationship to other laws**

21 Section 5125 of this title applies to the relationship between this chapter
22 and a requirement of a State, a political subdivision of a State, or an Indian
23 tribe.

24 **§ 5713. Application of sections 5711 and 5712**

25 Sections 5711 and 5712 of this title apply only to transportation occur-
26 ring on or after the date that regulations prescribed under section
27 5703(a)(1) of this title are effective.

28 **§ 5714. Coordination procedures**

29 Not later than November 3, 1991, the Secretary of Transportation, after
30 consultation with appropriate State officials, shall establish procedures to
31 promote more effective coordination between the departments, agencies, and
32 instrumentalities of the United States Government and State authorities
33 with regulatory authority over motor carrier safety and railroad safety in
34 carrying out and enforcing this chapter.

35 **CHAPTER 59—INTERMODAL SAFE CONTAINER**
36 **TRANSPORTATION**

Sec.

- 5901. Definitions.
- 5902. Notifications and certifications.
- 5903. Prohibitions.
- 5904. State enforcement.
- 5905. Liens.
- 5906. Perishable agricultural commodities.
- 5907. Regulations and effective date.

§ 5901. Definitions

In this chapter—

(1) the definitions in section 10102 of this title apply.

(2) “beneficial owner” means a person not having title to property but having ownership rights in the property, including a trustee of property in transit from an overseas place of origin that is domiciled or doing business in the United States, except that a carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator is not a beneficial owner only because of providing or arranging for any part of the intermodal transportation of property.

(3) “carrier” means—

(A) a motor carrier, water carrier, and rail carrier providing transportation of property in commerce; and

(B) an ocean common carrier (as defined in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702)) providing transportation of property in commerce.

(4) “container” has the meaning given the term “freight container” by the International Standards Organization in Series 1, Freight Containers, 3d Edition (reference number ISO668–1979(E)), including successive revisions, and similar containers that are used in providing transportation in interstate commerce.

(5) “first carrier” means the first carrier transporting a loaded container or trailer in intermodal transportation.

(6) “intermodal transportation” means the successive transportation of a loaded container or trailer from its place of origin to its place of destination by more than one mode of transportation in interstate or foreign commerce, whether under a single bill of lading or under separate bills of lading.

(7) “trailer” means a nonpower, property-carrying, trailing unit that is designed for use in combination with a truck tractor.

§ 5902. Notifications and certifications

(a) PRIOR NOTIFICATION.—Before a person tenders to a first carrier for intermodal transportation a loaded container or trailer having a projected gross cargo weight of more than 10,000 pounds (including packing material and pallets), the person shall give the carrier a written notification of the gross cargo weight and a reasonable description of the contents of the container or trailer. The notification may be transmitted electronically.

(b) CERTIFICATION.—Not later than when a person tenders to a first carrier for intermodal transportation a container or trailer to which subsection (a) of this section applies or a loaded container or trailer having an actual gross cargo weight of more than 10,000 pounds (including packing material

1 and pallets), the person shall certify to the carrier in writing the actual
2 gross cargo weight and a reasonable description of the contents of the con-
3 tainer or trailer.

4 (c) FORWARDING CERTIFICATIONS TO SUBSEQUENT CARRIERS.—A car-
5 rier, agent of a carrier, broker, customs broker, freight forwarder,
6 warehouse, or terminal operator shall forward the certification provided
7 under subsection (b) of this section to a subsequent carrier transporting the
8 container or trailer in intermodal transportation. The act of forwarding the
9 certification may not be construed as a verification or affirmation of the ac-
10 curacy or completeness of the information in the certification.

11 (d) NONAPPLICATION.—(1) Subsections (a) and (b) of this section and
12 section 5903(c) of this title do not apply to a carrier when the carrier is
13 transferring a loaded container or trailer to another carrier during inter-
14 modal transportation, unless the carrier is also the person tendering the
15 loaded container or trailer to the first carrier.

16 (2) A carrier, agent of a carrier, broker, customs broker, freight for-
17 warder, warehouse, or terminal operator is deemed not to be a person ten-
18 dering a loaded container or trailer to a first carrier under this section, un-
19 less the carrier, agent, broker, customs broker, freight forwarder,
20 warehouse, or terminal operator assumes legal responsibility for loading
21 property into the container or trailer.

22 **§ 5903. Prohibitions**

23 (a) PROVIDING ERRONEOUS INFORMATION.—A person tendering a loaded
24 container or trailer may not provide erroneous information in a certification
25 required by section 5902(b) of this title.

26 (b) TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.—A motor car-
27 rier may not transport a loaded container or trailer to which section
28 5902(b) of this title applies before receiving the certification required by
29 section 5902(b).

30 (c) UNLAWFUL COERCION.—(1) A person may not coerce or attempt to
31 coerce a person participating in intermodal transportation to transport a
32 loaded container or trailer having an actual gross cargo weight of more than
33 10,000 pounds (including packing materials and pallets) before the certifi-
34 cation required by section 5902(b) of this title is provided.

35 (2) A person, knowing that the weight of a loaded container or trailer
36 or the weight of a tractor-trailer combination carrying the container or trail-
37 er is more than the weight allowed by applicable State law, may not coerce
38 or attempt to coerce a carrier to transport the container or trailer or to op-
39 erate the tractor-trailer combination in violation of that State law.

§ 5904. State enforcement

(a) GENERAL.—A State may enact a law to permit the State or a political subdivision of the State—

(1) to impose a fine or penalty, for a violation of a State highway weight law or regulation by a tractor-trailer combination carrying a loaded container or trailer for which a certification is required by section 5902(b) of this title, against the person tendering the loaded container or trailer to the first carrier if the violation results from the person's having provided erroneous information in the certification in violation of section 5903(a) of this title; and

(2) to impound the container or trailer until the fine or penalty has been paid by the owner or beneficial owner of the contents of the container or trailer or the person tendering the loaded container or trailer to the first carrier.

(b) LIMITATION.—This chapter does not require a person tendering a loaded container or trailer to a first carrier to ensure that the first carrier or any other carrier involved in the intermodal transportation will comply with any State highway weight law or regulation, other than as required by this chapter.

§ 5905. Liens

(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required under State law to post a bond or pay any fine, penalty, cost, or interest resulting from providing erroneous information in the certification to the first carrier in violation of section 5903(a) of this title, the person has a lien against the contents equal to the amount of the bond, fine, penalty, cost, or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents or from the person responsible for making the certification.

(b) LIMITATIONS.—(1) A lien under this section does not authorize a person to dispose of the contents of a loaded container or trailer until the person who tendered the container or trailer to the first carrier is given a reasonable opportunity to establish responsibility for the bond, fine, penalty, cost, or interest.

(2) In this section, an owner or beneficial owner of the contents of a container or trailer or a person tendering a container or trailer to the first carrier is deemed not to be a person involved in the intermodal transportation of the container or trailer.

§ 5906. Perishable agricultural commodities

Sections 5904(a)(2) and 5905 of this title do not apply to a container or trailer the contents of which are perishable agricultural commodities (as

1 defined in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C.
2 499a et seq.)).

3 **§ 5907. Regulations and effective date**

4 (a) REGULATIONS.—Not later than July 25, 1993, the Secretary of
5 Transportation shall prescribe final regulations to enforce this chapter. The
6 Secretary may establish by regulation exemptions to the regulations that are
7 in the public interest and consistent with the purposes of this chapter.

8 (b) EFFECTIVE DATE.—This chapter is effective on the date final regula-
9 tions to enforce this chapter are prescribed.

10 (c) Title 49, United States Code, is amended by adding the following im-
11 mediately after subtitle IV:

12 **SUBTITLE V—RAIL PROGRAMS**

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205. SIGNAL SYSTEMS	20501
207. LOCOMOTIVES	20701
209. ACCIDENTS AND INCIDENTS	20901
211. HOURS OF SERVICE	21101
213. PENALTIES	21301

PART B—ASSISTANCE

221. LOCAL RAIL FREIGHT ASSISTANCE	22101
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PART C—PASSENGER TRANSPORTATION

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243. AMTRAK	24301
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13 **PART A—SAFETY**

14 **CHAPTER 201—GENERAL**

SUBCHAPTER I—GENERAL

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SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

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- 20132. Visible markers for rear cars.
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SUBCHAPTER I—GENERAL

§ 20101. Purpose

The purpose of this chapter is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.

§ 20102. Definitions

In this part—

(1) “railroad”—

(A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(2) “railroad carrier” means a person providing railroad transportation.

§ 20103. General authority

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

1 (c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing
2 regulations and issuing orders under this section, the Secretary shall con-
3 sider existing relevant safety information and standards.

4 (d) WAIVERS.—The Secretary may waive compliance with any part of a
5 regulation prescribed or order issued under this chapter if the waiver is in
6 the public interest and consistent with railroad safety. The Secretary shall
7 make public the reasons for granting the waiver.

8 (e) HEARINGS.—The Secretary shall conduct a hearing as provided by
9 section 553 of title 5 when prescribing a regulation or issuing an order
10 under this chapter, including a regulation or order establishing, amending,
11 or waiving compliance with a railroad safety regulation prescribed or order
12 issued under this chapter. An opportunity for an oral presentation shall be
13 provided.

14 **§20104. Emergency authority**

15 (a) ORDERING RESTRICTIONS AND PROHIBITIONS.—(1) If, through test-
16 ing, inspection, investigation, or research carried out under this chapter, the
17 Secretary of Transportation decides that an unsafe condition or practice, or
18 a combination of unsafe conditions and practices, causes an emergency situ-
19 ation involving a hazard of death or personal injury, the Secretary imme-
20 diately may order restrictions and prohibitions, without regard to section
21 20103(e) of this title, that may be necessary to abate the situation.

22 (2) The order shall describe the condition or practice, or a combination
23 of conditions and practices, that causes the emergency situation and pre-
24 scribe standards and procedures for obtaining relief from the order. This
25 paragraph does not affect the Secretary's discretion under this section to
26 maintain the order in effect for as long as the emergency situation exists.

27 (b) REVIEW OF ORDERS.—After issuing an order under this section, the
28 Secretary shall provide an opportunity for review of the order under section
29 554 of title 5. If a petition for review is filed and the review is not com-
30 pleted by the end of the 30-day period beginning on the date the order was
31 issued, the order stops being effective at the end of that period unless the
32 Secretary decides in writing that the emergency situation still exists.

33 (c) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of
34 a railroad carrier engaged in interstate or foreign commerce who may be
35 exposed to imminent physical injury during that employment because of the
36 Secretary's failure, without any reasonable basis, to issue an order under
37 subsection (a) of this section, or the employee's authorized representative,
38 may bring a civil action against the Secretary in a district court of the Unit-
39 ed States to compel the Secretary to issue an order. The action must be
40 brought in the judicial district in which the emergency situation is alleged
41 to exist, in which that employing carrier has its principal executive office,

1 or for the District of Columbia. The Secretary's failure to issue an order
2 under subsection (a) of this section may be reviewed only under section 706
3 of title 5.

4 **§ 20105. State participation**

5 (a) INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—The Secretary of
6 Transportation may prescribe investigative and surveillance activities nec-
7 essary to enforce the safety regulations prescribed and orders issued by the
8 Secretary that apply to railroad equipment, facilities, rolling stock, and op-
9 erations in a State. The State may participate in those activities when the
10 safety practices for railroad equipment, facilities, rolling stock, and oper-
11 ations in the State are regulated by a State authority and the authority sub-
12 mits to the Secretary an annual certification as provided in subsection (b)
13 of this section.

14 (b) ANNUAL CERTIFICATION.—(1) A State authority's annual certifi-
15 cation must include—

16 (A) a certification that the authority—

17 (i) has regulatory jurisdiction over the safety practices for rail-
18 road equipment, facilities, rolling stock, and operations in the
19 State;

20 (ii) was given a copy of each safety regulation prescribed and
21 order issued by the Secretary, that applies to the equipment, facili-
22 ties, rolling stock, or operations, as of the date of certification; and

23 (iii) is conducting the investigative and surveillance activities
24 prescribed by the Secretary under subsection (a) of this section;
25 and

26 (B) a report, in the form the Secretary prescribes by regulation, that
27 includes—

28 (i) the name and address of each railroad carrier subject to the
29 safety jurisdiction of the authority;

30 (ii) each accident or incident reported during the prior 12
31 months by a railroad carrier involving a fatality, personal injury
32 requiring hospitalization, or property damage of more than \$750
33 (or a higher amount prescribed by the Secretary), and a summary
34 of the authority's investigation of the cause and circumstances
35 surrounding the accident or incident;

36 (iii) the record maintenance, reporting, and inspection practices
37 conducted by the authority to aid the Secretary in enforcing rail-
38 road safety regulations prescribed and orders issued by the Sec-
39 retary, including the number of inspections made of railroad
40 equipment, facilities, rolling stock, and operations by the authority
41 during the prior 12 months; and

1 (iv) other information the Secretary requires.

2 (2) An annual certification applies to a safety regulation prescribed or
3 order issued after the date of the certification only if the State authority
4 submits an appropriate certification to provide the necessary investigative
5 and surveillance activities.

6 (3) If, after receipt of an annual certification, the Secretary decides the
7 State authority is not complying satisfactorily with the investigative and
8 surveillance activities prescribed under subsection (a) of this section, the
9 Secretary may reject any part of the certification or take other appropriate
10 action to achieve adequate enforcement. The Secretary must give the au-
11 thority notice and an opportunity for a hearing before taking action under
12 this paragraph. When the Secretary gives notice, the burden of proof is on
13 the authority to show that it is complying satisfactorily with the investiga-
14 tive and surveillance activities prescribed by the Secretary.

15 (c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the Sec-
16 retary does not receive an annual certification under subsection (a) of this
17 section related to any railroad equipment, facility, rolling stock, or oper-
18 ation, the Secretary may make an agreement with a State authority for the
19 authority to provide any part of the investigative and surveillance activities
20 prescribed by the Secretary as necessary to enforce the safety regulations
21 and orders applicable to the equipment, facility, rolling stock, or operation.

22 (2) The Secretary may terminate any part of an agreement made under
23 this subsection on finding that the authority has not provided every part
24 of the investigative and surveillance activities to which the agreement re-
25 lates. The Secretary must give the authority notice and an opportunity for
26 a hearing before making such a finding. The finding and termination shall
27 be published in the Federal Register and may not become effective for at
28 least 15 days after the date of publication.

29 (d) AGREEMENT FOR INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—
30 In addition to providing for State participation under this section, the Sec-
31 retary may make an agreement with a State to provide investigative and
32 surveillance activities related to the Secretary's duties under chapters 203-
33 213 of this title.

34 (e) PAYMENT.—On application by a State authority that has submitted
35 a certification under subsections (a) and (b) of this section or made an
36 agreement under subsection (c) or (d) of this section, the Secretary shall
37 pay not more than 50 percent of the cost of the personnel, equipment, and
38 activities of the authority needed, during the next fiscal year, to carry out
39 a safety program under the certification or agreement. However, the Sec-
40 retary may pay an authority only when the authority assures the Secretary
41 that it will provide the remaining cost of the safety program and that the

1 total State money expended for the safety program, excluding grants of the
2 United States Government, will be at least as much as the average amount
3 expended for the fiscal years that ended June 30, 1969, and June 30, 1970.

4 (f) MONITORING.—The Secretary may monitor State investigative and
5 surveillance practices and carry out other inspections and investigations nec-
6 essary to help enforce this chapter.

7 **§ 20106. National uniformity of regulation**

8 Laws, regulations, and orders related to railroad safety shall be nationally
9 uniform to the extent practicable. A State may adopt or continue in force
10 a law, regulation, or order related to railroad safety until the Secretary of
11 Transportation prescribes a regulation or issues an order covering the sub-
12 ject matter of the State requirement. A State may adopt or continue in
13 force an additional or more stringent law, regulation, or order related to
14 railroad safety when the law, regulation, or order—

15 (1) is necessary to eliminate or reduce an essentially local safety haz-
16 ard;

17 (2) is not incompatible with a law, regulation, or order of the United
18 States Government; and

19 (3) does not unreasonably burden interstate commerce.

20 **§ 20107. Inspection and investigation**

21 (a) GENERAL.—To carry out this part, the Secretary of Transportation
22 may take actions the Secretary considers necessary, including—

23 (1) conduct investigations, make reports, issue subpoenas, require the
24 production of documents, take depositions, and prescribe recordkeeping
25 and reporting requirements; and

26 (2) delegate to a public entity or qualified person the inspection, ex-
27 amination, and testing of railroad equipment, facilities, rolling stock,
28 operations, and persons.

29 (b) ENTRY AND INSPECTION.—In carrying out this part, an officer, em-
30 ployee, or agent of the Secretary, at reasonable times and in a reasonable
31 way, may enter and inspect railroad equipment, facilities, rolling stock, op-
32 erations, and relevant records. When requested, the officer, employee, or
33 agent shall display proper credentials. During an inspection, the officer, em-
34 ployee, or agent is an employee of the United States Government under
35 chapter 171 of title 28.

36 **§ 20108. Research, development, testing, and training**

37 (a) GENERAL.—The Secretary of Transportation shall carry out, as nec-
38 essary, research, development, testing, evaluation, and training for every
39 area of railroad safety.

40 (b) CONTRACTS.—To carry out this part, the Secretary may make con-
41 tracts for, and carry out, research, development, testing, evaluation, and

1 training (particularly for those areas of railroad safety found to need
2 prompt attention).

3 (c) AMOUNTS FROM NON-GOVERNMENT SOURCES FOR TRAINING SAFE-
4 TY EMPLOYEES.—The Secretary may request, receive, and expend amounts
5 received from non-United States Government sources for expenses incurred
6 in training safety employees of private industry, State and local authorities,
7 or other public authorities, except State rail safety inspectors participating
8 in training under section 20105 of this title.

9 **§ 20109. Employee protections**

10 (a) FILING COMPLAINTS AND TESTIFYING.—A railroad carrier engaged
11 in interstate or foreign commerce may not discharge or in any way discrimi-
12 nate against an employee because the employee, whether acting for the em-
13 ployee or as a representative, has—

14 (1) filed a complaint or brought or caused to be brought a proceed-
15 ing related to the enforcement of this part or, as applicable to railroad
16 safety, chapter 51 or 57 of this title; or

17 (2) testified or will testify in that proceeding.

18 (b) REFUSING TO WORK BECAUSE OF HAZARDOUS CONDITIONS.—(1) A
19 railroad carrier engaged in interstate or foreign commerce may not dis-
20 charge or in any way discriminate against an employee for refusing to work
21 when confronted by a hazardous condition related to the performance of the
22 employee's duties, if—

23 (A) the refusal is made in good faith and no reasonable alternative
24 to the refusal is available to the employee;

25 (B) a reasonable individual in the circumstances then confronting
26 the employee would conclude that—

27 (i) the hazardous condition presents an imminent danger of
28 death or serious injury; and

29 (ii) the urgency of the situation does not allow sufficient time
30 to eliminate the danger through regular statutory means; and

31 (C) the employee, where possible, has notified the carrier of the haz-
32 arduous condition and the intention not to perform further work unless
33 the condition is corrected immediately.

34 (2) This subsection does not apply to security personnel employed by a
35 carrier to protect individuals and property transported by railroad.

36 (c) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under
37 this section is subject to resolution under section 3 of the Railway Labor
38 Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment
39 Board, a division or delegate of the Board, or another board of adjustment
40 established under section 3 to resolve the dispute, grievance, or claim, the
41 proceeding shall be expedited and the dispute, grievance, or claim shall be

1 resolved not later than 180 days after it is filed. If the violation is a form
2 of discrimination that does not involve discharge, suspension, or another ac-
3 tion affecting pay, and no other remedy is available under this subsection,
4 the Board, division, delegate, or other board of adjustment may award the
5 employee reasonable damages, including punitive damages, of not more than
6 \$20,000.

7 (d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not
8 seek protection under both this section and another provision of law for the
9 same allegedly unlawful act of the carrier.

10 (e) DISCLOSURE OF IDENTITY.—(1) Except as provided in paragraph (2)
11 of this subsection, or with the written consent of the employee, the Sec-
12 retary of Transportation may not disclose the name of an employee of a
13 railroad carrier who has provided information about an alleged violation of
14 this part or, as applicable to railroad safety, chapter 51 or 57 of this title
15 or a regulation prescribed or order issued under any of those provisions.

16 (2) The Secretary shall disclose to the Attorney General the name of an
17 employee described in paragraph (1) of this subsection if the matter is re-
18 ferred to the Attorney General for enforcement.

19 **§20110. Effect on employee qualifications and collective**
20 **bargaining**

21 This chapter does not—

22 (1) authorize the Secretary of Transportation to prescribe regula-
23 tions and issue orders related to qualifications of employees, except
24 qualifications specifically related to safety; or

25 (2) prohibit the bargaining representatives of railroad carriers and
26 their employees from making collective bargaining agreements under
27 the Railway Labor Act (45 U.S.C. 151 et seq.), including agreements
28 related to qualifications of employees, that are not inconsistent with
29 regulations prescribed and orders issued under this chapter.

30 **§20111. Enforcement by the Secretary of Transportation**

31 (a) EXCLUSIVE AUTHORITY.—The Secretary of Transportation has exclu-
32 sive authority—

33 (1) to impose and compromise a civil penalty for a violation of a rail-
34 road safety regulation prescribed or order issued by the Secretary;

35 (2) except as provided in section 20113 of this title, to request an
36 injunction for a violation of a railroad safety regulation prescribed or
37 order issued by the Secretary; and

38 (3) to recommend appropriate action be taken under section
39 20112(a) of this title.

1 (b) COMPLIANCE ORDERS.—The Secretary may issue an order directing
2 compliance with this part or with a railroad safety regulation prescribed or
3 order issued under this part.

4 (c) ORDERS PROHIBITING INDIVIDUALS FROM PERFORMING SAFETY-
5 SENSITIVE FUNCTIONS.—If an individual's violation of a regulation pre-
6 scribed or order issued by the Secretary under this chapter is shown to
7 make that individual unfit for the performance of safety-sensitive functions,
8 the Secretary, after notice and opportunity for a hearing, may issue an
9 order prohibiting the individual from performing safety-sensitive functions
10 in the railroad industry for a specified period of time or until specified con-
11 ditions are met. This subsection does not affect the Secretary's authority
12 under section 20104 of this title to act on an emergency basis.

13 (d) REGULATIONS REQUIRING REPORTING OF REMEDIAL ACTIONS.—(1)
14 The Secretary shall prescribe regulations to require that a railroad carrier
15 notified by the Secretary that imposition of a civil penalty will be rec-
16 ommended for a failure to comply with this part, chapter 51 or 57 of this
17 title, or a regulation prescribed or order issued under any of those provi-
18 sions, shall report to the Secretary, not later than the 30th day after the
19 end of the month in which the notification is received—

20 (A) actions taken to remedy the failure; or

21 (B) if appropriate remedial actions cannot be taken by that 30th
22 day, an explanation of the reasons for the delay.

23 (2) The Secretary—

24 (A) not later than June 3, 1993, shall issue a notice of a regulatory
25 proceeding for proposed regulations to carry out this subsection; and

26 (B) not later than September 3, 1994, shall prescribe final regula-
27 tions to carry out this subsection.

28 **§ 20112. Enforcement by the Attorney General**

29 (a) CIVIL ACTIONS.—At the request of the Secretary of Transportation,
30 the Attorney General may bring a civil action in a district court of the Unit-
31 ed States—

32 (1) to enjoin a violation of, or to enforce, a railroad safety regulation
33 prescribed or order issued by the Secretary;

34 (2) to collect a civil penalty imposed or an amount agreed on in com-
35 promise under section 21301 of this title; or

36 (3) to enforce a subpoena issued by the Secretary under this chapter.

37 (b) VENUE.—(1) Except as provided in paragraph (2) of this subsection,
38 a civil action under this section may be brought in the judicial district in
39 which the violation occurred or the defendant has its principal executive of-
40 fice. If an action to collect a penalty is against an individual, the action also
41 may be brought in the judicial district in which the individual resides.

1 (2) A civil action to enforce a subpoena issued by the Secretary or a com-
2 pliance order issued under section 20111(b) of this title may be brought in
3 the judicial district in which the defendant resides, does business, or is
4 found.

5 **§20113. Enforcement by the States**

6 (a) INJUNCTIVE RELIEF.—If the Secretary of Transportation does not
7 begin a civil action under section 20112 of this title to enjoin the violation
8 of a railroad safety regulation prescribed or order issued by the Secretary
9 not later than 15 days after the date the Secretary receives notice of the
10 violation and a request from a State authority participating in investigative
11 and surveillance activities under section 20105 of this title that the action
12 be brought, the authority may bring a civil action in a district court of the
13 United States to enjoin the violation. This subsection does not apply if the
14 Secretary makes an affirmative written finding that the violation did not
15 occur or that the action is not necessary because of other enforcement ac-
16 tion taken by the Secretary related to the violation.

17 (b) IMPOSITION AND COLLECTION OF CIVIL PENALTIES.—If the Sec-
18 retary does not impose the applicable civil penalty for a violation of a rail-
19 road safety regulation prescribed or order issued by the Secretary not later
20 than 60 days after the date of receiving notice from a State authority par-
21 ticipating in investigative and surveillance activities under section 20105 of
22 this title, the authority may bring a civil action in a district court of the
23 United States to impose and collect the penalty. This paragraph does not
24 apply if the Secretary makes an affirmative written finding that the viola-
25 tion did not occur.

26 (c) VENUE.—A civil action under this section may be brought in the judi-
27 cial district in which the violation occurred or the defendant has its prin-
28 cipal executive office. However, a State authority may not bring an action
29 under this section outside the State.

30 **§20114. Judicial procedures**

31 (a) CRIMINAL CONTEMPT.—In a trial for criminal contempt for violating
32 an injunction or restraining order issued under this chapter, the violation
33 of which is also a violation of this chapter, the defendant may demand a
34 jury trial. The defendant shall be tried as provided in rule 42(b) of the Fed-
35 eral Rules of Criminal Procedure (18 App. U.S.C.).

36 (b) SUBPENAS FOR WITNESSES.—A subpoena for a witness required to at-
37 tend a district court of the United States in an action brought under this
38 chapter may be served in any judicial district.

39 (c) REVIEW OF AGENCY ACTION.—Except as provided in section
40 20104(c) of this title, a proceeding to review a final action of the Secretary
41 of Transportation under this part or, as applicable to railroad safety, chap-

1 ter 51 or 57 of this title shall be brought in the appropriate court of appeals
2 as provided in chapter 158 of title 28.

3 **§ 20115. User fees**

4 (a) SCHEDULE OF FEES.—The Secretary of Transportation shall pre-
5 scribe by regulation a schedule of fees for railroad carriers subject to this
6 chapter. The fees—

7 (1) shall cover the costs of carrying out this chapter (except section
8 20108(a));

9 (2) shall be imposed fairly on the railroad carriers, in reasonable re-
10 lationship to an appropriate combination of criteria such as revenue
11 ton-miles, track miles, passenger miles, or other relevant factors; and

12 (3) may not be based on that part of industry revenues attributable
13 to a railroad carrier or class of railroad carriers.

14 (b) COLLECTION PROCEDURES.—The Secretary shall prescribe proce-
15 dures to collect the fees. The Secretary may use the services of a depart-
16 ment, agency, or instrumentality of the United States Government or of a
17 State or local authority to collect the fees, and may reimburse the depart-
18 ment, agency, or instrumentality a reasonable amount for its services.

19 (c) COLLECTION, DEPOSIT, AND USE.—(1) The Secretary shall impose
20 and collect fees under this section for each fiscal year before the end of the
21 fiscal year.

22 (2) Fees collected under this section shall be deposited in the general
23 fund of the Treasury as offsetting receipts. The fees may be used, to the
24 extent provided in advance in an appropriation law, only to carry out this
25 chapter.

26 (3) Fees prescribed under this section shall be imposed in an amount suf-
27 ficient to pay for the costs of activities under this chapter. However, the
28 total fees received for a fiscal year may not be more than 105 percent of
29 the total amount of the appropriations for the fiscal year for activities to
30 be financed by the fees.

31 (d) ANNUAL REPORT.—(1) Not later than 90 days after the end of each
32 fiscal year in which fees are collected under this section, the Secretary shall
33 report to Congress on—

34 (A) the amount of fees collected during that fiscal year;

35 (B) the impact of the fees on the financial health of the railroad in-
36 dustry and its competitive position relative to each competing mode of
37 transportation; and

38 (C) the total cost of Government safety activities for each other com-
39 peting mode of transportation, including any part of that total cost de-
40 frayed by Government user fees.

1 (2) Not later than 90 days after submitting a report for a fiscal year,
2 the Secretary shall submit to Congress recommendations for corrective legis-
3 lation if the report includes a finding that—

4 (A) there has been an impact from the fees on the financial health
5 of the railroad industry or its competitive position relative to each com-
6 peting mode of transportation; or

7 (B) there is a significant difference in the burden of Government
8 user fees on the railroad industry and other competing modes of trans-
9 portation.

10 (e) EXPIRATION.—This section expires on September 30, 1995.

11 **§20116. Annual report**

12 The Secretary of Transportation shall submit to the President for sub-
13 mission to Congress not later than July 1 of each year a report on carrying
14 out this chapter for the prior calendar year. The report shall include the
15 following information about the prior year:

16 (1) a thorough statistical compilation of railroad accidents, incidents,
17 and casualties by cause.

18 (2) a list of railroad safety regulations and orders prescribed, issued,
19 or in effect under this chapter.

20 (3) a summary of the reasons for each waiver granted under section
21 20103(d) of this title.

22 (4) an evaluation of the degree of compliance with railroad safety
23 regulations prescribed and orders issued under this chapter.

24 (5) a summary of outstanding problems in carrying out railroad safe-
25 ty regulations prescribed and orders issued under this chapter, in order
26 of priority.

27 (6) an analysis and evaluation of research and related activities com-
28 pleted, including their policy implications, and technological progress
29 achieved.

30 (7) a list, with a brief statement of the issues, of completed or pend-
31 ing civil actions to enforce railroad safety regulations prescribed and
32 orders issued under this chapter.

33 (8) the extent to which technical information was distributed to the
34 scientific community and consumer-oriented information was made
35 available to the public.

36 (9) a compilation of certifications filed under section 20105(a) of
37 this title that were—

38 (A) in effect; or

39 (B) rejected in any part by the Secretary, and a summary of
40 the reasons for each rejection.

1 (10) a compilation of agreements made under section 20105(c) of
2 this title that were—

3 (A) in effect; or

4 (B) terminated in any part by the Secretary, and a summary
5 of the reasons for each termination.

6 (11) recommendations for legislation the Secretary considers nec-
7 essary to strengthen the national railroad safety program.

8 **§ 20117. Authorization of appropriations**

9 (a) GENERAL.—(1) Not more than the following amounts may be appro-
10 priated to the Secretary of Transportation to carry out this chapter:

11 (A) \$68,283,000 for the fiscal year ending September 30, 1993.

12 (B) \$71,690,000 for the fiscal year ending September 30, 1994.

13 (2) Not more than \$5,000,000 may be appropriated to the Secretary for
14 the fiscal year ending September 30, 1993, to carry out section 20105 of
15 this title.

16 (b) GRADE CROSSING SAFETY.—Not more than \$1,000,000 may be ap-
17 propriated to the Secretary for improvements in grade crossing safety, ex-
18 cept demonstration projects under section 20134(c) of this title. Amounts
19 appropriated under this subsection remain available until expended.

20 (c) RESEARCH AND DEVELOPMENT, AUTOMATED TRACK INSPECTION,
21 AND STATE PARTICIPATION GRANTS.—Amounts appropriated under this
22 section for research and development, automated track inspection, and
23 grants under section 20105(e) of this title remain available until expended.

24 (d) MINIMUM AVAILABLE FOR CERTAIN PURPOSES.—At least 50 percent
25 of the amounts appropriated to the Secretary for a fiscal year to carry out
26 railroad research and development programs under this chapter or another
27 law shall be available for safety research, improved track inspection and in-
28 formation acquisition technology, improved railroad freight transportation,
29 and improved railroad passenger systems.

30 SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

31 **§ 20131. Restricted access to rolling equipment**

32 The Secretary of Transportation shall prescribe regulations and issue or-
33 ders that may be necessary to require that when railroad carrier employees
34 (except train or yard crews) assigned to inspect, test, repair, or service roll-
35 ing equipment have to work on, under, or between that equipment, every
36 manually operated switch, including each crossover switch, providing access
37 to the track on which the equipment is located is lined against movement
38 to that track and secured by an effective locking device that can be removed
39 only by the class or craft of employees performing the inspection, testing,
40 repair, or service.

1 **§ 20132. Visible markers for rear cars**

2 (a) GENERAL.—The Secretary of Transportation shall prescribe regula-
3 tions and issue orders that may be necessary to require that—

4 (1) the rear car of each passenger and commuter train has at least
5 one highly visible marker that is lighted during darkness and when
6 weather conditions restrict clear visibility; and

7 (2) the rear car of each freight train has highly visible markers dur-
8 ing darkness and when weather conditions restrict clear visibility.

9 (b) PREEMPTION.—Notwithstanding section 20106 of this title, sub-
10 section (a) of this section does not prohibit a State from continuing in force
11 a law, regulation, or order in effect on July 8, 1976, related to lighted
12 markers on the rear car of a freight train except to the extent it would
13 cause the car to be in violation of this section.

14 **§ 20133. Passenger equipment**

15 (a) GENERAL.—The Secretary of Transportation shall prescribe regula-
16 tions and issue orders that may be necessary to ensure that the construc-
17 tion, maintenance, and operation of railroad equipment used to transport
18 railroad passengers, whether in commuter or intercity service, maximize the
19 safety of those passengers. The Secretary periodically shall review the regu-
20 lations and orders and make amendments that may be necessary.

21 (b) CONSIDERATIONS AND AREAS OF CONCENTRATION.—In prescribing
22 regulations, issuing orders, and making amendments under this section, the
23 Secretary shall—

24 (1) consider comparable regulations and procedures of the United
25 States Government that apply to other modes of transportation, espe-
26 cially those regulations and procedures carried out by the Adminis-
27 trator of the Federal Aviation Administration;

28 (2) consider relevant differences between commuter and intercity
29 passenger service;

30 (3) concentrate on those areas that the Secretary believes present the
31 greatest opportunity for enhancing the safety of the equipment; and

32 (4) give significant weight to the expenditures that would be nec-
33 essary to retrofit existing equipment and to change specifications for
34 equipment on order.

35 (c) CONSULTATION.—In prescribing regulations, issuing orders, and mak-
36 ing amendments under this section, the Secretary may consult with Amtrak,
37 public authorities operating railroad passenger service, other railroad car-
38 riers transporting passengers, organizations of passengers, and organiza-
39 tions of employees. A consultation is not subject to the Federal Advisory
40 Committee Act (5 App. U.S.C.), but minutes of the consultation shall be
41 placed in the public docket of the regulatory proceeding.

1 **§ 20134. Grade crossings and railroad rights of way**

2 (a) GENERAL.—To the extent practicable, the Secretary of Transportation shall maintain a coordinated effort to develop and carry out solutions
3 to the railroad grade crossing problem and measures to protect pedestrians
4 in densely populated areas along railroad rights of way. To carry out this
5 subsection, the Secretary may use the authority of the Secretary under this
6 chapter and over highway, traffic, and motor vehicle safety and over high-
7 way construction.
8

9 (b) SIGNAL SYSTEMS AND OTHER DEVICES.—Not later than June 22,
10 1989, the Secretary shall prescribe regulations and issue orders to ensure
11 the safe maintenance, inspection, and testing of signal systems and devices
12 at railroad highway grade crossings.

13 (c) DEMONSTRATION PROJECTS.—(1) The Secretary shall establish dem-
14 onstration projects to evaluate whether accidents and incidents involving
15 trains would be reduced by—

16 (A) reflective markers installed on the road surface or on a signal
17 post at railroad grade crossings;

18 (B) stop signs or yield signs installed at grade crossings; and

19 (C) speed bumps or rumble strips installed on the road surfaces at
20 the approaches to grade crossings.

21 (2) Not later than June 22, 1990, the Secretary shall submit a report
22 on the results of the demonstration projects to the Committee on Energy
23 and Commerce of the House of Representatives and the Committee on Com-
24 merce, Science, and Transportation of the Senate.

25 **§ 20135. Licensing or certification of locomotive operators**

26 (a) GENERAL.—The Secretary of Transportation shall prescribe regula-
27 tions and issue orders to establish a program requiring the licensing or cer-
28 tification, after one year after the program is established, of any operator
29 of a locomotive.

30 (b) PROGRAM REQUIREMENTS.—The program established under sub-
31 section (a) of this section—

32 (1) shall be carried out through review and approval of each railroad
33 carrier's operator qualification standards;

34 (2) shall provide minimum training requirements;

35 (3) shall require comprehensive knowledge of applicable railroad car-
36 rier operating practices and rules;

37 (4) except as provided in subsection (c)(1) of this section, shall re-
38 quire consideration, to the extent the information is available, of the
39 motor vehicle driving record of each individual seeking licensing or cer-
40 tification, including—

1 (A) any denial, cancellation, revocation, or suspension of a
2 motor vehicle operator's license by a State for cause within the
3 prior 5 years; and

4 (B) any conviction within the prior 5 years of an offense de-
5 scribed in section 30304(a)(3) (A) or (B) of this title;

6 (5) may require, based on the individual's driving record, disquali-
7 fication or the granting of a license or certification conditioned on re-
8 quirements the Secretary prescribes; and

9 (6) shall require an individual seeking a license or certification—

10 (A) to request the chief driver licensing official of each State
11 in which the individual has held a motor vehicle operator's license
12 within the prior 5 years to provide information about the individ-
13 ual's driving record to the individual's employer, prospective em-
14 ployer, or the Secretary, as the Secretary requires; and

15 (B) to make the request provided for in section 30305(b)(4) of
16 this title for information to be sent to the individual's employer,
17 prospective employer, or the Secretary, as the Secretary requires.

18 (c) WAIVERS.—(1) The Secretary shall prescribe standards and establish
19 procedures for waiving subsection (b)(4) of this section for an individual or
20 class of individuals who the Secretary decides are not currently unfit to op-
21 erate a locomotive. However, the Secretary may waive subsection (b)(4) for
22 an individual or class of individuals with a conviction, cancellation, revoca-
23 tion, or suspension described in paragraph (2) (A) or (B) of this subsection
24 only if the individual or class, after the conviction, cancellation, revocation,
25 or suspension, successfully completes a rehabilitation program established by
26 a railroad carrier or approved by the Secretary.

27 (2) If an individual, after the conviction, cancellation, revocation, or sus-
28 pension, successfully completes a rehabilitation program established by a
29 railroad carrier or approved by the Secretary, the individual may not be de-
30 nied a license or certification under subsection (b)(4) of this section because
31 of—

32 (A) a conviction for operating a motor vehicle when under the influ-
33 ence of, or impaired by, alcohol or a controlled substance; or

34 (B) the cancellation, revocation, or suspension of the individual's
35 motor vehicle operator's license for operating a motor vehicle when
36 under the influence of, or impaired by, alcohol or a controlled sub-
37 stance.

38 (d) OPPORTUNITY FOR HEARING.—An individual denied a license or cer-
39 tification or whose license or certification is conditioned on requirements
40 prescribed under subsection (b)(4) of this section shall be entitled to a hear-

1 ing under section 20103(e) of this title to decide whether the license has
2 been properly denied or conditioned.

3 (e) OPPORTUNITY TO EXAMINE AND COMMENT ON INFORMATION.—The
4 Secretary, employer, or prospective employer, as appropriate, shall make in-
5 formation obtained under subsection (b)(6) of this section available to the
6 individual. The individual shall be given an opportunity to comment in writ-
7 ing about the information. Any comment shall be included in any record or
8 file maintained by the Secretary, employer, or prospective employer that
9 contains information to which the comment is related.

10 **§ 20136. Automatic train control and related systems**

11 The Secretary of Transportation shall prescribe regulations and issue or-
12 ders to require that—

13 (1) an individual performing a test of an automatic train stop, train
14 control, or cab signal apparatus required by the Secretary to be per-
15 formed before entering territory where the apparatus will be used shall
16 certify in writing that the test was performed properly; and

17 (2) the certification required under clause (1) of this subsection shall
18 be maintained in the same way and place as the daily inspection report
19 for the locomotive.

20 **§ 20137. Event recorders**

21 (a) DEFINITION.—In this section, “event recorder” means a device that—

22 (1) records train speed, hot box detection, throttle position, brake
23 application, brake operations, and any other function the Secretary of
24 Transportation considers necessary to record to assist in monitoring
25 the safety of train operation, such as time and signal indication; and

26 (2) is designed to resist tampering.

27 (b) REGULATIONS AND ORDERS.—Not later than December 22, 1989, the
28 Secretary shall prescribe regulations and issue orders that may be necessary
29 to enhance safety by requiring that a train be equipped with an event re-
30 corder not later than one year after the regulations are prescribed and the
31 orders are issued. However, if the Secretary finds it is impracticable to
32 equip trains within that one-year period, the Secretary may extend the pe-
33 riod to a date that is not later than 18 months after the regulations are
34 prescribed and the orders are issued.

35 **§ 20138. Tampering with safety and operational monitoring**
36 **devices**

37 (a) GENERAL.—The Secretary of Transportation shall prescribe regula-
38 tions and issue orders to prohibit the willful tampering with, or disabling
39 of, any specified railroad safety or operational monitoring device.

40 (b) PENALTIES.—(1) A railroad carrier operating a train on which a safe-
41 ty or operational monitoring device is tampered with or disabled in violation

1 of a regulation prescribed or order issued under subsection (a) of this sec-
2 tion is liable to the United States Government for a civil penalty under sec-
3 tion 21301 of this title.

4 (2) An individual tampering with or disabling a safety or operational
5 monitoring device in violation of a regulation prescribed or order issued
6 under subsection (a) of this section, or knowingly operating or allowing to
7 be operated a train on which such a device has been tampered with or dis-
8 abled, is liable for penalties established by the Secretary. The penalties may
9 include—

10 (A) a civil penalty under section 21301 of this title;

11 (B) suspension from work; and

12 (C) suspension or loss of a license or certification issued under sec-
13 tion 20135 of this title.

14 **§ 20139. Maintenance-of-way operations on railroad bridges**

15 Not later than June 22, 1989, the Secretary of Transportation shall pre-
16 scribe regulations and issue orders for the safety of maintenance-of-way em-
17 ployees on railroad bridges. The Secretary at least shall provide in those
18 regulations standards for bridge safety equipment, including nets, walkways,
19 handrails, and safety lines, and requirements for the use of vessels when
20 work is performed on bridges located over bodies of water.

21 **§ 20140. Alcohol and controlled substances testing**

22 (a) DEFINITION.—In this section, “controlled substance” means any sub-
23 stance under section 102 of the Comprehensive Drug Abuse Prevention and
24 Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Trans-
25 portation.

26 (b) GENERAL.—(1) In the interest of safety, the Secretary of Transpor-
27 tation shall prescribe regulations and issue orders, not later than October
28 28, 1992, related to alcohol and controlled substances use in railroad oper-
29 ations. The regulations shall establish a program requiring—

30 (A) a railroad carrier to conduct preemployment, reasonable sus-
31 picion, random, and post-accident testing of all railroad employees re-
32 sponsible for safety-sensitive functions (as decided by the Secretary) for
33 the use of alcohol or a controlled substance in violation of law or a
34 United States Government regulation; and

35 (B) when the Secretary considers it appropriate, disqualification for
36 an established period of time or dismissal of any employee found—

37 (i) to have used or been impaired by alcohol when on duty; or

38 (ii) to have used a controlled substance, whether or not on duty,
39 except as allowed for medical purposes by law or a regulation or
40 order under this chapter.

1 (2) When the Secretary of Transportation considers it appropriate in the
2 interest of safety, the Secretary may prescribe regulations and issue orders
3 requiring railroad carriers to conduct periodic recurring testing of railroad
4 employees responsible for safety-sensitive functions (as decided by the Sec-
5 retary) for the use of alcohol or a controlled substance in violation of law
6 or a Government regulation.

7 (c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out this
8 section, the Secretary of Transportation shall develop requirements that
9 shall—

10 (1) promote, to the maximum extent practicable, individual privacy
11 in the collection of specimens;

12 (2) for laboratories and testing procedures for controlled substances,
13 incorporate the Department of Health and Human Services scientific
14 and technical guidelines dated April 11, 1988, and any amendments to
15 those guidelines, including mandatory guidelines establishing—

16 (A) comprehensive standards for every aspect of laboratory con-
17 trolled substances testing and laboratory procedures to be applied
18 in carrying out this section, including standards requiring the use
19 of the best available technology to ensure the complete reliability
20 and accuracy of controlled substances tests and strict procedures
21 governing the chain of custody of specimens collected for con-
22 trolled substances testing;

23 (B) the minimum list of controlled substances for which individ-
24 uals may be tested; and

25 (C) appropriate standards and procedures for periodic review of
26 laboratories and criteria for certification and revocation of certifi-
27 cation of laboratories to perform controlled substances testing in
28 carrying out this section;

29 (3) require that a laboratory involved in controlled substances testing
30 under this section have the capability and facility, at the laboratory,
31 of performing screening and confirmation tests;

32 (4) provide that all tests indicating the use of alcohol or a controlled
33 substance in violation of law or a Government regulation be confirmed
34 by a scientifically recognized method of testing capable of providing
35 quantitative information about alcohol or a controlled substance;

36 (5) provide that each specimen be subdivided, secured, and labeled
37 in the presence of the tested individual and that a part of the specimen
38 be retained in a secure manner to prevent the possibility of tampering,
39 so that if the individual's confirmation test results are positive the indi-
40 vidual has an opportunity to have the retained part tested by a 2d con-
41 firmation test done independently at another certified laboratory if the

1 individual requests the 2d confirmation test not later than 3 days after
2 being advised of the results of the first confirmation test;

3 (6) ensure appropriate safeguards for testing to detect and quantify
4 alcohol in breath and body fluid samples, including urine and blood,
5 through the development of regulations that may be necessary and in
6 consultation with the Secretary of Health and Human Services;

7 (7) provide for the confidentiality of test results and medical infor-
8 mation (other than information about alcohol or a controlled substance)
9 of employees, except that this clause does not prevent the use of test
10 results for the orderly imposition of appropriate sanctions under this
11 section; and

12 (8) ensure that employees are selected for tests by nondiscriminatory
13 and impartial methods, so that no employee is harassed by being treat-
14 ed differently from other employees in similar circumstances.

15 (d) REHABILITATION.—The Secretary of Transportation shall prescribe
16 regulations or issue orders establishing requirements for rehabilitation pro-
17 grams that at least provide for the identification and opportunity for treat-
18 ment of railroad employees responsible for safety-sensitive functions (as de-
19 cided by the Secretary) in need of assistance in resolving problems with the
20 use of alcohol or a controlled substance in violation of law or a Government
21 regulation. The Secretary shall decide on the circumstances under which
22 employees shall be required to participate in a program. Each railroad car-
23 rier is encouraged to make such a program available to all of its employees
24 in addition to employees responsible for safety-sensitive functions. This sub-
25 section does not prevent a railroad carrier from establishing a program
26 under this subsection in cooperation with another railroad carrier.

27 (e) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS AND REGULA-
28 TIONS.—In carrying out this section, the Secretary of Transportation—

29 (1) shall establish only requirements that are consistent with inter-
30 national obligations of the United States; and

31 (2) shall consider applicable laws and regulations of foreign coun-
32 tries.

33 (f) OTHER REGULATIONS ALLOWED.—This section does not prevent the
34 Secretary of Transportation from continuing in effect, amending, or further
35 supplementing a regulation prescribed or order issued before October 28,
36 1991, governing the use of alcohol or a controlled substance in railroad op-
37 erations.

38 **§ 20141. Power brake safety**

39 (a) REVIEW AND REVISION OF EXISTING REGULATIONS.—The Secretary
40 of Transportation shall review existing regulations on railroad power brakes
41 and, not later than December 31, 1993, revise the regulations based on

1 safety information presented during the review. Where applicable, the Sec-
2 retary shall prescribe regulations that establish standards on dynamic brak-
3 ing equipment.

4 (b) 2-WAY END-OF-TRAIN DEVICES.—(1) The Secretary shall require 2-
5 way end-of-train devices (or devices able to perform the same function) on
6 road trains, except locals, road switchers, or work trains, to enable the initi-
7 ation of emergency braking from the rear of a train. The Secretary shall
8 prescribe regulations as soon as possible, but not later than December 31,
9 1993, requiring the 2-way end-of-train devices. The regulations at least
10 shall—

11 (A) establish standards for the devices based on performance;

12 (B) prohibit a railroad carrier, on or after the date that is one year
13 after the regulations are prescribed, from acquiring any end-of-train
14 device for use on trains that is not a 2-way device meeting the stand-
15 ards established under clause (A) of this paragraph;

16 (C) require that the trains be equipped with 2-way end-of-train de-
17 vices meeting those standards not later than 4 years after the regula-
18 tions are prescribed; and

19 (D) provide that any 2-way end-of-train device acquired for use on
20 trains before the regulations are prescribed shall be deemed to meet the
21 standards.

22 (2) The Secretary may consider petitions to amend the regulations pre-
23 scribed under paragraph (1) of this subsection to allow the use of alter-
24 native technologies that meet the same basic performance requirements es-
25 tablished by the regulations.

26 (3) In developing the regulations required by paragraph (1) of this sub-
27 section, the Secretary shall consider information presented under subsection
28 (a) of this section.

29 (c) EXCLUSIONS.—The Secretary may exclude from regulations pre-
30 scribed under subsections (a) and (b) of this section any category of trains
31 or rail operations if the Secretary decides that the exclusion is in the public
32 interest and is consistent with railroad safety. The Secretary shall make
33 public the reasons for the exclusion. The Secretary at least shall exclude
34 from the regulations prescribed under subsection (b)—

35 (1) trains that have manned cabooses;

36 (2) passenger trains with emergency brakes;

37 (3) trains that operate only on track that is not part of the general
38 railroad system;

39 (4) trains that do not exceed 30 miles an hour and do not operate
40 on heavy grades, except for any categories of trains specifically des-
41 ignated by the Secretary; and

1 (5) trains that operate in a push mode.

2 **§ 20142. Track safety**

3 (a) REVIEW OF EXISTING REGULATIONS.—Not later than March 3,
4 1993, the Secretary of Transportation shall begin a review of Department
5 of Transportation regulations related to track safety standards. The review
6 at least shall include an evaluation of—

7 (1) procedures associated with maintaining and installing continuous
8 welded rail and its attendant structure;

9 (2) the need for revisions to regulations on track excepted from track
10 safety standards; and

11 (3) employee safety.

12 (b) REVISION OF REGULATIONS.—Not later than September 3, 1994, the
13 Secretary shall prescribe regulations and issue orders to revise track safety
14 standards, considering safety information presented during the review under
15 subsection (a) of this section and the report of the Comptroller General sub-
16 mitted under subsection (c) of this section.

17 (c) COMPTROLLER GENERAL'S STUDY AND REPORT.—The Comptroller
18 General shall study the effectiveness of the Secretary's enforcement of track
19 safety standards, with particular attention to recent relevant railroad acci-
20 dent experience and information. Not later than September 3, 1993, the
21 Comptroller General shall submit a report to Congress and the Secretary
22 on the results of the study, with recommendations for improving enforce-
23 ment of those standards.

24 **§ 20143. Locomotive visibility**

25 (a) DEFINITION.—In this section, “locomotive visibility” means the en-
26 hancement of day and night visibility of the front end unit of a train, con-
27 sidering in particular the visibility and perspective of a driver of a motor
28 vehicle at a grade crossing.

29 (b) INTERIM REGULATIONS.—Not later than December 31, 1992, the
30 Secretary of Transportation shall prescribe temporary regulations identify-
31 ing ditch, crossing, strobe, and oscillating lights as temporary locomotive
32 visibility measures and authorizing and encouraging the installation and use
33 of those lights. Subchapter II of chapter 5 of title 5 does not apply to a
34 temporary regulation or to an amendment to a temporary regulation.

35 (c) REVIEW OF REGULATIONS.—The Secretary shall review the Sec-
36 retary's regulations on locomotive visibility. Not later than December 31,
37 1993, the Secretary shall complete the current research of the Department
38 of Transportation on locomotive visibility. In conducting the review, the Sec-
39 retary shall collect relevant information from operational experience by rail
40 carriers using enhanced visibility measures.

1 (d) REGULATORY PROCEEDING.—Not later than June 30, 1994, the Sec-
 2 retary shall begin a regulatory proceeding to prescribe final regulations re-
 3 quiring substantially enhanced locomotive visibility measures. In the pro-
 4 ceeding, the Secretary shall consider at least—

5 (1) revisions to the existing locomotive headlight standards, including
 6 standards for placement and intensity;

7 (2) requiring the use of reflective material to enhance locomotive vis-
 8 ibility;

9 (3) requiring the use of additional alerting lights, including ditch,
 10 crossing, strobe, and oscillating lights;

11 (4) requiring the use of auxiliary lights to enhance locomotive visi-
 12 bility when viewed from the side;

13 (5) the effect of an enhanced visibility measure on the vision, health,
 14 and safety of train crew members; and

15 (6) separate standards for self-propelled, push-pull, and multi-unit
 16 passenger operations without a dedicated head end locomotive.

17 (e) FINAL REGULATIONS.—(1) Not later than June 30, 1995, the Sec-
 18 retary shall prescribe final regulations requiring enhanced locomotive visi-
 19 bility measures. The Secretary shall require that not later than December
 20 31, 1997, a locomotive not excluded from the regulations be equipped with
 21 temporary visibility measures under subsection (b) of this section or the visi-
 22 bility measures the final regulations require.

23 (2) In prescribing regulations under paragraph (1) of this subsection, the
 24 Secretary may exclude a category of trains or rail operations from a specific
 25 visibility requirement if the Secretary decides the exclusion is in the public
 26 interest and is consistent with rail safety, including grade-crossing safety.

27 (3) A locomotive equipped with temporary visibility measures prescribed
 28 under subsection (b) of this section when final regulations are prescribed
 29 under paragraph (1) of this subsection is deemed to be complying with the
 30 final regulations for 4 years after the final regulations are prescribed.

31 **§ 20144. Blue signal protection for on-track vehicles**

32 The Secretary of Transportation shall prescribe regulations applying blue
 33 signal protection to on-track vehicles where rest is provided.

34 **CHAPTER 203—SAFETY APPLIANCES**

Sec.

20301. Definition and nonapplication.

20302. General requirements.

20303. Moving defective and insecure vehicles needing repairs.

20304. Assumption of risk by employees.

20305. Inspection of mail cars.

20306. Exemption for technological improvements.

35 **§ 20301. Definition and nonapplication**

36 (a) DEFINITION.—In this chapter, “vehicle” means a car, locomotive, ten-
 37 der, or similar vehicle.

1 (b) NONAPPLICATION.—This chapter does not apply to the following:

2 (1) a train of 4-wheel coal cars.

3 (2) a train of 8-wheel standard logging cars if the height of each car
4 from the top of the rail to the center of the coupling is not more than
5 25 inches.

6 (3) a locomotive used in hauling a train referred to in clause (2) of
7 this subsection when the locomotive and cars of the train are used only
8 to transport logs.

9 **§ 20302. General requirements**

10 (a) GENERAL.—Except as provided in subsection (c) of this section and
11 section 20303 of this title, a railroad carrier may use or allow to be used
12 on any of its railroad lines—

13 (1) a vehicle only if it is equipped with—

14 (A) couplers coupling automatically by impact, and capable of
15 being uncoupled, without the necessity of individuals going be-
16 tween the ends of the vehicles;

17 (B) secure sill steps and efficient hand brakes; and

18 (C) secure ladders and running boards when required by the
19 Secretary of Transportation, and, if ladders are required, secure
20 handholds or grab irons on its roof at the top of each ladder;

21 (2) except as otherwise ordered by the Secretary, a vehicle only if
22 it is equipped with secure grab irons or handholds on its ends and sides
23 for greater security to individuals in coupling and uncoupling vehicles;

24 (3) a vehicle only if it complies with the standard height of drawbars
25 required by regulations prescribed by the Secretary;

26 (4) a locomotive only if it is equipped with a power-driving wheel
27 brake and appliances for operating the train-brake system; and

28 (5) a train only if—

29 (A) enough of the vehicles in the train are equipped with power
30 or train brakes so that the engineer on the locomotive hauling the
31 train can control the train's speed without the necessity of brake
32 operators using the common hand brakes for that purpose; and

33 (B) at least 50 percent of the vehicles in the train are equipped
34 with power or train brakes and the engineer is using the power
35 or train brakes on those vehicles and on all other vehicles equipped
36 with them that are associated with those vehicles in the train.

37 (b) REFUSAL TO RECEIVE VEHICLES NOT PROPERLY EQUIPPED.—A
38 railroad carrier complying with subsection (a)(5)(A) of this section may
39 refuse to receive from a railroad line of a connecting railroad carrier or a
40 shipper a vehicle that is not equipped with power or train brakes that will

1 work and readily interchange with the power or train brakes in use on the
2 vehicles of the complying railroad carrier.

3 (c) COMBINED VEHICLES LOADING AND HAULING LONG COMMOD-
4 ITIES.—Notwithstanding subsection (a)(1)(B) of this section, when vehicles
5 are combined to load and haul long commodities, only one of the vehicles
6 must have hand brakes during the loading and hauling.

7 (d) AUTHORITY TO CHANGE REQUIREMENTS.—The Secretary may—

8 (1) change the number, dimensions, locations, and manner of appli-
9 cation prescribed by the Secretary for safety appliances required by
10 subsection (a)(1)(B) and (C) and (2) of this section only for good cause
11 and after providing an opportunity for a full hearing;

12 (2) amend regulations for installing, inspecting, maintaining, and re-
13 pairing power and train brakes only for the purpose of achieving safety;
14 and

15 (3) increase, after an opportunity for a full hearing, the minimum
16 percentage of vehicles in a train that are required by subsection
17 (a)(5)(B) of this section to be equipped and used with power or train
18 brakes.

19 (e) SERVICES OF ASSOCIATION OF AMERICAN RAILROADS.—In carrying
20 out subsection (d)(2) and (3) of this section, the Secretary may use the
21 services of the Association of American Railroads.

22 **§ 20303. Moving defective and insecure vehicles needing re-**
23 **pairs**

24 (a) GENERAL.—A vehicle that is equipped in compliance with this chapter
25 whose equipment becomes defective or insecure nevertheless may be moved
26 when necessary to make repairs, without a penalty being imposed under sec-
27 tion 21302 of this title, from the place at which the defect or insecurity was
28 first discovered to the nearest available place at which the repairs can be
29 made—

30 (1) on the railroad line on which the defect or insecurity was discov-
31 ered; or

32 (2) at the option of a connecting railroad carrier, on the railroad line
33 of the connecting carrier, if not farther than the place of repair de-
34 scribed in clause (1) of this subsection.

35 (b) USE OF CHAINS INSTEAD OF DRAWBARS.—A vehicle in a revenue
36 train or in association with commercially-used vehicles may be moved under
37 this section with chains instead of drawbars only when the vehicle contains
38 livestock or perishable freight.

39 (c) LIABILITY.—The movement of a vehicle under this section is at the
40 risk only of the railroad carrier doing the moving. This section does not re-
41 lieve a carrier from liability in a proceeding to recover damages for death

1 or injury of a railroad employee arising from the movement of a vehicle with
 2 equipment that is defective, insecure, or not maintained in compliance with
 3 this chapter.

4 **§ 20304. Assumption of risk by employees**

5 An employee of a railroad carrier injured by a vehicle or train used in
 6 violation of section 20302(a)(1)(A), (2), (4), or (5)(A) of this title does not
 7 assume the risk of injury resulting from the violation, even if the employee
 8 continues to be employed by the carrier after learning of the violation.

9 **§ 20305. Inspection of mail cars**

10 The Secretary of Transportation shall inspect the construction, adapt-
 11 ability, design, and condition of mail cars used on railroads in the United
 12 States. The Secretary shall make a report on the inspection and submit a
 13 copy of the report to the United States Postal Service.

14 **§ 20306. Exemption for technological improvements**

15 (a) GENERAL.—Subject to subsection (b) of this section, the Secretary of
 16 Transportation may exempt from the requirements of this chapter railroad
 17 equipment or equipment that will be operated on rails, when those require-
 18 ments preclude the development or implementation of more efficient railroad
 19 transportation equipment or other transportation innovations under existing
 20 law.

21 (b) CONDITIONS FOR EXEMPTION.—The Secretary may grant an exemp-
 22 tion under subsection (a) of this section only on the basis of—

23 (1) findings based on evidence developed at a hearing; or

24 (2) an agreement between national railroad labor representatives and
 25 the developer of the new equipment or technology.

26 **CHAPTER 205—SIGNAL SYSTEMS**

Sec.

20501. Definition.

20502. Requirements for installation and use.

20503. Amending regulations and changing requirements.

20504. Inspection, testing, and investigation.

20505. Reports of malfunctions and accidents.

27 **§ 20501. Definition**

28 In this chapter, “signal system” means a block signal system, an inter-
 29 locking, automatic train stop, train control, or cab-signal device, or a similar
 30 appliance, method, device, or system intended to promote safety in railroad
 31 operations.

32 **§ 20502. Requirements for installation and use**

33 (a) INSTALLATION.—(1) When the Secretary of Transportation decides
 34 after an investigation that it is necessary in the public interest, the Sec-
 35 retary may order a railroad carrier to install, on any part of its railroad
 36 line, a signal system that complies with requirements of the Secretary. The
 37 order must allow the carrier a reasonable time to complete the installation.

1 A carrier may discontinue or materially alter a signal system required under
2 this paragraph only with the approval of the Secretary.

3 (2) A railroad carrier ordered under paragraph (1) of this subsection to
4 install a signal system on one part of its railroad line may not be held neg-
5 ligent for not installing the system on any part of its line that was not in-
6 cluded in the order. If an accident or incident occurs on a part of the line
7 on which the signal system was not required to be installed and was not
8 installed, the use of the system on another part of the line may not be con-
9 sidered in a civil action brought because of the accident or incident.

10 (b) USE.—A railroad carrier may allow a signal system to be used on its
11 railroad line only when the system, including its controlling and operating
12 appurtenances—

13 (1) may be operated safely without unnecessary risk of personal in-
14 jury; and

15 (2) has been inspected and can meet any test prescribed under this
16 chapter.

17 **§ 20503. Amending regulations and changing requirements**

18 The Secretary of Transportation may amend a regulation or change a re-
19 quirement applicable to a railroad carrier for installing, maintaining, in-
20 specting, or repairing a signal system under this chapter—

21 (1) when the carrier files with the Secretary a request for the
22 amendment or change and the Secretary approves the request; or

23 (2) on the Secretary's own initiative for good cause shown.

24 **§ 20504. Inspection, testing, and investigation**

25 (a) SYSTEMS IN USE.—(1) The Secretary of Transportation may—

26 (A) inspect and test a signal system used by a railroad carrier; and

27 (B) decide whether the system is in safe operating condition.

28 (2) In carrying out this subsection, the Secretary may employ only an in-
29 dividual who—

30 (A) has no interest in a patented article required to be used on or
31 with a signal system; and

32 (B) has no financial interest in a railroad carrier or in a concern
33 dealing in railroad supplies.

34 (b) SYSTEMS SUBMITTED FOR INVESTIGATION AND TESTING.—The Sec-
35 retary may investigate, test, and report on the use of and need for a signal
36 system, without cost to the United States Government, when the system is
37 submitted in completed shape for investigation and testing.

38 **§ 20505. Reports of malfunctions and accidents**

39 In the way and to the extent required by the Secretary of Transportation,
40 a railroad carrier shall report to the Secretary a failure of a signal system
41 to function as intended. If the failure results in an accident or incident

1 causing injury to an individual or property that is required to be reported
 2 under regulations prescribed by the Secretary, the carrier owning or main-
 3 taining the signal system shall report to the Secretary immediately in writ-
 4 ing the fact of the accident or incident.

5 **CHAPTER 207—LOCOMOTIVES**

Sec.

20701. Requirements for use.

20702. Inspections, repairs, and inspection and repair reports.

20703. Accident reports and investigations.

6 **§ 20701. Requirements for use**

7 A railroad carrier may use or allow to be used a locomotive or tender on
 8 its railroad line only when the locomotive or tender and its parts and appur-
 9 tenances—

10 (1) are in proper condition and safe to operate without unnecessary
 11 danger of personal injury;

12 (2) have been inspected as required under this chapter and regula-
 13 tions prescribed by the Secretary of Transportation under this chapter;
 14 and

15 (3) can withstand every test prescribed by the Secretary under this
 16 chapter.

17 **§ 20702. Inspections, repairs, and inspection and repair re- 18 ports**

19 (a) GENERAL.—The Secretary of Transportation shall—

20 (1) become familiar, so far as practicable, with the condition of every
 21 locomotive and tender and its parts and appurtenances;

22 (2) inspect every locomotive and tender and its parts and appur-
 23 tenances as necessary to carry out this chapter, but not necessarily at
 24 stated times or at regular intervals; and

25 (3) ensure that every railroad carrier makes inspections of loco-
 26 motives and tenders and their parts and appurtenances as required by
 27 regulations prescribed by the Secretary and repairs every defect that
 28 is disclosed by an inspection before a defective locomotive, tender, part,
 29 or appurtenance is used again.

30 (b) NONCOMPLYING LOCOMOTIVES, TENDERS, AND PARTS.—(1) When
 31 the Secretary finds that a locomotive, tender, or locomotive or tender part
 32 or appurtenance owned or operated by a railroad carrier does not comply
 33 with this chapter or a regulation prescribed under this chapter, the Sec-
 34 retary shall give the carrier written notice describing any defect resulting
 35 in noncompliance. Not later than 5 days after receiving the notice of non-
 36 compliance, the carrier may submit a written request for a reinspection. On
 37 receiving the request, the Secretary shall provide for the reinspection by an
 38 officer or employee of the Department of Transportation who did not make

1 the original inspection. The reinspection shall be made not later than 15
2 days after the date the Secretary gives the notice of noncompliance.

3 (2) Immediately after the reinspection is completed, the Secretary shall
4 give written notice to the railroad carrier stating whether the locomotive,
5 tender, part, or appurtenance is in compliance. If the original finding of
6 noncompliance is sustained, the carrier has 30 days after receipt of the no-
7 tice to file an appeal with the Secretary. If the carrier files an appeal, the
8 Secretary, after providing an opportunity for a proceeding, may revise or
9 set aside the finding of noncompliance.

10 (3) A locomotive, tender, part, or appurtenance found not in compliance
11 under this subsection may be used only after it is—

12 (A) repaired to comply with this chapter and regulations prescribed
13 under this chapter; or

14 (B) found on reinspection or appeal to be in compliance.

15 (c) REPORTS.—A railroad carrier shall make and keep, in the way the
16 Secretary prescribes by regulation, a report of every—

17 (1) inspection made under regulations prescribed by the Secretary;
18 and

19 (2) repair made of a defect disclosed by such an inspection.

20 (d) CHANGES IN INSPECTION PROCEDURES.—A railroad carrier may
21 change a rule or instruction of the carrier governing the inspection by the
22 carrier of the locomotives and tenders and locomotive and tender parts and
23 appurtenances of the carrier when the Secretary approves a request filed by
24 the carrier to make the change.

25 **§ 20703. Accident reports and investigations**

26 (a) ACCIDENT REPORTS AND SCENE PRESERVATION.—When the failure
27 of a locomotive, tender, or locomotive or tender part or appurtenance results
28 in an accident or incident causing serious personal injury or death, the rail-
29 road carrier owning or operating the locomotive or tender—

30 (1) immediately shall file with the Secretary of Transportation a
31 written statement of the fact of the accident or incident; and

32 (2) when the locomotive is disabled to the extent it cannot be oper-
33 ated under its own power, shall preserve intact all parts affected by the
34 accident or incident, if possible without interfering with traffic, until
35 an investigation of the accident or incident is completed.

36 (b) INVESTIGATIONS.—The Secretary shall—

37 (1) investigate each accident and incident reported under subsection
38 (a) of this section;

39 (2) inspect each part affected by the accident or incident; and

40 (3) make a complete and detailed report on the cause of the accident
41 or incident.

1 (c) PUBLICATION AND USE OF INVESTIGATION REPORTS.—When the
 2 Secretary considers publication to be in the public interest, the Secretary
 3 may publish a report of an investigation made under this section, stating
 4 the cause of the accident or incident and making appropriate recommenda-
 5 tions. No part of a report may be admitted into evidence or used in a civil
 6 action for damages resulting from a matter mentioned in the report.

7 **CHAPTER 209—ACCIDENTS AND INCIDENTS**

Sec.

20901. Reports.

20902. Investigations.

20903. Reports not evidence in civil actions for damages.

8 **§ 20901. Reports**

9 (a) GENERAL REQUIREMENTS.—Not later than 30 days after the end of
 10 each month, a railroad carrier shall file a report with the Secretary of
 11 Transportation on all accidents and incidents resulting in injury or death
 12 to an individual or damage to equipment or a roadbed arising from the car-
 13 rier's operations during the month. The report shall be under oath and shall
 14 state the nature, cause, and circumstances of each reported accident or inci-
 15 dent. If a railroad carrier assigns human error as a cause, the report shall
 16 include, at the option of each employee whose error is alleged, a statement
 17 by the employee explaining any factors the employee alleges contributed to
 18 the accident or incident.

19 (b) MONETARY THRESHOLD FOR REPORTING.—(1) In establishing or
 20 changing a monetary threshold for the reporting of a railroad accident or
 21 incident, the Secretary shall base damage cost calculations only on publicly
 22 available information obtained from—

23 (A) the Bureau of Labor Statistics; or

24 (B) another department, agency, or instrumentality of the United
 25 States Government if the information has been collected through objec-
 26 tive, statistically sound survey methods or has been previously subject
 27 to a public notice and comment process in a proceeding of a Govern-
 28 ment department, agency, or instrumentality.

29 (2) If information is not available as provided in paragraph (1)(A) or (B)
 30 of this subsection, the Secretary may use any other source to obtain the in-
 31 formation. However, use of the information shall be subject to public notice
 32 and an opportunity for written comment.

33 **§ 20902. Investigations**

34 (a) GENERAL AUTHORITY.—The Secretary of Transportation, or an im-
 35 partial investigator authorized by the Secretary, may investigate—

36 (1) an accident or incident resulting in serious injury to an individ-
 37 ual or to railroad property, occurring on the railroad line of a railroad
 38 carrier; and

1 (2) an accident or incident reported under section 20505 of this title.

2 (b) OTHER DUTIES AND POWERS.—In carrying out an investigation, the
3 Secretary or authorized investigator may subpoena witnesses, require the pro-
4 duction of records, exhibits, and other evidence, administer oaths, and take
5 testimony. If the accident or incident is investigated by a commission of the
6 State in which it occurred, the Secretary, if convenient, shall carry out the
7 investigation at the same time as, and in coordination with, the commis-
8 sion’s investigation. The railroad carrier on whose railroad line the accident
9 or incident occurred shall provide reasonable facilities to the Secretary for
10 the investigation.

11 (c) REPORTS.—When in the public interest, the Secretary shall make a
12 report of the investigation, stating the cause of the accident or incident and
13 making recommendations the Secretary considers appropriate. The Sec-
14 retary shall publish the report in a way the Secretary considers appropriate.

15 **§ 20903. Reports not evidence in civil actions for damages**

16 No part of an accident or incident report filed by a railroad carrier under
17 section 20901 of this title or made by the Secretary of Transportation
18 under section 20902 of this title may be used in a civil action for damages
19 resulting from a matter mentioned in the report.

20 **CHAPTER 211—HOURS OF SERVICE**

Sec.

21101. Definitions.

21102. Nonapplication and exemption.

21103. Limitations on duty hours of train employees.

21104. Limitations on duty hours of signal employees.

21105. Limitations on duty hours of dispatching service employees.

21106. Limitations on employee sleeping quarters.

21107. Maximum duty hours and subjects of collective bargaining.

21 **§ 21101. Definitions**

22 In this chapter—

23 (1) “designated terminal” means the home or away-from-home ter-
24 minal for the assignment of a particular crew.

25 (2) “dispatching service employee” means an operator, train dis-
26 patcher, or other train employee who by the use of an electrical or me-
27 chanical device dispatches, reports, transmits, receives, or delivers or-
28 ders related to or affecting train movements.

29 (3) “employee” means a dispatching service employee, a signal em-
30 ployee, or a train employee.

31 (4) “signal employee” means an individual employed by a railroad
32 carrier who is engaged in installing, repairing, or maintaining signal
33 systems.

34 (5) “train employee” means an individual engaged in or connected
35 with the movement of a train, including a hostler.

1 **§ 21102. Nonapplication and exemption**

2 (a) GENERAL.—This chapter does not apply to a situation involving any
3 of the following:

4 (1) a casualty.

5 (2) an unavoidable accident.

6 (3) an act of God.

7 (4) a delay resulting from a cause unknown and unforeseeable to a
8 railroad carrier or its officer or agent in charge of the employee when
9 the employee left a terminal.

10 (b) EXEMPTION.—The Secretary of Transportation may exempt a rail-
11 road carrier having not more than 15 employees covered by this chapter
12 from the limitations imposed by this chapter. The Secretary may allow the
13 exemption after a full hearing, for good cause shown, and on deciding that
14 the exemption is in the public interest and will not affect safety adversely.
15 The exemption shall be for a specific period of time and is subject to review
16 at least annually. The exemption may not authorize a carrier to require or
17 allow its employees to be on duty more than a total of 16 hours in a 24-
18 hour period.

19 **§ 21103. Limitations on duty hours of train employees**

20 (a) GENERAL.—Except as provided in subsection (c) of this section, a
21 railroad carrier and its officers and agents may not require or allow a train
22 employee to remain or go on duty—

23 (1) unless that employee has had at least 8 consecutive hours off
24 duty during the prior 24 hours; or

25 (2) after that employee has been on duty for 12 consecutive hours,
26 until that employee has had at least 10 consecutive hours off duty.

27 (b) DETERMINING TIME ON DUTY.—In determining under subsection (a)
28 of this section the time a train employee is on or off duty, the following
29 rules apply:

30 (1) Time on duty begins when the employee reports for duty and
31 ends when the employee is finally released from duty.

32 (2) Time the employee is engaged in or connected with the movement
33 of a train is time on duty.

34 (3) Time spent performing any other service for the railroad carrier
35 during a 24-hour period in which the employee is engaged in or con-
36 nected with the movement of a train is time on duty.

37 (4) Time spent in deadhead transportation to a duty assignment is
38 time on duty, but time spent in deadhead transportation from a duty
39 assignment to the place of final release is neither time on duty nor time
40 off duty.

1 (5) An interim period available for rest at a place other than a des-
2 ignated terminal is time on duty.

3 (6) An interim period available for less than 4 hours rest at a des-
4 ignated terminal is time on duty.

5 (7) An interim period available for at least 4 hours rest at a place
6 with suitable facilities for food and lodging is not time on duty when
7 the employee is prevented from getting to the employee's designated
8 terminal by any of the following:

9 (A) a casualty.

10 (B) a track obstruction.

11 (C) an act of God.

12 (D) a derailment or major equipment failure resulting from a
13 cause that was unknown and unforeseeable to the railroad carrier
14 or its officer or agent in charge of that employee when that em-
15 ployee left the designated terminal.

16 (c) EMERGENCIES.—A train employee on the crew of a wreck or relief
17 train may be allowed to remain or go on duty for not more than 4 addi-
18 tional hours in any period of 24 consecutive hours when an emergency exists
19 and the work of the crew is related to the emergency. In this subsection,
20 an emergency ends when the track is cleared and the railroad line is open
21 for traffic.

22 **§ 21104. Limitations on duty hours of signal employees**

23 (a) GENERAL.—(1) In paragraph (2)(C) of this subsection, “24-hour pe-
24 riod” means the period beginning when a signal employee reports for duty
25 immediately after 8 consecutive hours off duty or, when required under
26 paragraph (2)(B) of this subsection, after 10 consecutive hours off duty.

27 (2) Except as provided in subsection (c) of this section, a railroad carrier
28 and its officers and agents may not require or allow a signal employee to
29 remain or go on duty—

30 (A) unless that employee has had at least 8 consecutive hours off
31 duty during the prior 24 hours;

32 (B) after that employee has been on duty for 12 consecutive hours,
33 until that employee has had at least 10 consecutive hours off duty; or

34 (C) after that employee has been on duty a total of 12 hours during
35 a 24-hour period, or after the end of that 24-hour period, whichever
36 occurs first, until that employee has had at least 8 consecutive hours
37 off duty.

38 (b) DETERMINING TIME ON DUTY.—In determining under subsection (a)
39 of this section the time a signal employee is on duty or off duty, the follow-
40 ing rules apply:

1 (1) Time on duty begins when the employee reports for duty and
2 ends when the employee is finally released from duty.

3 (2) Time spent performing any other service for the railroad carrier
4 during a 24-hour period in which the employee is engaged in installing,
5 repairing, or maintaining signal systems is time on duty.

6 (3) Time spent returning from a trouble call, whether the employee
7 goes directly to the employee's residence or by way of the employee's
8 headquarters, is neither time on duty nor time off duty, except that
9 up to one hour of that time spent returning from the final trouble call
10 of a period of continuous or broken service is time off duty.

11 (4) If, at the end of scheduled duty hours, an employee has not com-
12 pleted the trip from the final outlying worksite of the duty period to
13 the employee's headquarters or directly to the employee's residence, the
14 time after the scheduled duty hours necessarily spent in completing the
15 trip to the residence or headquarters is neither time on duty nor time
16 off duty.

17 (5) If an employee is released from duty at an outlying worksite be-
18 fore the end of the employee's scheduled duty hours to comply with this
19 section, the time necessary for the trip from the worksite to the em-
20 ployee's headquarters or directly to the employee's residence is neither
21 time on duty nor time off duty.

22 (6) Time spent in transportation on an ontrack vehicle, including
23 time referred to in paragraphs (3)–(5) of this subsection, is time on
24 duty.

25 (7) A regularly scheduled meal period or another release period of
26 at least 30 minutes but not more than one hour is time off duty and
27 does not break the continuity of service of the employee under this sec-
28 tion, but a release period of more than one hour is time off duty and
29 does break the continuity of service.

30 (c) EMERGENCIES.—A signal employee may be allowed to remain or go
31 on duty for not more than 4 additional hours in any period of 24 consecu-
32 tive hours when an emergency exists and the work of that employee is relat-
33 ed to the emergency. In this subsection, an emergency ends when the signal
34 system is restored to service.

35 **§21105. Limitations on duty hours of dispatching service**
36 **employees**

37 (a) APPLICATION.—This section applies, rather than section 21103 or
38 21104 of this title, to a train employee or signal employee during any period
39 of time the employee is performing duties of a dispatching service employee.

1 (b) GENERAL.—Except as provided in subsection (d) of this section, a
 2 dispatching service employee may not be required or allowed to remain or
 3 go on duty for more than—

4 (1) a total of 9 hours during a 24-hour period in a tower, office, sta-
 5 tion, or place at which at least 2 shifts are employed; or

6 (2) a total of 12 hours during a 24-hour period in a tower, office,
 7 station, or place at which only one shift is employed.

8 (c) DETERMINING TIME ON DUTY.—Under subsection (b) of this section,
 9 time spent performing any other service for the railroad carrier during a
 10 24-hour period in which the employee is on duty in a tower, office, station,
 11 or other place is time on duty in that tower, office, station, or place.

12 (d) EMERGENCIES.—When an emergency exists, a dispatching service em-
 13 ployee may be allowed to remain or go on duty for not more than 4 addi-
 14 tional hours during a period of 24 consecutive hours for not more than 3
 15 days during a period of 7 consecutive days.

16 **§ 21106. Limitations on employee sleeping quarters**

17 A railroad carrier and its officers and agents—

18 (1) may provide sleeping quarters (including crew quarters, camp or
 19 bunk cars, and trailers) for employees, and any individuals employed
 20 to maintain the right of way of a railroad carrier, only if the sleeping
 21 quarters are clean, safe, and sanitary and give those employees and in-
 22 dividuals an opportunity for rest free from the interruptions caused by
 23 noise under the control of the carrier; and

24 (2) may not begin, after July 7, 1976, construction or reconstruction
 25 of sleeping quarters referred to in clause (1) of this section in an area
 26 or in the immediate vicinity of an area, as determined under regula-
 27 tions prescribed by the Secretary of Transportation, in which railroad
 28 switching or humping operations are performed.

29 **§ 21107. Maximum duty hours and subjects of collective bar-**
 30 **gaining**

31 The number of hours established by this chapter that an employee may
 32 be required or allowed to be on duty is the maximum number of hours con-
 33 sistent with safety. Shorter hours of service and time on duty of an em-
 34 ployee are proper subjects for collective bargaining between a railroad car-
 35 rier and its employees.

36 **CHAPTER 213—PENALTIES**

SUBCHAPTER I—CIVIL PENALTIES

Sec.

21301. Chapter 201 general violations.

21302. Chapter 201 accident and incident violations and chapter 203–209 violations.

21303. Chapter 211 violations.

21304. Willfulness requirement for penalties against individuals.

SUBCHAPTER II—CRIMINAL PENALTIES

21311. Records and reports.

SUBCHAPTER I—CIVIL PENALTIES

§ 21301. Chapter 201 general violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. The amount of the penalty shall be at least \$500 but not more than \$10,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$20,000.

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than \$500 before referring the matter to the Attorney General for collection. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(b) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) DEPOSIT IN TREASURY.—A civil penalty collected under this section or section 20113(b) of this title shall be deposited in the Treasury as miscellaneous receipts.

§ 21302. Chapter 201 accident and incident violations and chapter 203–209 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation, or violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under chapters 203–209, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

1 (2) The Secretary of Transportation imposes a civil penalty under this
2 subsection. The amount of the penalty shall be at least \$500 but not more
3 than \$10,000. However, when a grossly negligent violation or a pattern of
4 repeated violations has caused an imminent hazard of death or injury to in-
5 dividuals, or has caused death or injury, the amount may be not more than
6 \$20,000.

7 (3) The Secretary may compromise the amount of the civil penalty under
8 section 3711 of title 31. In determining the amount of a compromise, the
9 Secretary shall consider—

10 (A) the nature, circumstances, extent, and gravity of the violation;

11 (B) with respect to the violator, the degree of culpability, any history
12 of violations, the ability to pay, and any effect on the ability to con-
13 tinue to do business; and

14 (C) other matters that justice requires.

15 (4) If the Secretary does not compromise the amount of the civil penalty,
16 the Secretary shall refer the matter to the Attorney General for collection.

17 (b) CIVIL ACTIONS TO COLLECT.—The Attorney General shall bring a
18 civil action in a district court of the United States to collect a civil penalty
19 that is referred to the Attorney General for collection under subsection (a)
20 of this section. The action may be brought in the judicial district in which
21 the violation occurred or the defendant has its principal executive office. If
22 the action is against an individual, the action also may be brought in the
23 judicial district in which the individual resides.

24 **§ 21303. Chapter 211 violations**

25 (a) PENALTY.—(1) Subject to section 21304 of this title, a person violat-
26 ing chapter 211 of this title is liable to the United States Government for
27 a civil penalty. An act by an individual that causes a railroad carrier to be
28 in violation is a violation. For a violation of section 21106 of this title, a
29 separate violation occurs for each day a facility is not in compliance.

30 (2) The Secretary of Transportation imposes a civil penalty under this
31 subsection. The amount of the penalty shall be at least \$500 but not more
32 than \$10,000. However, when a grossly negligent violation or a pattern of
33 repeated violations has caused an imminent hazard of death or injury to in-
34 dividuals, or has caused death or injury, the amount may be not more than
35 \$20,000.

36 (3) The Secretary may compromise the amount of the civil penalty under
37 section 3711 of title 31. In determining the amount of a compromise, the
38 Secretary shall consider—

39 (A) the nature, circumstances, extent, and gravity of the violation;

1 (B) with respect to the violator, the degree of culpability, any history
2 of violations, the ability to pay, and any effect on the ability to con-
3 tinue to do business; and

4 (C) other matters that justice requires.

5 (4) If the Secretary does not compromise the amount of the civil penalty,
6 the Secretary shall refer the matter to the Attorney General for collection.

7 (b) CIVIL ACTIONS TO COLLECT.—(1) The Attorney General shall bring
8 a civil action in a district court of the United States to collect a civil penalty
9 that is referred to the Attorney General for collection under subsection (a)
10 of this section after satisfactory information is presented to the Attorney
11 General. The action may be brought in the judicial district in which the vio-
12 lation occurred or the defendant has its principal executive office. If the ac-
13 tion is against an individual, the action also may be brought in the judicial
14 district in which the individual resides.

15 (2) A civil action under this subsection must be brought not later than
16 2 years after the date of the violation unless administrative notification
17 under section 3711 of title 31 is given within that 2-year period to the per-
18 son committing the violation. However, even if notification is given, the ac-
19 tion must be brought within the period specified in section 2462 of title 28.

20 (c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section,
21 a railroad carrier is deemed to know the acts of its officers and agents.

22 **§ 21304. Willfulness requirement for penalties against indi-**
23 **viduals**

24 A civil penalty under this subchapter may be imposed against an individ-
25 ual only for a willful violation. An individual is deemed not to have commit-
26 ted a willful violation if the individual was following the direct order of a
27 railroad carrier official or supervisor under protest communicated to the of-
28 ficial or supervisor. The individual is entitled to document the protest.

29 SUBCHAPTER II—CRIMINAL PENALTIES

30 **§ 21311. Records and reports**

31 (a) RECORDS AND REPORTS UNDER CHAPTER 201.—A person shall be
32 fined under title 18, imprisoned for not more than 2 years, or both, if the
33 person knowingly and willfully—

34 (1) makes a false entry in a record or report required to be made
35 or preserved under chapter 201 of this title;

36 (2) destroys, mutilates, changes, or by another means falsifies such
37 a record or report;

38 (3) does not enter required specified facts and transactions in such
39 a record or report;

40 (4) makes or preserves such a record or report in violation of a regu-
41 lation prescribed or order issued under chapter 201 of this title; or

1 (5) files a false record or report with the Secretary of Transpor-
2 tation.

3 (b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing the
4 report required by section 20901 of this title shall be fined not more than
5 \$500 for each violation and not more than \$500 for each day during which
6 the report is overdue.

7 PART B—ASSISTANCE

8 CHAPTER 221—LOCAL RAIL FREIGHT ASSISTANCE

Sec.

22101. Financial assistance for State projects.

22102. Eligibility.

22103. Applications.

22104. State rail plan financing.

22105. Sharing project costs.

22106. Limitations on financial assistance.

22107. Records, audits, and information.

22108. Authorization of appropriations.

9 § 22101. Financial assistance for State projects

10 (a) GENERAL.—The Secretary of Transportation shall provide financial
11 assistance to a State, as provided under this chapter, for a rail freight as-
12 sistance project of the State when a rail carrier subject to subchapter I of
13 chapter 105 of this title maintains a rail line in the State. The assistance
14 is for the cost of—

15 (1) acquiring, in any way the State considers appropriate, an interest
16 in a rail line or rail property to maintain existing, or to provide future,
17 rail freight transportation, but only if the Interstate Commerce Com-
18 mission has authorized, or exempted from the requirements of that au-
19 thorization, the abandonment of, or the discontinuance of rail transpor-
20 tation on, the rail line related to the project;

21 (2) improving and rehabilitating rail property on a rail line to the
22 extent necessary to allow adequate and efficient rail freight transpor-
23 tation on the line, but only if the rail carrier certifies that the rail line
24 related to the project carried not more than 5,000,000 gross ton-miles
25 of freight a mile in the prior year; and

26 (3) building rail or rail-related facilities (including new connections
27 between at least 2 existing rail lines, intermodal freight terminals, sid-
28 ings, bridges, and relocation of existing lines) to improve the quality
29 and efficiency of the rail freight transportation, but only if the rail car-
30 rier certifies that the rail line related to the project carried not more
31 than 5,000,000 gross ton-miles of freight a mile in the prior year.

32 (b) CALCULATING COST-BENEFIT RATIO.—The Secretary shall establish
33 a methodology for calculating the ratio of benefits to costs of projects pro-
34 posed under this chapter. In establishing the methodology, the Secretary
35 shall consider the need for equitable treatment of different regions of the

1 United States and different commodities transported by rail. The establish-
2 ment of the methodology is committed to the discretion of the Secretary.

3 (c) CONDITIONS.—(1) Assistance for a project shall be provided under
4 this chapter only if—

5 (A) a rail carrier certifies that the rail line related to the project car-
6 ried more than 20 carloads a mile during the most recent year during
7 which transportation was provided by the carrier on the line; and

8 (B) the ratio of benefits to costs for the project, as calculated using
9 the methodology established under subsection (b) of this section, is
10 more than 1.0.

11 (2) If the rail carrier that provided the transportation on the rail line is
12 no longer in existence, the applicant for the project shall provide the infor-
13 mation required by the certification under paragraph (1)(A) of this sub-
14 section in the way the Secretary prescribes.

15 (3) The Secretary may waive the requirement of paragraph (1)(A) or (2)
16 of this subsection if the Secretary—

17 (A) decides that the rail line has contractual guarantees of at least
18 40 carloads a mile for each of the first 2 years of operation of the pro-
19 posed project; and

20 (B) finds that there is a reasonable expectation that the contractual
21 guarantees will be fulfilled.

22 (d) LIMITATIONS ON AMOUNTS.—A State may not receive more than 15
23 percent of the amounts provided in a fiscal year under this chapter. Not
24 more than 20 percent of the amounts available under this chapter may be
25 provided in a fiscal year for any one project.

26 **§ 22102. Eligibility**

27 A State is eligible to receive financial assistance under this chapter only
28 when the State complies with regulations the Secretary of Transportation
29 prescribes under this chapter and the Secretary decides that—

30 (1) the State has an adequate plan for rail transportation in the
31 State and a suitable process for updating, revising, and modifying the
32 plan;

33 (2) the State plan is administered or coordinated by a designated
34 State authority and provides for a fair distribution of resources;

35 (3) the State authority—

36 (A) is authorized to develop, promote, supervise, and support
37 safe, adequate, and efficient rail transportation;

38 (B) employs or will employ sufficient qualified and trained per-
39 sonnel;

1 (C) maintains or will maintain adequate programs of investiga-
2 tion, research, promotion, and development with opportunity for
3 public participation; and

4 (D) is designated and directed to take all practicable steps (by
5 itself or with other State authorities) to improve rail transpor-
6 tation safety and reduce energy use and pollution related to trans-
7 portation; and

8 (4) the State has ensured that it maintains or will maintain adequate
9 procedures for financial control, accounting, and performance evalua-
10 tion for the proper use of assistance provided by the United States
11 Government.

12 **§ 22103. Applications**

13 (a) **FILING.**—A State must file an application with the Secretary of
14 Transportation for financial assistance for a project described under section
15 22101(a) of this title not later than January 1 of the fiscal year for which
16 amounts have been appropriated. However, for a fiscal year for which the
17 authorization of appropriations for assistance under this chapter has not
18 been enacted by the first day of the fiscal year, the State must file the ap-
19 plication not later than 90 days after the date of enactment of a law author-
20 izing the appropriations for that fiscal year. The Secretary shall prescribe
21 the form of the application.

22 (b) **CONSIDERATIONS.**—In considering an application under this sub-
23 section, the Secretary shall consider the following:

24 (1) the percentage of rail lines that rail carriers have identified to
25 the Interstate Commerce Commission for abandonment or potential
26 abandonment in the State.

27 (2) the likelihood of future abandonments in the State.

28 (3) the ratio of benefits to costs for a proposed project calculated
29 using the methodology established under section 22101(b) of this title.

30 (4) the likelihood that the rail line will continue operating with as-
31 sistance.

32 (5) the impact of rail bankruptcies, rail restructuring, and rail merg-
33 ers on the State.

34 **§ 22104. State rail plan financing**

35 (a) **ENTITLEMENT AND USES.**—On the first day of each fiscal year, each
36 State is entitled to \$36,000 of the amounts made available under section
37 22108 of this title during that fiscal year to be used—

38 (1) to establish, update, revise, and modify the State plan required
39 by section 22102 of this title; or

1 (2) to carry out projects described in section 22101(a)(1), (2), or (3)
2 of this title, as designated by the State, if those projects meet the re-
3 quirements of section 22101(c)(1)(B) of this title.

4 (b) APPLICATIONS.—Each State must apply for amounts under this sec-
5 tion not later than the first day of the fiscal year for which the amounts
6 are available. However, for any fiscal year for which the authorization of
7 appropriations for financial assistance under this chapter has not been en-
8 acted by the first day of the fiscal year, the State must apply for amounts
9 under this section not later than 60 days after the date of enactment of
10 a law authorizing the appropriations for that fiscal year. Not later than 60
11 days after receiving an application, the Secretary of Transportation shall
12 consider the application and notify the State of the approval or disapproval
13 of the application.

14 (c) AVAILABILITY OF AMOUNTS.—Amounts provided under this section
15 remain available to a State for obligation for the first 3 months after the
16 end of the fiscal year for which the amounts were made available. Amounts
17 not applied for under this section or that remain unobligated after the first
18 3 months after the end of the fiscal year for which the amounts were made
19 available are available to the Secretary for projects meeting the require-
20 ments of this chapter.

21 **§ 22105. Sharing project costs**

22 (a) GENERAL.—(1) The United States Government's share of the costs
23 of financial assistance for a project under this chapter is 50 percent, except
24 that for assistance provided under section 22101(a)(2) of this title, the Gov-
25 ernment's share is 70 percent. The State may pay its share of the costs
26 in cash or through the following benefits, to the extent that the benefits oth-
27 erwise would not be provided:

28 (A) forgiveness of taxes imposed on a rail carrier or its property.

29 (B) real and tangible personal property (provided by the State or a
30 person for the State) necessary for the safe and efficient operation of
31 rail freight transportation.

32 (C) track rights secured by the State for a rail carrier.

33 (D) the cash equivalent of State salaries for State employees working
34 on the State project, except overhead and general administrative costs.

35 (2) A State may pay more than its required percentage share of the costs
36 of a project under this chapter. When a State, or a person acting for a
37 State, pays more than the State share of the costs of its projects during
38 a fiscal year, the excess amount shall be applied to the State share for the
39 costs of the State projects for later fiscal years.

1 (b) AGREEMENTS TO COMBINE AMOUNTS.—States may agree to combine
2 any part of the amounts made available under this chapter to carry out a
3 project that is eligible for assistance under this chapter when—

- 4 (1) the project will benefit each State making the agreement; and
5 (2) the agreement is not a violation of State law.

6 **§ 22106. Limitations on financial assistance**

7 (a) GRANTS AND LOANS.—A State shall use financial assistance for
8 projects under this chapter to make a grant or lend money to the owner
9 of rail property, or a rail carrier providing rail transportation, related to a
10 project being assisted. The State shall decide on the financial terms of the
11 grant or loan, except that the time for making grant advances shall comply
12 with regulations of the Secretary of the Treasury.

13 (b) HOLDING AND USE OF GOVERNMENT'S SHARE.—The State shall
14 place the United States Government's share of money that is repaid in an
15 interest-bearing account. However, the Secretary of Transportation may
16 allow a borrower to place that money, for the benefit of the State, in a bank
17 designated by the Secretary of the Treasury under section 10 of the Act
18 of June 11, 1942 (12 U.S.C. 265). The State shall use the money and accu-
19 mulated interest to make other grants and loans under this chapter.

20 (c) PAYMENT OF UNUSED MONEY AND ACCUMULATED INTEREST.—The
21 State may pay the Secretary of Transportation the Government's share of
22 unused money and accumulated interest at any time. However, the State
23 must pay the unused money and accumulated interest to the Secretary when
24 the State ends its participation under this chapter.

25 (d) ENCOURAGING PARTICIPATION.—To the maximum extent possible,
26 the State shall encourage the participation of shippers, rail carriers, and
27 local communities in paying the State share of assistance costs.

28 (e) RETENTION OF CONTINGENT INTEREST.—Each State shall retain a
29 contingent interest (redeemable preference shares) for the Government's
30 share of amounts in a rail line receiving assistance under this chapter. The
31 State may collect its share of the amounts used for the rail line if—

- 32 (1) an application for abandonment of the rail line is filed under
33 chapter 109 of this title; or
34 (2) the rail line is sold or disposed of after it has received assistance
35 under this chapter.

36 **§ 22107. Records, audits, and information**

37 (a) RECORDS.—Each recipient of financial assistance through an arrange-
38 ment under this chapter shall keep records required by the Secretary of
39 Transportation. The records shall be kept for 3 years after a project is com-
40 pleted and shall disclose—

- 41 (1) the amount of, and disposition by the recipient, of the assistance;

1 (2) the total costs of the project for which the assistance was given
2 or used;

3 (3) the amount of that part of the costs of the project paid by other
4 sources; and

5 (4) any other records that will make an effective audit easier.

6 (b) AUDITS.—The Secretary and the Comptroller General shall make reg-
7 ular financial and performance audits, as provided under chapter 75 of title
8 31, of activities and transactions assisted under this chapter.

9 (c) INFORMATION.—The Interstate Commerce Commission shall provide
10 the Secretary with information the Secretary requests to assist in carrying
11 out this chapter. The Commission shall provide the information not later
12 than 30 days after receiving a request from the Secretary.

13 (d) LIST OF RAIL LINES.—Not later than August 1 of each year, each
14 rail carrier subject to subchapter I of chapter 105 of this title shall submit
15 to the Secretary a list of the rail lines of the carrier that carried not more
16 than 5,000,000 gross ton-miles of freight a mile in the prior year.

17 **§ 22108. Authorization of appropriations**

18 (a) GENERAL.—(1) Not more than the following amounts may be appro-
19 priated to the Secretary of Transportation to carry out this chapter:

20 (A) \$25,000,000 for the fiscal year ending September 30, 1993.

21 (B) \$30,000,000 for the fiscal year ending September 30, 1994.

22 (2) Amounts appropriated under paragraph (1) of this subsection remain
23 available until expended.

24 (3) No amount may be appropriated to the Secretary for any period after
25 September 30, 1994, to carry out this chapter.

26 (b) DISTRIBUTION OF AMOUNTS.—The Secretary shall establish proce-
27 dures necessary to ensure that amounts available to the Secretary for
28 projects under this chapter are distributed not later than April 1 of the fis-
29 cal year for which the amounts are appropriated. If any amounts are not
30 distributed by April 1, the Secretary shall report to the Committee on En-
31 ergy and Commerce of the House of Representatives and the Committee on
32 Commerce, Science, and Transportation of the Senate on the status of those
33 amounts and the reasons for the delay in distribution.

34 (c) AVAILABILITY OF OTHER AMOUNTS.—Amounts appropriated to carry
35 out section 5(i) of the Department of Transportation Act for fiscal year
36 1990 that are not applied for or that remain unobligated on January 1,
37 1991, are available to the Secretary for projects under this chapter.

38 **PART C—PASSENGER TRANSPORTATION**

39 **CHAPTER 241—GENERAL**

Sec.

24101. Findings, purpose, and goals.

24102. Definitions.

24103. Enforcement.

24104. Authorization of appropriations.

1 **§ 24101. Findings, purpose, and goals**

2 (a) FINDINGS.—(1) Public convenience and necessity require that Am-
3 trak, to the extent its budget allows, provide modern, cost-efficient, and en-
4 ergy-efficient intercity rail passenger transportation between crowded urban
5 areas and in other areas of the United States.

6 (2) Rail passenger transportation can help alleviate overcrowding of air-
7 ways and airports and on highways.

8 (3) A traveler in the United States should have the greatest possible
9 choice of transportation most convenient to the needs of the traveler.

10 (4) A greater degree of cooperation is necessary among Amtrak, other rail
11 carriers, State, regional, and local governments, the private sector, labor or-
12 ganizations, and suppliers of services and equipment to Amtrak to achieve
13 a performance level sufficient to justify expending public money.

14 (5) Modern and efficient commuter rail passenger transportation is im-
15 portant to the viability and well-being of major urban areas and to the en-
16 ergy conservation and self-sufficiency goals of the United States.

17 (6) As a rail passenger transportation entity, Amtrak should be available
18 to operate commuter rail passenger transportation through its subsidiary,
19 Amtrak Commuter, under contract with commuter authorities that do not
20 provide the transportation themselves as part of the governmental function
21 of the State.

22 (7) The Northeast Corridor is a valuable resource of the United States
23 used by intercity and commuter rail passenger transportation and freight
24 transportation.

25 (8) Greater coordination between intercity and commuter rail passenger
26 transportation is required.

27 (b) PURPOSE.—By using innovative operating and marketing concepts,
28 Amtrak shall provide intercity and commuter rail passenger transportation
29 that completely develops the potential of modern rail transportation to meet
30 the intercity and commuter passenger transportation needs of the United
31 States.

32 (c) GOALS.—Amtrak shall—

33 (1) use its best business judgment in acting to minimize United
34 States Government subsidies, including—

35 (A) increasing fares;

36 (B) increasing revenue from the transportation of mail and ex-
37 press;

38 (C) reducing losses on food service;

39 (D) improving its contracts with operating rail carriers;

40 (E) reducing management costs; and

- 1 (F) increasing employee productivity;
- 2 (2) minimize Government subsidies by encouraging State, regional,
3 and local governments and the private sector to share the cost of pro-
4 viding rail passenger transportation, including the cost of operating fa-
5 cilities;
- 6 (3) carry out strategies to achieve immediately maximum productiv-
7 ity and efficiency consistent with safe and efficient transportation;
- 8 (4) operate Amtrak trains, to the maximum extent feasible, to all
9 station stops within 15 minutes of the time established in public time-
10 tables;
- 11 (5) develop transportation on rail corridors subsidized by States and
12 private parties;
- 13 (6) implement schedules based on a systemwide average speed of at
14 least 60 miles an hour that can be achieved with a degree of reliability
15 and passenger comfort;
- 16 (7) encourage rail carriers to assist in improving intercity rail pas-
17 senger transportation;
- 18 (8) improve generally the performance of Amtrak through com-
19 prehensive and systematic operational programs and employee incen-
20 tives;
- 21 (9) carry out policies that ensure equitable access to the Northeast
22 Corridor by intercity and commuter rail passenger transportation;
- 23 (10) coordinate the uses of the Northeast Corridor, particularly
24 intercity and commuter rail passenger transportation; and
- 25 (11) maximize the use of its resources, including the most cost-effec-
26 tive use of employees, facilities, and real property.

27 (d) MINIMIZING GOVERNMENT SUBSIDIES.—To carry out subsection
28 (c)(11) of this section, Amtrak is encouraged to make agreements with the
29 private sector and undertake initiatives that are consistent with good busi-
30 ness judgment and designed to maximize its revenues and minimize Govern-
31 ment subsidies.

32 **§ 24102. Definitions**

33 In this part—

- 34 (1) “auto-ferry transportation” means intercity rail passenger trans-
35 portation—
- 36 (A) of automobiles or recreational vehicles and their occupants;
37 and
- 38 (B) when space is available, of used unoccupied vehicles.
- 39 (2) “avoidable loss” means the avoidable costs of providing rail pas-
40 senger transportation, less revenue attributable to the transportation,

1 as determined by the Interstate Commerce Commission under section
2 553 of title 5.

3 (3) “basic system” means the system of intercity rail passenger
4 transportation designated by the Secretary of Transportation under
5 section 4 of the Amtrak Improvement Act of 1978 and approved by
6 Congress, and transportation required to be provided under section
7 24705(a) of this title and section 4(g) of the Act, including changes
8 in the system or transportation that Amtrak makes using the route and
9 service criteria.

10 (4) “commuter authority” means a State, local, or regional entity es-
11 tablished to provide, or make a contract providing for, commuter rail
12 passenger transportation.

13 (5) “commuter rail passenger transportation” means short-haul rail
14 passenger transportation in metropolitan and suburban areas usually
15 having reduced fare, multiple-ride, and commuter tickets and morning
16 and evening peak period operations.

17 (6) “intercity rail passenger transportation” means rail passenger
18 transportation, except commuter rail passenger transportation.

19 (7) “Northeast Corridor” means Connecticut, Delaware, the District
20 of Columbia, Maryland, Massachusetts, New Jersey, New York, Penn-
21 sylvania, and Rhode Island.

22 (8) “rail carrier” means a person providing rail transportation for
23 compensation.

24 (9) “rate” means a rate, fare, or charge for rail transportation.

25 (10) “regional transportation authority” means an entity established
26 to provide passenger transportation in a region.

27 (11) “route and service criteria” means the criteria and procedures
28 for making route and service decisions established under section
29 404(c)(1)-(3)(A) of the Rail Passenger Service Act.

30 **§ 24103. Enforcement**

31 (a) GENERAL.—(1) Except as provided in paragraph (2) of this sub-
32 section, only the Attorney General may bring a civil action for equitable re-
33 lief in a district court of the United States when Amtrak or a rail carrier—

34 (A) engages in or adheres to an action, practice, or policy inconsis-
35 tent with this part;

36 (B) obstructs or interferes with an activity authorized under this
37 part;

38 (C) refuses, fails, or neglects to discharge its duties and responsibil-
39 ities under this part; or

40 (D) threatens—

1 (i) to engage in or adhere to an action, practice, or policy incon-
2 sistent with this part;

3 (ii) to obstruct or interfere with an activity authorized by this
4 part; or

5 (iii) to refuse, fail, or neglect to discharge its duties and respon-
6 sibilities under this part.

7 (2) An employee affected by any conduct or threat referred to in para-
8 graph (1) of this subsection, or an authorized employee representative, may
9 bring the civil action if the conduct or threat involves a labor agreement.

10 (b) REVIEW OF DISCONTINUANCE OR REDUCTION.—A discontinuance of
11 a route, a train, or transportation, or a reduction in the frequency of trans-
12 portation, by Amtrak is reviewable only in a civil action for equitable relief
13 brought by the Attorney General.

14 (c) VENUE.—Except as otherwise prohibited by law, a civil action under
15 this section may be brought in the judicial district in which Amtrak or the
16 rail carrier resides or is found.

17 **§ 24104. Authorization of appropriations**

18 (a) CAPITAL ACQUISITION AND CORRIDOR DEVELOPMENT.—(1) Not
19 more than \$250,000,000 may be appropriated to the Secretary of Transpor-
20 tation for each of the fiscal years ending September 30, 1993, and Septem-
21 ber 30, 1994, for the benefit of Amtrak to make capital expenditures under
22 chapters 243–247 of this title.

23 (2) In addition to amounts that may be appropriated under section 24909
24 of this title, not more than the following amounts may be appropriated to
25 the Secretary for the benefit of Amtrak to make capital expenditures under
26 chapter 249 of this title:

27 (A) \$220,000,000 for the fiscal year ending September 30, 1993.

28 (B) \$250,000,000 for the fiscal year ending September 30, 1994.

29 (3)(A) Not more than 15 percent of each of the amounts appropriated
30 under paragraphs (1) and (2) of this subsection is available for transpor-
31 tation described in subparagraphs (B) and (C) of this paragraph.

32 (B) Amounts made available under subparagraph (A) of this paragraph
33 shall be used to develop new intercity rail passenger transportation on cor-
34 ridors between cities undergoing significant population growth and in which
35 the transportation reasonably can be expected to provide travel times com-
36 parable with other surface transportation modes. An amount may be ex-
37 pended for the transportation only if a State requests the transportation
38 and the State and Amtrak agree that—

39 (i) Amtrak will pay at least 90 percent of the cost of acquiring roll-
40 ing stock for the transportation; and

1 (ii) the State will pay at least 90 percent of the cost of improving
2 the right of way, including track structure, signal systems, passenger
3 station facilities, highway and pedestrian grade crossings, and other
4 safety equipment and facilities.

5 (C) Amounts made available under subparagraph (A) of this paragraph
6 shall be used to begin new long distance intercity rail passenger transpor-
7 tation. An amount may be expended for the transportation only if a State
8 requests the transportation and the State and Amtrak agree that—

9 (i) Amtrak will pay at least 75 percent of the cost of acquiring roll-
10 ing stock for the transportation; and

11 (ii) the State will pay at least 90 percent of the cost of improving
12 the right of way, including track structure, signal systems, passenger
13 station facilities, highway and pedestrian grade crossings, and other
14 safety equipment and facilities.

15 (D) Section 24704 of this title applies to the operating expenses of trans-
16 portation described in subparagraphs (B) and (C) of this paragraph.

17 (b) OPERATING EXPENSES.—(1) Not more than \$381,000,000 may be
18 appropriated to the Secretary for each of the fiscal years ending September
19 30, 1993, and September 30, 1994, for the benefit of Amtrak for operating
20 expenses. Not more than 5 percent of the amounts appropriated for each
21 fiscal year shall be used to pay operating expenses under section 24704 of
22 this title for transportation in operation on September 30, 1992.

23 (2)(A) Not more than the following amounts may be appropriated to the
24 Secretary for the benefit of Amtrak for operating losses under section
25 24704 of this title for transportation beginning after September 30, 1992:

26 (i) \$7,500,000 for the fiscal year ending September 30, 1993.

27 (ii) \$9,500,000 for the fiscal year ending September 30, 1994.

28 (B) The expenditure by Amtrak of an amount appropriated under sub-
29 paragraph (A) of this paragraph is deemed not to be an operating expense
30 when calculating the revenue-to-operating expense ratio of Amtrak.

31 (c) MANDATORY PAYMENTS.—(1) Not more than \$150,000,000 for the
32 fiscal year ending September 30, 1993, and amounts that may be necessary
33 for the fiscal year ending September 30, 1994, may be appropriated to the
34 Secretary to pay—

35 (A) tax liabilities under section 3221 of the Internal Revenue Code
36 of 1986 (26 U.S.C. 3221) due in those fiscal years that are more than
37 the amount needed for benefits for individuals who retire from Amtrak
38 and for their beneficiaries;

39 (B) obligations of Amtrak under section 8(a) of the Railroad Unem-
40 ployment Insurance Act (45 U.S.C. 358(a)) due in those fiscal years

1 that are more than obligations of Amtrak calculated on an experience-
2 related basis; and

3 (C) obligations of Amtrak due under section 3321 of the Code (26
4 U.S.C. 3321).

5 (2) Amounts appropriated under this subsection are not a United States
6 Government subsidy of Amtrak.

7 (d) PAYMENT TO AMTRAK.—Amounts appropriated under this section
8 shall be paid to Amtrak under the budget request of the Secretary as ap-
9 proved or modified by Congress when the amounts are appropriated. A pay-
10 ment may not be made more frequently than once every 90 days, unless
11 Amtrak, for good cause, requests more frequent payment before a 90-day
12 period ends. In each fiscal year in which amounts are authorized to be ap-
13 propriated under this section, amounts appropriated shall be paid to Amtrak
14 as follows:

15 (1) 50 percent on October 1.

16 (2) 25 percent on January 1.

17 (3) 25 percent on April 1.

18 (e) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—(1)
19 Amounts appropriated under this section remain available until expended.

20 (2) Amounts for capital acquisitions and improvements may be appro-
21 priated in a fiscal year before the fiscal year in which the amounts will be
22 obligated.

23 (f) LIMITATIONS ON USE.—Amounts appropriated under this section may
24 not be used to subsidize operating losses of commuter rail passenger or rail
25 freight transportation.

26 CHAPTER 243—AMTRAK

Sec.

24301. Status and applicable laws.

24302. Board of directors.

24303. Officers.

24304. Capitalization.

24305. General authority.

24306. Mail, express, and auto-ferry transportation.

24307. Special transportation.

24308. Use of facilities and providing services to Amtrak.

24309. Retaining and maintaining facilities.

24310. Assistance for upgrading facilities.

24311. Acquiring interests in property by eminent domain.

24312. Labor standards.

24313. Rail safety system program.

24314. Demonstration of new technology.

24315. Reports and audits.

27 § 24301. Status and applicable laws

28 (a) STATUS.—Amtrak—

29 (1) is a rail carrier under section 10102 of this title;

30 (2) shall be operated and managed as a for-profit corporation; and

1 (3) is not a department, agency, or instrumentality of the United
2 States Government.

3 (b) PRINCIPAL OFFICE AND PLACE OF BUSINESS.—The principal office
4 and place of business of Amtrak are in the District of Columbia. Amtrak
5 is qualified to do business in each State in which Amtrak carries out an
6 activity authorized under this part. Amtrak shall accept service of process
7 by certified mail addressed to the secretary of Amtrak at its principal office
8 and place of business. Amtrak is a citizen only of the District of Columbia
9 when deciding original jurisdiction of the district courts of the United States
10 in a civil action.

11 (c) APPLICATION OF SUBTITLE IV.—(1) Subtitle IV of this title applies
12 to Amtrak, except for provisions related to the—

13 (A) regulation of rates;

14 (B) abandonment or extension of rail lines used only for passenger
15 transportation and the abandonment or extension of operations over
16 those lines;

17 (C) regulation of routes and service;

18 (D) discontinuance or change of rail passenger transportation oper-
19 ations; and

20 (E) issuance of securities or the assumption of an obligation or li-
21 ability related to the securities of others.

22 (2) Notwithstanding this subsection—

23 (A) sections 10721–10724 of this title apply to Amtrak; and

24 (B) on application of an adversely affected motor carrier, the Inter-
25 state Commerce Commission under any provision of subtitle IV of this
26 title applicable to a carrier subject to subchapter I of chapter 105 of
27 this title may hear a complaint about an unfair or predatory rate or
28 marketing practice of Amtrak for a route or service operating at a loss.

29 (d) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND
30 REGULATIONS.—Laws and regulations governing safety, employee represen-
31 tation for collective bargaining purposes, the handling of disputes between
32 carriers and employees, employee retirement, annuity, and unemployment
33 systems, and other dealings with employees that apply to a common carrier
34 subject to subchapter I of chapter 105 of this title apply to Amtrak.

35 (e) APPLICATION OF CERTAIN ADDITIONAL LAWS.—Section 552 of title
36 5, this part, and, to the extent consistent with this part, the District of Co-
37 lumbia Business Corporation Act (D.C. Code § 29–301 et seq.) apply to
38 Amtrak.

39 (f) LAWS GOVERNING LEASES AND CONTRACTS.—The laws of the Dis-
40 trict of Columbia govern leases and contracts of Amtrak, regardless of
41 where they are executed.

1 (g) NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State
2 or other law related to rates, routes, or service does not apply to Amtrak
3 in connection with rail passenger transportation.

4 (h) NONAPPLICATION OF PAY PERIOD LAWS.—A State or local law relat-
5 ed to pay periods or days for payment of employees does not apply to Am-
6 trak. Except when otherwise provided under a collective bargaining agree-
7 ment, an employee of Amtrak shall be paid at least as frequently as the
8 employee was paid on October 1, 1979.

9 (i) PREEMPTION RELATED TO EMPLOYEE WORK REQUIREMENTS.—A
10 State may not adopt or continue in force a law, rule, regulation, order, or
11 standard requiring Amtrak to employ a specified number of individuals to
12 perform a particular task, function, or operation.

13 (j) NONAPPLICATION OF LAWS ON JOINT USE OR OPERATION OF FACILI-
14 TIES AND EQUIPMENT.—Prohibitions of law applicable to an agreement for
15 the joint use or operation of facilities and equipment necessary to provide
16 quick and efficient rail passenger transportation do not apply to a person
17 making an agreement with Amtrak to the extent necessary to allow the per-
18 son to make and carry out obligations under the agreement.

19 (k) EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection—

20 (A) “additional tax” means a tax or fee—

21 (i) on the acquisition, improvement, ownership, or operation of
22 personal property by Amtrak; and

23 (ii) on real property, except a tax or fee on the acquisition of
24 real property or on the value of real property not attributable to
25 improvements made, or the operation of those improvements, by
26 Amtrak.

27 (B) “Amtrak” includes a rail carrier subsidiary of Amtrak and a les-
28 sor or lessee of Amtrak or one of its rail carrier subsidiaries.

29 (2) Amtrak is not required to pay an additional tax because of an expend-
30 iture to acquire or improve real property, equipment, a facility, or right-of-
31 way material or structures used in providing rail passenger transportation,
32 even if that use is indirect.

33 (l) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—

34 (1) Amtrak or a rail carrier subsidiary of Amtrak is exempt from a tax or
35 fee imposed by a State, a political subdivision of a State, or a local taxing
36 authority and levied on it after September 30, 1981. However, Amtrak is
37 not exempt under this subsection from a tax or fee that it was required to
38 pay as of September 10, 1982.

39 (2) The district courts of the United States have original jurisdiction over
40 a civil action Amtrak brings to enforce this subsection and may grant equi-
41 table or declaratory relief requested by Amtrak.

1 (m) WASTE DISPOSAL.—(1) An intercity rail passenger car manufactured
2 after October 14, 1990, shall be built to provide for the discharge of human
3 waste only at a servicing facility. Amtrak shall retrofit each of its intercity
4 rail passenger cars that was manufactured after May 1, 1971, and before
5 October 15, 1990, with a human waste disposal system that provides for
6 the discharge of human waste only at a servicing facility. Subject to appro-
7 priations—

8 (A) the retrofit program shall be completed not later than October
9 15, 1996; and

10 (B) a car that does not provide for the discharge of human waste
11 only at a servicing facility shall be removed from service after that
12 date.

13 (2) Section 361 of the Public Health Service Act (42 U.S.C. 264) and
14 other laws of the United States, States, and local governments do not apply
15 to waste disposal from rail carrier vehicles operated in intercity rail pas-
16 senger transportation. The district courts of the United States have original
17 jurisdiction over a civil action Amtrak brings to enforce this paragraph and
18 may grant equitable or declaratory relief requested by Amtrak.

19 (n) RAIL TRANSPORTATION TREATED EQUALLY.—When authorizing
20 transportation in the continental United States for an officer, employee, or
21 member of the uniformed services of a department, agency, or instrumentality
22 of the Government, the head of that department, agency, or instrumen-
23 tality shall consider rail transportation (including transportation by extra-
24 fare trains) the same as transportation by another authorized mode. The
25 Administrator of General Services shall include Amtrak in the contract air
26 program of the Administrator in markets in which transportation provided
27 by Amtrak is competitive with other carriers on fares and total trip times.

28 **§ 24302. Board of directors**

29 (a) COMPOSITION AND TERMS.—(1) The board of directors of Amtrak is
30 composed of the following 9 directors, each of whom must be a citizen of
31 the United States:

32 (A) the Secretary of Transportation.

33 (B) the President of Amtrak.

34 (C) 3 individuals appointed by the President of the United States,
35 by and with the advice and consent of the Senate, as follows:

36 (i) one individual selected from a list of 3 qualified individuals
37 submitted by the Railway Labor Executives Association.

38 (ii) one chief executive officer of a State selected from among
39 the chief executive officers of States with an interest in rail trans-
40 portation. The chief executive officer may select an individual to
41 act as the officer's representative at board meetings.

1 (iii) one individual selected as a representative of business with
2 an interest in rail transportation.

3 (D) 2 individuals selected by the President of the United States from
4 a list of names consisting of one individual nominated by each com-
5 muter authority for which Amtrak Commuter provides commuter rail
6 passenger transportation under section 24505 of this title and one indi-
7 vidual nominated by each commuter authority in the region (as defined
8 in section 102 of the Regional Rail Reorganization Act of 1973 (45
9 U.S.C. 702)) that provides its own commuter rail passenger transpor-
10 tation or makes a contract with an operator (except Amtrak Com-
11 muter), except that—

12 (i) one of the individuals selected must have been nominated by
13 a commuter authority for which Amtrak Commuter provides com-
14 muter rail transportation; or

15 (ii) if Amtrak Commuter does not provide commuter rail pas-
16 senger transportation for any authority, the 2 individuals shall be
17 selected from a list of 5 individuals submitted by commuter au-
18 thorities providing transportation over rail property of Amtrak.

19 (E) 2 individuals selected by the holders of the preferred stock of
20 Amtrak.

21 (2) An individual appointed under paragraph (1)(C) of this subsection
22 serves for 4 years or until the individual's successor is appointed and quali-
23 fied. Not more than 2 individuals appointed under paragraph (1)(C) may
24 be members of the same political party.

25 (3) An individual selected under paragraph (1)(D) of this subsection
26 serves for 2 years or until the individual's successor is selected.

27 (4) An individual selected under paragraph (1)(E) of this subsection
28 serves for one year or until the individual's successor is selected.

29 (5) The President of Amtrak serves as Chairman of the board.

30 (6) The Secretary may be represented at a meeting of the board only by
31 the Deputy Secretary of Transportation, the Administrator of the Federal
32 Railroad Administration, or the General Counsel of the Department of
33 Transportation.

34 (b) CUMULATIVE VOTING.—The articles of incorporation of Amtrak shall
35 provide for cumulative voting for all stockholders.

36 (c) CONFLICTS OF INTEREST.—When serving on the board, a director ap-
37 pointed by the President of the United States may not have—

38 (1) a financial or employment relationship with a rail carrier; and

39 (2) a significant financial relationship or an employment relationship
40 with a person competing with Amtrak in providing passenger transpor-
41 tation.

1 (d) PAY AND EXPENSES.—Each director not employed by the United
 2 States Government is entitled to \$300 a day when performing board duties
 3 and powers. Each director is entitled to reimbursement for necessary travel,
 4 reasonable secretarial and professional staff support, and subsistence ex-
 5 penses incurred in attending board meetings.

6 (e) VACANCIES.—A vacancy on the board is filled in the same way as the
 7 original selection, except that an individual appointed by the President of
 8 the United States under subsection (a)(1)(C) of this section to fill a vacancy
 9 occurring before the end of the term for which the predecessor of that indi-
 10 vidual was appointed is appointed for the remainder of that term. A vacancy
 11 required to be filled by appointment under subsection (a)(1)(C) must be
 12 filled not later than 120 days after the vacancy occurs.

13 (f) BYLAWS.—The board may adopt and amend bylaws governing the op-
 14 eration of Amtrak. The bylaws shall be consistent with this part and the
 15 articles of incorporation.

16 **§ 24303. Officers**

17 (a) APPOINTMENT AND TERMS.—Amtrak has a President and other offi-
 18 cers that are named and appointed by the board of directors of Amtrak.
 19 An officer of Amtrak must be a citizen of the United States. Officers of
 20 Amtrak serve at the pleasure of the board.

21 (b) PAY.—The board may fix the pay of the officers of Amtrak. An offi-
 22 cer may not be paid more than the general level of pay for officers of rail
 23 carriers with comparable responsibility.

24 (c) CONFLICTS OF INTEREST.—When employed by Amtrak, an officer
 25 may not have a financial or employment relationship with another rail car-
 26 rier, except that holding securities issued by a rail carrier is not deemed
 27 to be a violation of this subsection if the officer holding the securities makes
 28 a complete public disclosure of the holdings and does not participate in any
 29 decision directly affecting the rail carrier.

30 **§ 24304. Capitalization**

31 (a) STOCK.—Amtrak may have outstanding one issue of common stock
 32 and one issue of preferred stock. Each type of stock is eligible for a divi-
 33 dend. The articles of incorporation of Amtrak shall provide that—

- 34 (1) each type of stock must be fully paid and nonassessable;
- 35 (2) common stock has a par value of \$10 a share; and
- 36 (3) preferred stock has a par value of \$100 a share.

37 (b) LIMITATIONS ON OWNERSHIP AND VOTING.—(1) A rail carrier or
 38 person controlling a rail carrier—

39 (A) may not hold preferred stock of Amtrak; and

40 (B) may vote not more than one-third of the total number of shares
 41 of outstanding common stock of Amtrak.

1 (2) Additional common stock owned by a rail carrier or person controlling
2 a rail carrier is deemed to be not outstanding for voting and quorum pur-
3 poses.

4 (c) PREFERRED STOCK DIVIDENDS AND LIQUIDATION PREFERENCES.—
5 The articles of incorporation of Amtrak shall provide that—

6 (1) its preferred stock has a cumulative dividend of at least 6 per-
7 cent a year;

8 (2) if a dividend on the preferred stock is not declared and paid or
9 set aside for payment, the deficiency shall be declared and paid or set
10 aside for payment before a dividend or other distribution is made on
11 its common stock;

12 (3) the preferred stock has a liquidation preference over the common
13 stock entitling holders of preferred stock to receive a liquidation pay-
14 ment of at least par value plus all accrued unpaid dividends before a
15 liquidation payment is made to holders of common stock; and

16 (4) the preferred stock may be converted to common stock.

17 (d) ISSUANCE OF PREFERRED STOCK TO SECRETARY.—(1) Not later
18 than 30 days after the close of each fiscal quarter, Amtrak shall issue to
19 the Secretary of Transportation preferred stock equal, to the nearest whole
20 share, to the amount paid to Amtrak under section 24104(d) of this title
21 during the quarter.

22 (2) Preferred stock issued under this subsection or section 304(c)(1) of
23 the Rail Passenger Service Act is deemed to be issued on the date Amtrak
24 receives the amounts for which the stock is issued.

25 (3) An amendment to the articles of incorporation of Amtrak is not re-
26 quired for issuing preferred stock under this subsection.

27 (e) TAXES AND FEES ON PREFERRED STOCK.—A tax or fee applies to
28 preferred stock issued under this section only if specifically prescribed by
29 Congress.

30 (f) NONVOTING CERTIFICATES OF INDEBTEDNESS.—Amtrak may issue
31 nonvoting certificates of indebtedness, except that an obligation with a liq-
32 uidation interest superior to preferred stock issued to the Secretary or se-
33 cured by a lien on property of Amtrak may be incurred when preferred
34 stock issued to the Secretary is outstanding only if the Secretary consents.

35 (g) INSPECTION RIGHTS.—Stockholders of Amtrak have the rights of in-
36 specting and copying set forth in section 45(b) of the District of Columbia
37 Business Corporation Act (D.C. Code § 29-345(b)) regardless of the
38 amount of stock they hold.

39 **§ 24305. General authority**

40 (a) ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES.—(1)
41 Amtrak may acquire, operate, maintain, and make contracts for the oper-

1 ation and maintenance of equipment and facilities necessary for intercity
2 and commuter rail passenger transportation, the transportation of mail and
3 express, and auto-ferry transportation.

4 (2) Amtrak shall operate and control directly, to the extent practicable,
5 all aspects of the rail passenger transportation it provides.

6 (b) MAINTENANCE AND REHABILITATION.—Amtrak may maintain and
7 rehabilitate rail passenger equipment and shall maintain a regional mainte-
8 nance plan that includes—

9 (1) a review panel at the principal office of Amtrak consisting of
10 members the President of Amtrak designates;

11 (2) a systemwide inventory of spare equipment parts in each oper-
12 ational region;

13 (3) enough maintenance employees for cars and locomotives in each
14 region;

15 (4) a systematic preventive maintenance program;

16 (5) periodic evaluations of maintenance costs, time lags, and parts
17 shortages and corrective actions; and

18 (6) other elements or activities Amtrak considers appropriate.

19 (c) MISCELLANEOUS AUTHORITY.—Amtrak may—

20 (1) make and carry out appropriate agreements;

21 (2) transport mail and express and shall use all feasible methods to
22 obtain the bulk mail business of the United States Postal Service;

23 (3) improve its reservation system and advertising;

24 (4) provide food and beverage services on its trains only if revenues
25 from the services each year at least equal the cost of providing the
26 services;

27 (5) conduct research, development, and demonstration programs re-
28 lated to the mission of Amtrak; and

29 (6) buy or lease rail rolling stock and develop and demonstrate im-
30 proved rolling stock.

31 (d) THROUGH ROUTES AND JOINT FARES.—(1) Establishing through
32 routes and joint fares between Amtrak and other intercity rail passenger
33 carriers and motor carriers of passengers is consistent with the public inter-
34 est and the transportation policy of the United States. Congress encourages
35 establishing those routes and fares.

36 (2) Amtrak may establish through routes and joint fares with any domes-
37 tic or international motor carrier, air carrier, or water carrier.

38 (e) RAIL POLICE.—Amtrak may employ rail police to provide security for
39 rail passengers and property of Amtrak. Rail police employed by Amtrak
40 who have complied with a State law establishing requirements applicable to

1 rail police or individuals employed in a similar position may be employed
2 without regard to the law of another State containing those requirements.

3 (f) DOMESTIC BUYING PREFERENCES.—(1) In this subsection, “United
4 States” means the States, territories, and possessions of the United States
5 and the District of Columbia.

6 (2) Amtrak shall buy only—

7 (A) unmanufactured articles, material, and supplies mined or pro-
8 duced in the United States; or

9 (B) manufactured articles, material, and supplies manufactured in
10 the United States substantially from articles, material, and supplies
11 mined, produced, or manufactured in the United States.

12 (3) Paragraph (2) of this subsection applies only when the cost of those
13 articles, material, or supplies bought is at least \$1,000,000.

14 (4) On application of Amtrak, the Secretary of Transportation may ex-
15 empt Amtrak from this subsection if the Secretary decides that—

16 (A) for particular articles, material, or supplies—

17 (i) the requirements of paragraph (2) of this subsection are in-
18 consistent with the public interest;

19 (ii) the cost of imposing those requirements is unreasonable; or

20 (iii) the articles, material, or supplies, or the articles, material,
21 or supplies from which they are manufactured, are not mined, pro-
22 duced, or manufactured in the United States in sufficient and rea-
23 sonably available commercial quantities and are not of a satisfac-
24 tory quality; or

25 (B) rolling stock or power train equipment cannot be bought and de-
26 livered in the United States within a reasonable time.

27 **§ 24306. Mail, express, and auto-ferry transportation**

28 (a) ACTIONS TO INCREASE REVENUES.—Amtrak shall take necessary ac-
29 tion to increase its revenues from the transportation of mail and express.
30 To increase its revenues, Amtrak may provide auto-ferry transportation as
31 part of the basic passenger transportation authorized by this part. When
32 requested by Amtrak, a department, agency, or instrumentality of the Unit-
33 ed States Government shall assist in carrying out this section.

34 (b) AUTHORITY OF OTHERS TO PROVIDE AUTO-FERRY TRANSPOR-
35 TATION.—(1) A person primarily providing auto-ferry transportation and
36 any other person not a rail carrier may provide auto-ferry transportation
37 over any route under a certificate issued by the Interstate Commerce Com-
38 mission if the Commission finds that the auto-ferry transportation—

39 (A) will not impair the ability of Amtrak to reduce its losses or in-
40 crease its revenues; and

41 (B) is required to meet the public demand.

1 (2) A rail carrier that has not made a contract with Amtrak to provide
2 rail passenger transportation may provide auto-ferry transportation over its
3 own rail lines.

4 (3) State and local laws and regulations that impair the provision of auto-
5 ferry transportation do not apply to Amtrak or a rail carrier providing auto-
6 ferry transportation. A rail carrier may not refuse to participate with Am-
7 trak in providing auto-ferry transportation because a State or local law or
8 regulation makes the transportation unlawful.

9 **§ 24307. Special transportation**

10 (a) REDUCED FARE PROGRAM.—Amtrak shall maintain a reduced fare
11 program for the following:

12 (1) individuals at least 65 years of age.

13 (2) individuals (except alcoholics and drug abusers) who—

14 (A) have a physical or mental impairment that substantially
15 limits a major life activity of the individual;

16 (B) have a record of an impairment; or

17 (C) are regarded as having an impairment.

18 (b) ACTIONS TO ENSURE ACCESS.—Amtrak may act to ensure access to
19 intercity transportation for elderly or handicapped individuals on passenger
20 trains operated by or for Amtrak. That action may include—

21 (1) acquiring special equipment;

22 (2) conducting special training for employees;

23 (3) designing and acquiring new equipment and facilities;

24 (4) eliminating barriers in existing equipment and facilities to com-
25 ply with the highest standards of design, construction, and alteration
26 of property to accommodate elderly and handicapped individuals; and

27 (5) providing special assistance to elderly and handicapped individ-
28 uals when getting on and off trains and in terminal areas.

29 (c) EMPLOYEE TRANSPORTATION.—(1) In this subsection, “rail carrier
30 employee” means—

31 (A) an active full-time employee of a rail carrier or terminal com-
32 pany and includes an employee on furlough or leave of absence;

33 (B) a retired employee of a rail carrier or terminal company; and

34 (C) a dependent of an employee referred to in clause (A) or (B) of
35 this paragraph.

36 (2) Amtrak shall ensure that a rail carrier employee eligible for free or
37 reduced-rate rail transportation on April 30, 1971, under an agreement in
38 effect on that date is eligible, to the greatest extent practicable, for free or
39 reduced-rate intercity rail passenger transportation provided by Amtrak
40 under this part, if space is available, on terms similar to those available on
41 that date under the agreement. However, Amtrak may apply to all rail car-

1 rier employees eligible to receive free or reduced-rate transportation under
2 any agreement a single systemwide schedule of terms that Amtrak decides
3 applied to a majority of employees on that date under all those agreements.
4 Unless Amtrak and a rail carrier make a different agreement, the carrier
5 shall reimburse Amtrak at the rate of 25 percent of the systemwide average
6 monthly yield of each revenue passenger-mile. The reimbursement is in
7 place of costs Amtrak incurs related to free or reduced-rate transportation,
8 including liability related to travel of a rail carrier employee eligible for free
9 or reduced-rate transportation.

10 (3) This subsection does not prohibit the Interstate Commerce Commis-
11 sion from ordering retroactive relief in a proceeding begun or reopened after
12 October 1, 1981.

13 **§ 24308. Use of facilities and providing services to Amtrak**

14 (a) GENERAL AUTHORITY.—(1) Amtrak may make an agreement with a
15 rail carrier or regional transportation authority to use facilities of, and have
16 services provided by, the carrier or authority under terms on which the par-
17 ties agree. The terms shall include a penalty for untimely performance.

18 (2)(A) If the parties cannot agree and if the Interstate Commerce Com-
19 mission finds it necessary to carry out this part, the Commission shall—

20 (i) order that the facilities be made available and the services pro-
21 vided to Amtrak; and

22 (ii) prescribe reasonable terms and compensation for using the facili-
23 ties and providing the services.

24 (B) When prescribing reasonable compensation under subparagraph (A)
25 of this paragraph, the Commission shall consider quality of service as a
26 major factor when determining whether, and the extent to which, the
27 amount of compensation shall be greater than the incremental costs of using
28 the facilities and providing the services.

29 (C) The Commission shall decide the dispute not later than 90 days after
30 Amtrak submits the dispute to the Commission.

31 (3) Amtrak's right to use the facilities or have the services provided is
32 conditioned on payment of the compensation. If the compensation is not
33 paid promptly, the rail carrier or authority entitled to it may bring an ac-
34 tion against Amtrak to recover the amount owed.

35 (4) Amtrak shall seek immediate and appropriate legal remedies to en-
36 force its contract rights when track maintenance on a route over which Am-
37 trak operates falls below the contractual standard.

38 (b) OPERATING DURING EMERGENCIES.—To facilitate operation by Am-
39 trak during an emergency, the Commission, on application by Amtrak, shall
40 require a rail carrier to provide facilities immediately during the emergency.
41 The Commission then shall promptly prescribe reasonable terms, including

1 indemnification of the carrier by Amtrak against personal injury risk to
2 which the carrier may be exposed. The rail carrier shall provide the facilities
3 for the duration of the emergency.

4 (c) PREFERENCE OVER FREIGHT TRANSPORTATION.—Except in an
5 emergency, intercity and commuter rail passenger transportation provided
6 by or for Amtrak has preference over freight transportation in using a rail
7 line, junction, or crossing unless the Secretary of Transportation orders oth-
8 erwise under this subsection. A rail carrier affected by this subsection may
9 apply to the Secretary for relief. If the Secretary, after an opportunity for
10 a hearing under section 553 of title 5, decides that preference for intercity
11 and commuter rail passenger transportation materially will lessen the qual-
12 ity of freight transportation provided to shippers, the Secretary shall estab-
13 lish the rights of the carrier and Amtrak on reasonable terms.

14 (d) ACCELERATED SPEEDS.—If a rail carrier refuses to allow accelerated
15 speeds on trains operated by or for Amtrak, Amtrak may apply to the Sec-
16 retary for an order requiring the carrier to allow the accelerated speeds. The
17 Secretary shall decide whether accelerated speeds are unsafe or impractica-
18 ble and which improvements would be required to make accelerated speeds
19 safe and practicable. After an opportunity for a hearing, the Secretary shall
20 establish the maximum allowable speeds of Amtrak trains on terms the Sec-
21 retary decides are reasonable.

22 (e) ADDITIONAL TRAINS.—(1) When a rail carrier does not agree to pro-
23 vide, or allow Amtrak to provide, for the operation of additional trains over
24 a rail line of the carrier, Amtrak may apply to the Secretary for an order
25 requiring the carrier to provide or allow for the operation of the requested
26 trains. After a hearing on the record, the Secretary may order the carrier,
27 within 60 days, to provide or allow for the operation of the requested trains
28 on a schedule based on legally permissible operating times. However, if the
29 Secretary decides not to hold a hearing, the Secretary, not later than 30
30 days after receiving the application, shall publish in the Federal Register
31 the reasons for the decision not to hold the hearing.

32 (2) The Secretary shall consider—

33 (A) when conducting a hearing, whether an order would impair un-
34 reasonably freight transportation of the rail carrier, with the carrier
35 having the burden of demonstrating that the additional trains will im-
36 pair the freight transportation; and

37 (B) when establishing scheduled running times, the statutory goal of
38 Amtrak to implement schedules that attain a system-wide average
39 speed of at least 60 miles an hour that can be adhered to with a high
40 degree of reliability and passenger comfort.

1 (3) Unless the parties have an agreement that establishes the compensa-
2 tion Amtrak will pay the carrier for additional trains provided under an
3 order under this subsection, the Commission shall decide the dispute under
4 subsection (a) of this section.

5 **§ 24309. Retaining and maintaining facilities**

6 (a) DEFINITIONS.—In this section—

7 (1) “facility” means a rail line, right of way, fixed equipment, facil-
8 ity, or real property related to a rail line, right of way, fixed equipment,
9 or facility, including a signal system, passenger station and repair
10 tracks, a station building, a platform, and a related facility, including
11 a water, fuel, steam, electric, and air line.

12 (2) downgrading a facility means reducing a track classification as
13 specified in the Federal Railroad Administration track safety standards
14 or altering a facility so that the time required for rail passenger trans-
15 portation to be provided over the route on which a facility is located
16 may be increased.

17 (b) APPROVAL REQUIRED FOR DOWNGRADING OR DISPOSAL.—A facility
18 of a rail carrier or regional transportation authority that Amtrak used to
19 provide rail passenger transportation on February 1, 1979, may be down-
20 graded or disposed of only after approval by the Secretary of Transportation
21 under this section.

22 (c) NOTIFICATION AND ANALYSIS.—(1) A rail carrier intending to down-
23 grade or dispose of a facility Amtrak currently is not using to provide trans-
24 portation shall notify Amtrak of its intention. If, not later than 60 days
25 after Amtrak receives the notice, Amtrak and the carrier do not agree to
26 retain or maintain the facility or to convey an interest in the facility to Am-
27 trak, the carrier may apply to the Secretary for approval to downgrade or
28 dispose of the facility.

29 (2) After a rail carrier notifies Amtrak of its intention to downgrade or
30 dispose of a facility, Amtrak shall survey population centers with rail pas-
31 senger transportation facilities to assist in preparing a valid and timely
32 analysis of the need for the facility and shall update the survey as appro-
33 priate. Amtrak also shall maintain a system for collecting information gath-
34 ered in the survey. The system shall collect the information based on geo-
35 graphic regions and on whether the facility would be part of a short haul
36 or long haul route. The survey should facilitate an analysis of—

37 (A) ridership potential by ascertaining existing and changing travel
38 patterns that would provide maximum efficient rail passenger transpor-
39 tation;

40 (B) the quality of transportation of competitors or likely competitors;

1 (C) the likelihood of Amtrak offering transportation at a competitive
2 fare;

3 (D) opportunities to target advertising and fares to potential classes
4 of riders;

5 (E) economic characteristics of rail passenger transportation related
6 to the facility and the extent to which the characteristics are consistent
7 with sound economic principles of short haul or long haul rail transpor-
8 tation; and

9 (F) the feasibility of applying effective internal cost controls to the
10 facility and route served by the facility to improve the ratio of pas-
11 senger revenue to transportation expenses (excluding maintenance of
12 tracks, structures, and equipment and depreciation).

13 (d) APPROVAL OF APPLICATION AND PAYMENT OF AVOIDABLE COSTS.—

14 (1) If Amtrak does not object to an application not later than 30 days after
15 it is submitted, the Secretary shall approve the application promptly.

16 (2) If Amtrak objects to an application, the Secretary shall decide by not
17 later than 180 days after the objection those costs the rail carrier may avoid
18 if it does not have to retain or maintain a facility in the condition Amtrak
19 requests. If Amtrak does not agree by not later than 60 days after the deci-
20 sion to pay the carrier these avoidable costs, the Secretary shall approve the
21 application. When deciding whether to pay a carrier the avoidable costs of
22 retaining or maintaining a facility, Amtrak shall consider—

23 (A) the potential importance of restoring rail passenger transpor-
24 tation on the route on which the facility is located;

25 (B) the market potential of the route;

26 (C) the availability, adequacy, and energy efficiency of an alternate
27 rail line or alternate mode of transportation to provide passenger trans-
28 portation to or near the places that would be served by the route;

29 (D) the extent to which major population centers would be served
30 by the route;

31 (E) the extent to which providing transportation over the route
32 would encourage the expansion of an intercity rail passenger system in
33 the United States; and

34 (F) the possibility of increased ridership on a rail line that connects
35 with the route.

36 (e) COMPLIANCE WITH OTHER OBLIGATIONS.—Downgrading or dispos-
37 ing of a facility under this section does not relieve a rail carrier from com-
38 plying with its other common carrier or legal obligations related to the facil-
39 ity.

§ 24310. Assistance for upgrading facilities

(a) TO CORRECT DANGEROUS CONDITIONS.—(1) Amtrak or the owner of a facility presenting a danger to the employees, passengers, or property of Amtrak may petition the Secretary of Transportation for assistance to the owner for relocation or other measures undertaken after December 31, 1977, to minimize or eliminate the danger.

(2) The Secretary shall recommend to Congress that Congress authorize amounts for the relocation or other measures if the Secretary decides that—

(A) the facility presents a danger of death or serious injury to an employee or passenger or of serious damage to that property; and

(B) the owner should not be expected to bear the cost of that relocation or other measures.

(b) TO CORRECT STATE AND LOCAL VIOLATIONS.—(1) Amtrak, by itself or jointly with an owner or operator of a rail station Amtrak uses to provide rail passenger transportation, may apply to the Secretary for amounts that may be appropriated under paragraph (2) of this subsection to pay or reimburse expenses incurred after October 1, 1987, related to the station complying with an official notice received before October 1, 1987, from a State or local authority stating that the station violates or allegedly violates the building, construction, fire, electric, sanitation, mechanical, or plumbing code.

(2) Not more than \$1,000,000, may be appropriated to the Secretary to carry out paragraph (1) of this subsection. Amounts appropriated under this paragraph remain available until expended.

§ 24311. Acquiring interests in property by eminent domain

(a) GENERAL AUTHORITY.—(1) To the extent financial resources are available, Amtrak may acquire by eminent domain under subsection (b) of this section interests in property—

(A) necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority; or

(B) requested by the Secretary of Transportation in carrying out the Secretary's duty to design and build an intermodal transportation terminal at Union Station in the District of Columbia if the Secretary assures Amtrak that the Secretary will reimburse Amtrak.

(2) Amtrak may exercise the power of eminent domain only if it cannot—

(A) acquire the interest in the property by contract; or

(B) agree with the owner on the purchase price for the interest.

(b) CIVIL ACTIONS.—(1) A civil action to acquire an interest in property by eminent domain under subsection (a) of this section must be brought in the district court of the United States for the judicial district in which the

1 property is located or, if a single piece of property is located in more than
2 one judicial district, in any judicial district in which any piece of the prop-
3 erty is located. An interest is condemned and taken by Amtrak for its use
4 when a declaration of taking is filed under this subsection and an amount
5 of money estimated in the declaration to be just compensation for the inter-
6 est is deposited in the court. The declaration may be filed with the com-
7 plaint in the action or at any time before judgment. The declaration must
8 contain or be accompanied by—

- 9 (A) a statement of the public use for which the interest is taken;
- 10 (B) a description of the property sufficient to identify it;
- 11 (C) a statement of the interest in the property taken;
- 12 (D) a plan showing the interest taken; and
- 13 (E) a statement of the amount of money Amtrak estimates is just
14 compensation for the interest.

15 (2) When the declaration is filed and the deposit is made under para-
16 graph (1) of this subsection, title to the property vests in Amtrak in fee
17 simple absolute or in the lesser interest shown in the declaration, and the
18 right to the money vests in the person entitled to the money. When the dec-
19 laration is filed, the court may decide—

- 20 (A) the time by which, and the terms under which, possession of the
21 property is given to Amtrak; and
- 22 (B) the disposition of outstanding charges related to the property.

23 (3) After a hearing, the court shall make a finding on the amount that
24 is just compensation for the interest in the property and enter judgment
25 awarding that amount and interest on it. The rate of interest is 6 percent
26 a year and is computed on the amount of the award less the amount depos-
27 ited in the court from the date of taking to the date of payment.

28 (4) On application of a party, the court may order immediate payment
29 of any part of the amount deposited in the court for the compensation to
30 be awarded. If the award is more than the amount received, the court shall
31 enter judgment against Amtrak for the deficiency.

32 (c) AUTHORITY TO CONDEMN RAIL CARRIER PROPERTY INTERESTS.—

33 (1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an
34 interest in property of a rail carrier necessary for intercity rail passenger
35 transportation, Amtrak may apply to the Interstate Commerce Commission
36 for an order establishing the need of Amtrak for the interest and requiring
37 the carrier to convey the interest on reasonable terms, including just com-
38 pensation. The need of Amtrak is deemed to be established, and the Com-
39 mission, after holding an expedited proceeding and not later than 120 days
40 after receiving the application, shall order the interest conveyed unless the
41 Commission decides that—

1 (A) conveyance would impair significantly the ability of the carrier
2 to carry out its obligations as a common carrier; and

3 (B) the obligations of Amtrak to provide modern, efficient, and eco-
4 nomical rail passenger transportation can be met adequately by acquir-
5 ing an interest in other property, either by sale or by exercising its
6 right of eminent domain under subsection (a) of this section.

7 (2) If the amount of compensation is not determined by the date of the
8 Commission's order, the order shall require, as part of the compensation,
9 interest at 6 percent a year from the date prescribed for the conveyance
10 until the compensation is paid.

11 (3) Amtrak subsequently may reconvey to a third party an interest con-
12 veyed to Amtrak under this subsection or prior comparable provision of law
13 if the Commission decides that the reconveyance will carry out the purposes
14 of this part, regardless of when the proceeding was brought (including a
15 proceeding pending before a United States court on November 28, 1990).

16 **§ 24312. Labor standards**

17 (a) PREVAILING WAGES AND HEALTH AND SAFETY STANDARDS.—(1)
18 Amtrak shall ensure that laborers and mechanics employed by contractors
19 and subcontractors in construction work financed under an agreement made
20 under section 24308(a), 24701(a), or 24704(b)(2) of this title will be paid
21 wages not less than those prevailing on similar construction in the locality,
22 as determined by the Secretary of Labor under the Act of March 3, 1931
23 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). Amtrak may
24 make such an agreement only after being assured that required labor stand-
25 ards will be maintained on the construction work. Health and safety stand-
26 ards prescribed by the Secretary under section 107 of the Contract Work
27 Hours and Safety Standards Act (40 U.S.C. 333) apply to all construction
28 work performed under such an agreement, except for construction work per-
29 formed by a rail carrier.

30 (2) Wage rates in a collective bargaining agreement negotiated under the
31 Railway Labor Act (45 U.S.C. 151 et seq.) are deemed to comply with the
32 Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—
33 276a-5).

34 (b) CONTRACTING OUT.—(1) Amtrak may not contract out work nor-
35 mally performed by an employee in a bargaining unit covered by a contract
36 between a labor organization and Amtrak or a rail carrier that provided
37 intercity rail passenger transportation on October 30, 1970, if contracting
38 out results in the layoff of an employee in the bargaining unit.

39 (2) This subsection does not apply to food and beverage services provided
40 on trains of Amtrak.

§ 24313. Rail safety system program

In consultation with rail labor organizations, Amtrak shall maintain a rail safety system program for employees working on property owned by Amtrak. The program shall be a model for other rail carriers to use in developing safety programs. The program shall include—

(1) periodic analyses of accident information, including primary and secondary causes;

(2) periodic evaluations of the activities of the program, particularly specific steps taken in response to an accident;

(3) periodic reports on amounts spent for occupational health and safety activities of the program;

(4) periodic reports on reduced costs and personal injuries because of accident prevention activities of the program;

(5) periodic reports on direct accident costs, including claims related to accidents; and

(6) reports and evaluations of other information Amtrak considers appropriate.

§ 24314. Demonstration of new technology

(a) PLAN.—Amtrak shall develop a plan for demonstrating new technology in rail passenger equipment. The plan shall provide that new equipment that Amtrak procures that may increase train speed significantly over existing rail facilities shall be demonstrated, to the extent practicable, throughout the intercity rail passenger system.

(b) REPORT.—Not later than September 30, 1993, Amtrak shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report summarizing the plan developed under subsection (a) of this section, including its goals, locations for technology demonstration, and a schedule for carrying out the plan.

(c) COOPERATION.—To make efforts to increase train speed throughout the intercity rail passenger system easier, Amtrak shall consult and cooperate, to the extent feasible, on request of eligible applicants proposing a technology demonstration authorized and financed under a law of the United States, with those applicants.

§ 24315. Reports and audits

(a) AMTRAK ANNUAL OPERATIONS REPORT.—Not later than February 15 of each year, Amtrak shall submit to Congress a report that—

(1) for each route on which Amtrak provided intercity rail passenger transportation during the prior fiscal year, includes information on—

(A) ridership;

(B) passenger-miles;

- 1 (C) the short-term avoidable profit or loss for each passenger-
2 mile;
- 3 (D) the revenue-to-cost ratio;
- 4 (E) revenues;
- 5 (F) the United States Government subsidy;
- 6 (G) the subsidy not provided by the United States Government;
- 7 and
- 8 (H) on-time performance;
- 9 (2) provides relevant information about a decision to pay an officer
10 of Amtrak more than the rate for level I of the Executive Schedule
11 under section 5312 of title 5; and
- 12 (3) specifies—
- 13 (A) significant operational problems Amtrak identifies; and
- 14 (B) proposals by Amtrak to solve those problems.
- 15 (b) AMTRAK GENERAL AND LEGISLATIVE ANNUAL REPORT.—(1) Not
16 later than February 15 of each year, Amtrak shall submit to the President
17 and Congress a complete report of its operations, activities, and accomplish-
18 ments, including a statement of revenues and expenditures for the prior fis-
19 cal year. The report—
- 20 (A) shall include a discussion and accounting of Amtrak’s success in
21 meeting the goal of section 24902(b) of this title; and
- 22 (B) may include recommendations for legislation, including the
23 amount of financial assistance needed for operations and capital im-
24 provements, the method of computing the assistance, and the sources
25 of the assistance.
- 26 (2) Amtrak may submit reports to the President and Congress at other
27 times Amtrak considers desirable.
- 28 (c) SECRETARY’S REPORT ON EFFECTIVENESS OF THIS PART.—The Sec-
29 retary of Transportation shall prepare a report on the effectiveness of this
30 part in meeting the requirements for a balanced transportation system in
31 the United States. The report may include recommendations for legislation.
32 The Secretary shall include this report as part of the annual report the Sec-
33 retary submits under section 308(a) of this title.
- 34 (d) INDEPENDENT AUDITS.—An independent certified public accountant
35 shall audit the financial statements of Amtrak each year. The audit shall
36 be carried out at the place at which the financial statements normally are
37 kept and under generally accepted auditing standards. A report of the audit
38 shall be included in the report required by subsection (a) of this section.
- 39 (e) COMPTROLLER GENERAL AUDITS.—The Comptroller General may
40 conduct performance audits of the activities and transactions of Amtrak.
41 Each audit shall be conducted at the place at which the Comptroller General

1 decides and under generally accepted management principles. The Comptrol-
2 ler General may prescribe regulations governing the audit.

3 (f) AVAILABILITY OF RECORDS AND PROPERTY OF AMTRAK AND RAIL
4 CARRIERS.—Amtrak and, if required by the Comptroller General, a rail car-
5 rier with which Amtrak has made a contract for intercity rail passenger
6 transportation shall make available for an audit under subsection (d) or (e)
7 of this section all records and property of, or used by, Amtrak or the carrier
8 that are necessary for the audit. Amtrak and the carrier shall provide facili-
9 ties for verifying transactions with the balances or securities held by deposi-
10 tories, fiscal agents, and custodians. Amtrak and the carrier may keep all
11 reports and property.

12 (g) COMPTROLLER GENERAL'S REPORT TO CONGRESS.—The Comptroller
13 General shall submit to Congress a report on each audit, giving comments
14 and information necessary to inform Congress on the financial operations
15 and condition of Amtrak and recommendations related to those operations
16 and conditions. The report also shall specify any financial transaction or un-
17 dertaking the Comptroller General considers is carried out without authority
18 of law. When the Comptroller General submits a report to Congress, the
19 Comptroller General shall submit a copy of it to the President, the Sec-
20 retary, and Amtrak at the same time.

21 **CHAPTER 245—AMTRAK COMMUTER**

Sec.

24501. Status and applicable laws.

24502. Board of directors.

24503. Officers.

24504. General authority.

24505. Commuter rail passenger transportation.

24506. Certain duties and powers unaffected.

22 **§ 24501. Status and applicable laws**

23 (a) STATUS.—Amtrak Commuter—

24 (1) is a wholly-owned subsidiary of Amtrak;

25 (2) provides by contract commuter rail passenger transportation for
26 a commuter authority with which Amtrak Commuter makes a contract
27 to provide the transportation under this chapter;

28 (3) has no common carrier obligations to provide rail passenger or
29 rail freight transportation; and

30 (4) is not a department, agency, or instrumentality of the United
31 States Government.

32 (b) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND
33 REGULATIONS.—Chapter 105 of this title does not apply to Amtrak Com-
34 muter. However, laws and regulations governing safety, employee represen-
35 tation for collective bargaining purposes, the handling of disputes between
36 carriers and employees, employee retirement, annuity, and unemployment
37 systems, and other dealings with employees that apply to a rail carrier pro-

1 viding transportation subject to subchapter I of chapter 105 apply to Am-
2 trak Commuter.

3 (c) APPLICATION OF CERTAIN ADDITIONAL LAWS.—This part and, to the
4 extent consistent with this part, the District of Columbia Business Corpora-
5 tion Act (D.C. Code § 29–301 et seq.) apply to Amtrak Commuter.

6 (d) NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State
7 or other law related to rates, routes, or service in connection with rail pas-
8 senger transportation does not apply to Amtrak Commuter.

9 (e) PREEMPTION RELATED TO EMPLOYEE WORK REQUIREMENTS.—A
10 State may not adopt or continue in force a law, rule, regulation, order, or
11 standard requiring Amtrak Commuter to employ a specified number of indi-
12 viduals to perform a particular task, function, or operation.

13 (f) EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection, “ad-
14 ditional tax” means a tax or fee—

15 (A) on the acquisition, improvement, ownership, or operation of per-
16 sonal property by Amtrak Commuter; and

17 (B) on real property, except a tax or fee on the acquisition of real
18 property or on the value of real property not attributable to improve-
19 ments made, or the operation of those improvements, by Amtrak Com-
20 muter.

21 (2) Amtrak Commuter is not required to pay an additional tax because
22 of an expenditure to acquire or improve real property, equipment, a facility,
23 or right-of-way material or structures used to provide rail passenger trans-
24 portation.

25 (g) TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A com-
26 muter authority with which Amtrak Commuter could have made a contract
27 to provide commuter rail passenger transportation under this chapter but
28 which decided to provide its own rail passenger transportation beginning on
29 January 1, 1983, is exempt, effective October 1, 1981, from paying a tax
30 or fee to the same extent Amtrak is exempt.

31 (h) NONAPPLICATION OF AGREEMENTS FOR FINANCIAL SUPPORT AND
32 TRACKAGE RIGHTS.—An agreement under which financial support was pro-
33 vided on January 2, 1974, to a commuter authority to continue rail pas-
34 senger transportation does not apply to Amtrak Commuter. However, Am-
35 trak and the Consolidated Rail Corporation retain appropriate trackage
36 rights over rail property owned or leased by the authority. Compensation
37 for the rights shall be reasonable.

38 **§ 24502. Board of directors**

39 (a) COMPOSITION.—The board of directors of Amtrak Commuter is com-
40 posed of the following directors:

41 (1) the President of Amtrak Commuter.

1 (2) one individual from the board of directors of Amtrak selected as
2 a representative of commuter authorities that make contracts with Am-
3 trak Commuter for the operation of commuter rail passenger transpor-
4 tation.

5 (3) 2 individuals selected by the board of directors of Amtrak.

6 (4) 2 individuals selected by commuter authorities for which Amtrak
7 Commuter provides commuter rail transportation under this chapter.
8 However, only one individual shall be selected under this clause if Am-
9 trak Commuter provides the transportation for only one authority.

10 (b) TERMS.—Except as otherwise provided in this section, individuals
11 shall serve for 2 years.

12 (c) CHAIRMAN.—The board shall select annually one of its members to
13 serve as Chairman.

14 (d) PAY AND EXPENSES.—Each director not employed by the United
15 States Government is entitled to \$300 a day when performing board duties
16 and powers. Each director is entitled to reimbursement for necessary travel,
17 reasonable secretarial and professional staff support, and subsistence ex-
18 penses incurred in attending board meetings.

19 (e) VACANCIES.—A vacancy on the board is filled in the same way as the
20 original selection.

21 (f) BYLAWS.—The board may adopt and amend bylaws governing the op-
22 eration of Amtrak Commuter. The bylaws shall be consistent with this part
23 and the articles of incorporation.

24 **§ 24503. Officers**

25 (a) APPOINTMENT AND TERMS.—Amtrak Commuter has a President and
26 other officers that are named and appointed by the board of directors of
27 Amtrak Commuter. An officer of Amtrak Commuter must be a citizen of
28 the United States. Officers of Amtrak Commuter serve at the pleasure of
29 the board.

30 (b) PAY.—The board may fix the pay of the officers of Amtrak Com-
31 muter. An officer may be paid not more than the general level of pay for
32 officers of rail carriers with comparable responsibility.

33 (c) CONFLICTS OF INTEREST.—When employed by Amtrak Commuter, an
34 officer may not have a financial or employment relationship with a rail car-
35 rier, except that holding securities issued by a rail carrier is not deemed
36 to be a violation of this subsection if the officer holding the securities makes
37 a complete public disclosure of the holdings and does not participate in any
38 decision directly affecting the rail carrier.

39 **§ 24504. General authority**

40 (a) GENERAL.—Amtrak Commuter may—

1 (1) acquire, operate, maintain, and make contracts for the operation
2 of equipment and facilities necessary for commuter rail passenger
3 transportation;

4 (2) conduct research and development related to the mission of Am-
5 trak Commuter; and

6 (3) issue common stock to Amtrak.

7 (b) OPERATION AND CONTROL.—To the extent consistent with this part
8 and with an agreement with a commuter authority, Amtrak Commuter shall
9 operate and control all aspects of the commuter rail passenger transpor-
10 tation it provides.

11 (c) AGREEMENT TO AVOID DUPLICATING EMPLOYEE FUNCTIONS.—To
12 the maximum extent practicable, Amtrak Commuter and Amtrak shall make
13 an agreement that avoids duplicating employee functions and voluntarily es-
14 tablishes a consolidated work force.

15 **§ 24505. Commuter rail passenger transportation**

16 (a) GENERAL AUTHORITY.—Amtrak Commuter—

17 (1) shall provide commuter rail passenger transportation that the
18 Consolidated Rail Corporation was obligated to provide on August 13,
19 1981, under section 303(b)(2) or 304(e) of the Regional Rail Reorga-
20 nization Act of 1973 (45 U.S.C. 743(b)(2), 744(e)); and

21 (2) may provide other commuter rail passenger transportation if the
22 commuter authority for which the transportation will be provided offers
23 to provide a commuter rail passenger transportation payment equal to
24 the—

25 (A) avoidable costs of providing the transportation (including
26 the avoidable cost of necessary capital improvements) and a rea-
27 sonable return on the value; less

28 (B) revenue attributable to the transportation.

29 (b) OFFER REQUIREMENTS.—(1) A commuter authority making an offer
30 under subsection (a)(2) of this section shall—

31 (A) show that it has obtained access to all rail property necessary
32 to provide the additional commuter rail passenger transportation; and

33 (B) make the offer according to regulations the Rail Services Plan-
34 ning Office prescribes under section 10362(b)(5)(A) and (6) of this
35 title.

36 (2) The Office may revise and update the regulations when necessary to
37 carry out this section.

38 (c) ADDITIONAL EMPLOYEE REQUIREMENTS.—Additional employee re-
39 quirements shall be met through existing seniority arrangements agreed to
40 in the implementing agreement negotiated under section 508 of the Rail
41 Passenger Service Act.

1 (d) WHEN OBLIGATION DOES NOT APPLY.—Amtrak Commuter is not
 2 obligated to provide commuter rail passenger transportation if a commuter
 3 authority provides the transportation or makes a contract under which a
 4 person, except Amtrak Commuter, will provide the transportation. When ap-
 5 propriate, Amtrak Commuter shall give the authority or person access to
 6 the rail property needed to provide the transportation.

7 (e) DISCONTINUANCE OF COMMUTER RAIL PASSENGER TRANSPOR-
 8 TATION.—(1) Amtrak Commuter may discontinue commuter rail passenger
 9 transportation provided under this section on 60 days' notice if—

10 (A) a commuter authority does not offer a commuter rail passenger
 11 transportation payment under subsection (a)(2) of this section; or

12 (B) a payment is not paid when due.

13 (2) The Office shall prescribe regulations on the necessary contents of the
 14 notice required under this subsection.

15 (f) COMPENSATION FOR RIGHT-OF-WAY RELATED COSTS.—Compensa-
 16 tion by a commuter authority to Amtrak or Amtrak Commuter for right-
 17 of-way related costs for transportation over property Amtrak owns shall be
 18 determined under a method the Interstate Commerce Commission estab-
 19 lishes under section 1163 of the Omnibus Budget Reconciliation Act of
 20 1981 (45 U.S.C. 1111) or to which the parties agree.

21 (g) APPLICATION OF OTHER LAWS.—All laws related to commuter rail
 22 passenger transportation apply to a commuter authority providing com-
 23 muter rail passenger transportation under this section.

24 **§ 24506. Certain duties and powers unaffected**

25 This chapter does not affect a duty or power of the Consolidated Rail
 26 Corporation or its successor and any bi-state commuter authority under an
 27 agreement, lease, or contract under which property was conveyed to the Cor-
 28 poration under the Regional Rail Reorganization Act of 1973 (45 U.S.C.
 29 701 et seq.).

30 **CHAPTER 247—AMTRAK ROUTE SYSTEM**

Sec.

24701. Operation of basic system.

24702. Improving rail passenger transportation.

24703. Route and service criteria.

24704. Transportation requested by States, authorities, and other persons.

24705. Additional qualifying routes.

24706. Discontinuance.

24707. Cost and performance review.

24708. Special commuter transportation.

24709. International transportation.

31 **§ 24701. Operation of basic system**

32 (a) BY AMTRAK.—Amtrak shall provide intercity rail passenger transpor-
 33 tation within the basic system unless the transportation is provided by—

34 (1) a rail carrier with which Amtrak did not make a contract under
 35 section 401(a) of the Rail Passenger Service Act; or

1 (2) a regional transportation authority under contract with Amtrak.

2 (b) BY OTHERS WITH CONSENT OF AMTRAK.—Except as provided in
3 section 24306 of this title, a person may provide intercity rail passenger
4 transportation over a route over which Amtrak provides scheduled intercity
5 rail passenger transportation under a contract under section 401(a) of the
6 Act only with the consent of Amtrak.

7 **§ 24702. Improving rail passenger transportation**

8 (a) PLAN TO IMPROVE TRANSPORTATION.—Amtrak shall continue to
9 carry out its plan, submitted under section 305(f) of the Rail Passenger
10 Service Act, to improve intercity rail passenger transportation provided in
11 the basic system. The plan shall include—

12 (1) a zero-based assessment of all operating practices;

13 (2) changes to achieve the minimum use of employees consistent with
14 safe operations and adequate transportation;

15 (3) a systematic program for achieving the greatest ratio of train
16 size to passenger demand;

17 (4) a systematic program to reduce trip time in the basic system;

18 (5) establishing training programs to achieve on-time departures;

19 (6) establishing priorities for passenger trains over freight trains;

20 (7) adjusting the buying and pricing of food and beverages so that
21 food and beverage services ultimately will be profitable;

22 (8) cooperative marketing opportunities between Amtrak and govern-
23 mental authorities that have intercity rail passenger transportation;
24 and

25 (9) cooperative marketing campaigns sponsored by Amtrak and the
26 Secretary of Energy, the Administrator of the Federal Highway Ad-
27 ministration, and the Administrator of the Environmental Protection
28 Agency.

29 (b) STATE AND LOCAL SPEED RESTRICTIONS.—Amtrak shall—

30 (1) identify any speed restriction a State or local government im-
31 poses on a train of Amtrak that Amtrak decides impedes Amtrak from
32 achieving high-speed intercity rail passenger transportation; and

33 (2) consult with that State or local government—

34 (A) to evaluate alternatives to the speed restriction, considering
35 the local safety hazard that is the basis for the restriction; and

36 (B) to consider modifying or eliminating the restriction to allow
37 safe operation at higher speeds.

38 (c) HIGH-SPEED RAIL TRANSPORTATION DEVELOPMENT.—On reason-
39 able request by a State, political subdivision of a State, regional partner-
40 ship, private sector representative, or other qualified person, Amtrak shall
41 consult and cooperate to the extent feasible with that person to assist the

1 efforts of that person to achieve high-speed rail transportation through
2 equipment upgrades, grade-crossing safety improvements, and incremental
3 infrastructure improvements on existing rail facilities that Amtrak uses (ex-
4 cept the Northeast Corridor facilities). Not later than September 30, 1993,
5 Amtrak shall submit to the Committee on Energy and Commerce of the
6 House of Representatives and the Committee on Commerce, Science, and
7 Transportation of the Senate a report on its efforts under this subsection.

8 (d) ROUTES CONNECTING CORRIDORS.—Amtrak shall begin or improve
9 appropriate rail passenger transportation on a route between corridors that
10 Amtrak decides is justified because it will increase ridership on trains of
11 Amtrak on the route and in the connecting corridors.

12 **§ 24703. Route and service criteria**

13 (a) ROUTE DISCONTINUANCES AND ADDITIONS.—Except as provided in
14 this part, route discontinuances and route additions shall comply with the
15 route and service criteria.

16 (b) CONGRESSIONAL REVIEW OF CRITERIA AMENDMENTS.—(1) Amtrak
17 shall submit to Congress a draft of an amendment to the route and service
18 criteria when Amtrak decides an amendment is appropriate. The amend-
19 ment is effective at the end of the first period of 120 calendar days of con-
20 tinuous session of Congress after it is submitted unless there is enacted into
21 law during the period a joint resolution stating Congress does not approve
22 the amendment.

23 (2) In this subsection—

24 (A) a continuous session of Congress is broken only by an adjourn-
25 ment sine die; and

26 (B) the 120-day period does not include days on which either House
27 is not in session because of adjournment of more than 3 days to a day
28 certain.

29 (c) NONAPPLICATION.—The route and service criteria do not apply to—

30 (1) increasing or, because of construction schedules or other tem-
31 porary disruptive facts or seasonal fluctuations in ridership, decreasing
32 the number of trains on an existing route or a part of an existing route
33 or on a route on which additional trains are being tested;

34 (2) carrying out the recommendations developed under section 4 of
35 the Amtrak Improvement Act of 1978;

36 (3) rerouting transportation between major population centers on an
37 existing route; or

38 (4)(A) modifying transportation operations under section 24707(a)
39 of this title; and

40 (B) modifying the route system or discontinuing transportation
41 under section 24707(b) of this title.

1 **§24704. Transportation requested by States, authorities,**
2 **and other persons**

3 (a) APPLICATIONS TO BEGIN OR KEEP TRANSPORTATION.—(1) A State,
4 a regional or local authority, or another person may apply to Amtrak and
5 request Amtrak to provide rail passenger transportation or keep any part
6 of a train, route, or service that Amtrak intends to discontinue under sec-
7 tion 24706(a) or (b) or 24707(a) or (b) of this title. An application shall—

8 (A) assure Amtrak that the State, authority, or person has sufficient
9 resources to meet its share of the cost of the transportation for the
10 time the transportation will be provided;

11 (B) contain a market analysis acceptable to Amtrak to ensure that
12 there is adequate demand for the transportation; and

13 (C) commit the State, authority, or person to provide at least 45 per-
14 cent of the short term avoidable loss of providing the transportation
15 the first year the transportation is provided and at least 65 percent of
16 the short term avoidable loss each of the following years, and, except
17 as provided in section 24104(a) of this title, at least 50 percent of as-
18 sociated capital costs each year the transportation is provided.

19 (2) An application submitted by more than one State shall be considered
20 in the same way as an application submitted by one State, without it being
21 necessary for each State to comply with paragraph (1) of this subsection.

22 (b) ACTIONS ON APPLICATIONS.—(1) Amtrak shall review each applica-
23 tion submitted under subsection (a) of this section to decide whether—

24 (A) the application complies with subsection (a); and

25 (B) there is a reasonable probability that Amtrak can provide the
26 transportation from available resources.

27 (2) Amtrak may make an agreement with an applicant under this section
28 to begin or keep the transportation if Amtrak decides that the transpor-
29 tation can be provided with resources available to Amtrak. An agreement
30 may be renewed for additional periods of not more than 2 years each.

31 (c) SELECTING AMONG COMPETING APPLICATIONS.—If more than one
32 application is made for transportation consistent with the requirements of
33 subsection (a) of this section, but all the transportation applied for cannot
34 be provided with the available resources of Amtrak, the board of directors
35 of Amtrak shall select the transportation that best serves the public interest
36 and can be provided with the available resources of Amtrak.

37 (d) FARE INCREASES.—(1) Before increasing a fare applicable to trans-
38 portation provided under subsection (b)(2) of this section by more than 5
39 percent during a 6-month period, Amtrak shall consult with officials of each
40 State affected by the increase and explain why the increase is necessary.

1 (2) Except as provided in paragraph (3) of this subsection, a fare in-
 2 crease described in paragraph (1) of this subsection takes effect 90 days
 3 after Amtrak first consults with the affected States. However, not later than
 4 30 days after the first consultation, a State may submit proposals to Am-
 5 trak for reducing costs and increasing revenues of the transportation. Am-
 6 trak shall consider the proposals in deciding how much of the proposed in-
 7 crease shall go into effect.

8 (3)(A) Amtrak may increase a fare without regard to the restrictions of
 9 this subsection during—

10 (i) the first month of a fiscal year if the authorization of appropria-
 11 tions and the appropriations for Amtrak are not enacted at least 90
 12 days before the beginning of the fiscal year; or

13 (ii) the 30 days following enactment of an appropriation for Amtrak
 14 or a rescission of an appropriation.

15 (B) Amtrak shall notify each affected State of an increase under subpara-
 16 graph (A) of this paragraph as soon as possible after Amtrak decides to
 17 increase a fare.

18 (e) DETERMINING LOSS, COSTS, AND REVENUES.—After consulting with
 19 officials of each State contributing to providing transportation under sub-
 20 section (b)(2) of this section, the board shall establish the basis for deter-
 21 mining short term avoidable loss and associated capital costs of, and reve-
 22 nues from, the transportation. Amtrak shall give State officials the basis for
 23 determining the loss, cost, and revenue for each route on which transpor-
 24 tation is provided under subsection (b)(2).

25 (f) AVAILABILITY OF AMOUNTS.—Amounts provided by Amtrak under an
 26 agreement with an applicant under subsection (b)(2) of this section that are
 27 allocated for associated capital costs remain available until expended.

28 (g) ADVERTISING AND PROMOTION.—At least 2 percent but not more
 29 than 5 percent of the revenue generated by transportation provided under
 30 subsection (b)(2) of this section shall be used for advertising and promotion
 31 at the local level.

32 **§ 24705. Additional qualifying routes**

33 (a) ROUTES RECOMMENDED FOR DISCONTINUANCE.—(1) To maintain a
 34 national intercity rail passenger system in the United States and if a reduc-
 35 tion in operating expenses can be achieved, Amtrak shall provide rail pas-
 36 senger transportation over each route the Secretary of Transportation rec-
 37 ommended be discontinued under section 4 of the Amtrak Improvement Act
 38 of 1978 and may restructure a route to serve a major population center as
 39 an ending place or principal intermediate place. Transportation over a long
 40 distance route shall be maintained if the Amtrak estimate for the fiscal year
 41 ending September 30, 1980, was that the short term avoidable loss for each

1 passenger mile on the route was not more than 7 cents. Transportation over
2 a short distance route shall be maintained if the Amtrak estimate for the
3 fiscal year ending September 30, 1980, was that the short term avoidable
4 loss for each passenger mile on the route was not more than 9 cents.

5 (2) For all routes, Amtrak shall calculate short term avoidable loss for
6 each passenger-mile based on consistently defined factors. Calculations shall
7 be based on the most recent available statistics for a 90-day period, except
8 that Amtrak may use historical information adjusted to reflect the most re-
9 cent available statistics.

10 (b) DEFERRAL OF SECRETARY'S RECOMMENDATIONS.—(1) To provide
11 equivalent or improved transportation consistent with the goals of section
12 4(a) of the Act, Amtrak may defer carrying out a recommendation of the
13 Secretary under section 4 of the Act that requires providing transportation
14 over a rail line not used in intercity rail passenger transportation on May
15 24, 1979, requires using a new facility, or requires making a new labor
16 agreement, until any necessary capital improvements are made in the line
17 or facility or the agreement is made.

18 (2) Notwithstanding another law and the route and service criteria, dur-
19 ing the period a decision of the Secretary under section 4 of the Act is de-
20 ferred, Amtrak shall provide substitute transportation over existing routes
21 recommended for restructuring and over other existing feasible routes. Ex-
22 cept for transportation concentrating on commuter ridership over a short
23 haul route, transportation provided under this paragraph may be provided
24 only if the route complies with subsection (a) of this section, adjusted to
25 reflect constant 1979 dollars.

26 (c) SHORT HAUL DEMONSTRATION ROUTES.—Notwithstanding this part,
27 Amtrak may provide short haul trains on additional routes totaling not
28 more than 200 miles that link at least 2 major metropolitan areas—

29 (1) on a demonstration basis to establish the feasibility and benefits
30 of the transportation; and

31 (2) to the extent available resources allow.

32 (d) ROUTES DISCONTINUED BY RAIL CARRIERS.—Amtrak may undertake
33 to provide rail passenger transportation between places served by a rail car-
34 rier filing a notice of discontinuance under section 10908 or 10909 of this
35 title.

36 **§ 24706. Discontinuance**

37 (a) NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection
38 (b) of this section, at least 90 days before a discontinuance under section
39 24704 or 24707(a) or (b) of this title, Amtrak shall give notice of the dis-
40 continuance in the way Amtrak decides will give a State, a regional or local

1 authority, or another person the opportunity to agree to share the cost of
2 any part of the train, route, or service to be discontinued.

3 (2) Notice of the discontinuance under section 24704 or 24707(a) or (b)
4 of this title shall be posted in all stations served by the train to be discon-
5 tinued at least 14 days before the discontinuance.

6 (b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may
7 discontinue service under section 24704 or 24707(a) or (b) of this title dur-
8 ing—

9 (A) the first month of a fiscal year if the authorization of appropria-
10 tions and the appropriations for Amtrak are not enacted at least 90
11 days before the beginning of the fiscal year; and

12 (B) the 30 days following enactment of an appropriation for Amtrak
13 or a rescission of an appropriation.

14 (2) Amtrak shall notify each affected State or regional or local transpor-
15 tation authority of a discontinuance under this subsection as soon as pos-
16 sible after Amtrak decides to discontinue the service.

17 (c) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) Amtrak or a rail car-
18 rier (including a terminal company) shall provide fair and equitable arrange-
19 ments to protect the interests of employees of Amtrak or a rail carrier, as
20 the case may be, affected by a discontinuance of intercity rail passenger
21 service, including a discontinuance of service provided by a rail carrier
22 under a facility or service agreement under section 24308(a) of this title
23 under a modification or ending of the agreement or because Amtrak begins
24 providing that service. Arrangements shall include provisions that may be
25 necessary for—

26 (A) the preservation of rights, privileges, and benefits (including con-
27 tinuation of pension rights and benefits) under existing collective bar-
28 gaining agreements or otherwise;

29 (B) the continuation of collective bargaining rights;

30 (C) the protection of individual employees against a worsening of
31 their positions related to employment;

32 (D) assurances of priority of reemployment of employees whose em-
33 ployment is ended or who are laid off; and

34 (E) paid training and retraining programs.

35 (2) With respect to Amtrak's obligations under this subsection and in an
36 agreement to carry out this subsection involving only Amtrak and its em-
37 ployees, a discontinuance of intercity rail passenger service does not include
38 an adjustment in frequency, or seasonal suspension of intercity rail pas-
39 senger trains that causes a temporary suspension of service, unless the ad-
40 justment or suspension reduces passenger train operations on a particular

1 route to fewer than 3 round trips a week at any time during a calendar
2 year.

3 (3) Arrangements under this subsection shall provide benefits at least
4 equal to benefits established under section 11347 of this title.

5 (4) A contract under this chapter or section 24308(a) of this title shall
6 specify the terms of protective arrangements.

7 (5) This subsection does not impose on Amtrak an obligation of a rail
8 carrier related to a right, privilege, or benefit earned by an employee be-
9 cause of previous service performed for the carrier.

10 (6) This subsection does not apply to Amtrak Commuter.

11 **§ 24707. Cost and performance review**

12 (a) ROUTE REVIEWS.—Amtrak shall review annually each route in the
13 basic system to decide if the route meets the long distance or short distance
14 route criterion, as appropriate, under section 24705(a)(1) of this title, ad-
15 justed to reflect constant 1979 dollars. The review shall include an evalua-
16 tion of the potential market demand for, and the cost of providing transpor-
17 tation on, a part of the route and an alternative route. Amtrak shall submit
18 the results of the review to the House of Representatives, the Senate, and
19 the Secretary of Transportation. If Amtrak decides that a route will not
20 meet the criterion under section 24705(a)(1), as adjusted, Amtrak shall
21 modify or discontinue rail passenger transportation operations on the route
22 so that it will meet the criterion.

23 (b) FINANCIAL REQUIREMENTS AND PERFORMANCE STANDARDS.—Not
24 later than 30 days after the beginning of each fiscal year, Amtrak shall
25 evaluate the financial requirements for operating the basic system and the
26 progress in achieving the system-wide performance standards prescribed
27 under this part during the fiscal year. If Amtrak decides amounts available
28 for the fiscal year are not enough to meet estimated operating costs, or if
29 Amtrak estimates it cannot meet the performance standards, Amtrak shall
30 act to reduce costs and improve performance. Action under this subsection
31 shall be designed to continue the maximum level of transportation prac-
32 ticable, including—

33 (1) changing the frequency of transportation;

34 (2) increasing fares;

35 (3) reducing the cost of sleeper car and dining car service on certain
36 routes;

37 (4) increasing the passenger capacity of cars used on certain routes;
38 and

39 (5) modifying the route system or discontinuing transportation over
40 routes, considering short term avoidable loss and the number of pas-
41 sengers served on those routes.

1 (c) COST LIMITATIONS AND REVENUE GOALS.—Annual costs of Amtrak
2 may not be more than amounts, including grants made under section 24104
3 of this title, contributions of States, regional and local authorities, and other
4 persons, and revenues, available to Amtrak in the fiscal year. Amtrak annu-
5 ally shall set a goal of recovering an amount so that its revenues, including
6 contributions, is at least 61 percent of its costs, except capital costs.

7 (d) CONDUCTOR REPORTS.—To assess the operational performance of
8 trains, the President of Amtrak may direct the conductor on any train of
9 Amtrak to report to Amtrak any inadequacy of train operation. The report
10 shall be signed by the conductor, contain sufficient information to locate
11 equipment or personnel failures, and be submitted promptly to Amtrak.

12 **§ 24708. Special commuter transportation**

13 (a) TRANSPORTATION TO BE CONTINUED IF CRITERION MET.—Amtrak
14 shall continue to provide rail passenger transportation provided under sec-
15 tion 403(d) of the Rail Passenger Service Act before October 1, 1981, if,
16 after considering estimated fare increases and State and local contributions
17 to the transportation, the transportation meets the short distance route cri-
18 terion under section 24705(a)(1) of this title, as adjusted. Transportation
19 continued under this section shall be financed consistent with the method
20 of financing in effect on September 30, 1981. If the transportation is not
21 estimated to meet the criterion, as adjusted, Amtrak may modify or dis-
22 continue the transportation so that the criterion is met.

23 (b) TRANSPORTATION WITH SHORT-TERM AVOIDABLE LOSS.—Notwith-
24 standing subsection (a) of this section, if after September 30, 1993, and be-
25 fore October 1, 1995, transportation provided under subsection (a) on a
26 route during the prior 6 months has a short-term avoidable loss (excluding
27 the cost of providing passenger equipment needed to provide the transpor-
28 tation), Amtrak may choose to consider modifying or discontinuing the
29 transportation. If Amtrak does make such a choice, Amtrak shall solicit
30 public comment for at least 30 days on alternatives to the modification or
31 discontinuance. Not later than 60 days after the comment period ends, Am-
32 trak may modify or discontinue the transportation so that there is no short-
33 term avoidable loss under this section for providing the transportation on
34 the route.

35 **§ 24709. International transportation**

36 Amtrak may develop and operate international intercity rail passenger
37 transportation between the United States and Canada and between the
38 United States and Mexico. The Secretary of the Treasury and the Attorney
39 General, in cooperation with Amtrak, shall maintain, consistent with the ef-
40 fective enforcement of the immigration and customs laws, en route customs

1 inspection and immigration procedures for international intercity rail pas-
 2 senger transportation that will—

3 (1) be convenient for passengers; and

4 (2) result in the quickest possible international intercity rail pas-
 5 senger transportation.

6 **CHAPTER 249—NORTHEAST CORRIDOR IMPROVEMENT**
 7 **PROGRAM**

Sec.

24901. Definitions.

24902. Goals and requirements.

24903. Program master plan for Boston-New York main line.

24904. General authority.

24905. Coordination board and safety committee.

24906. Eliminating highway at-grade crossings.

24907. Note and mortgage.

24908. Transfer taxes and levies and recording charges.

24909. Authorization of appropriations.

8 **§ 24901. Definitions**

9 In this chapter—

10 (1) “final system plan” means the final system plan (including addi-
 11 tions) adopted by the United States Railway Association under the Re-
 12 gional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

13 (2) “rail carrier” means an express carrier and a rail carrier as de-
 14 fined in section 10102 of this title, including Amtrak.

15 **§ 24902. Goals and requirements**

16 (a) NORTHEAST CORRIDOR IMPROVEMENT PLAN.—To the extent of
 17 amounts appropriated under section 24909 of this title, Amtrak shall carry
 18 out a Northeast Corridor improvement program to achieve the following
 19 goals:

20 (1) establish not later than September 30, 1985, regularly scheduled
 21 and dependable intercity rail passenger transportation between—

22 (A) Boston, Massachusetts, and New York, New York, in not
 23 more than 3 hours and 40 minutes, including intermediate stops;
 24 and

25 (B) New York, New York, and the District of Columbia, in not
 26 more than 2 hours and 40 minutes, including intermediate stops;

27 (2) improve facilities, under route criteria approved by Congress, on
 28 routes to Harrisburg, Pennsylvania, Albany, New York, and Atlantic
 29 City, New Jersey, from the Northeast Corridor main line, and to Bos-
 30 ton, Massachusetts, and New Haven, Connecticut, from Springfield,
 31 Massachusetts, to make those facilities more compatible with improved
 32 high-speed transportation provided on the Northeast Corridor main
 33 line;

34 (3) improve nonoperational parts of stations, related facilities, and
 35 fencing used in intercity rail passenger transportation;

1 (4) facilitate improvements in, and usage of, commuter rail pas-
2 senger, rail rapid transit, and local public transportation, to the extent
3 compatible with clauses (1)–(3) of this subsection and subsections (f)
4 and (h) of this section;

5 (5) maintain and improve rail freight transportation in or adjacent
6 to the Northeast Corridor and through-freight transportation in the
7 Northeast Corridor, to the extent compatible with clauses (1)–(4) of
8 this subsection and subsections (f) and (h) of this section;

9 (6) continue and improve passenger radio mobile telephone service on
10 high-speed rail passenger transportation between Boston, Massachu-
11 setts, and the District of Columbia, to the extent compatible with
12 clauses (1)–(3) of this subsection and subsections (f) and (h) of this
13 section; and

14 (7) eliminate to the maximum extent practicable congestion in rail
15 freight and rail passenger transportation at the Baltimore and Potomac
16 Tunnel in Baltimore, Maryland, by rehabilitating and improving the
17 tunnel and the rail lines approaching the tunnel.

18 (b) MANAGING COSTS AND REVENUES.—Amtrak shall manage its operat-
19 ing costs, pricing policies, and other factors with the goal of having revenues
20 derived each fiscal year from providing intercity rail passenger transpor-
21 tation over the Northeast Corridor route between the District of Columbia
22 and Boston, Massachusetts, equal at least the operating costs of providing
23 that transportation in that fiscal year.

24 (c) COST SHARING FOR NONOPERATIONAL FACILITIES.—(1) Fifty per-
25 cent of the cost of improvements under subsection (a)(3) of this section
26 shall be paid by a State, local or regional transportation authority or other
27 responsible party. However, Amtrak may finance entirely a safety-related
28 improvement.

29 (2) When a part of the cost of improvements under subsection (a)(3) of
30 this section will be paid by a responsible party under paragraph (1) of this
31 subsection, Amtrak may make an agreement with the party under which
32 Amtrak—

33 (A) shall carry out the improvements with amounts appropriated
34 under section 24909 of this title and the party shall reimburse Amtrak;
35 and

36 (B) to the extent provided in an appropriation law, may incur obliga-
37 tions for contracts to carry out the improvements in anticipation of re-
38 imbursement.

39 (3) Amounts reimbursed to Amtrak under paragraph (2) of this sub-
40 section shall be credited to the appropriation originally charged for the cost
41 of the improvements and are available for further obligation.

1 (d) PASSENGER RADIO MOBILE TELEPHONE SERVICE.—The President
2 and departments, agencies, and instrumentalities of the United States Gov-
3 ernment shall assist Amtrak under subsection (a)(6) of this section, subject
4 to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and radio serv-
5 ices standards, when the Federal Communications Commission decides the
6 assistance is in the public interest, convenience, and necessity.

7 (e) PRIORITIES IN SELECTING AND SCHEDULING PROJECTS.—When se-
8 lecting and scheduling specific projects, Amtrak shall apply the following
9 considerations, in the following order of priority:

10 (1) Safety-related items should be completed before other items be-
11 cause the safety of the passengers and users of the Northeast Corridor
12 is paramount.

13 (2) Activities that benefit the greatest number of passengers should
14 be completed before activities involving fewer passengers.

15 (3) Reliability of intercity rail passenger transportation must be em-
16 phasized.

17 (4) Trip-time requirements of this section must be achieved to the
18 extent compatible with the priorities referred to in paragraphs (1)–(3)
19 of this subsection.

20 (5) Improvements that will pay for the investment by achieving lower
21 operating or maintenance costs should be carried out before other im-
22 provements.

23 (6) Construction operations should be scheduled so that the fewest
24 possible passengers are inconvenienced, transportation is maintained,
25 and the on-time performance of Northeast Corridor commuter rail pas-
26 senger and rail freight transportation is optimized.

27 (7) Planning should focus on completing activities that will provide
28 immediate benefits to users of the Northeast Corridor.

29 (f) COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF
30 MAXIMUM LABOR BENEFITS.—Improvements under this section shall be
31 compatible with future improvements in transportation and shall produce
32 the maximum labor benefit from hiring individuals presently unemployed.

33 (g) AUTOMATIC TRAIN CONTROL SYSTEMS.—A train operating on the
34 Northeast Corridor main line or between the main line and Atlantic City
35 shall be equipped with an automatic train control system designed to slow
36 or stop the train in response to an external signal.

37 (h) HIGH-SPEED TRANSPORTATION.—If practicable, Amtrak shall estab-
38 lish intercity rail passenger transportation in the Northeast Corridor that
39 carries out section 703(1)(E) of the Railroad Revitalization and Regulatory
40 Reform Act of 1976 (Public Law 94–210, 90 Stat. 121).

1 (i) EQUIPMENT DEVELOPMENT.—Amtrak shall develop economical and
2 reliable equipment compatible with track, operating, and marketing charac-
3 teristics of the Northeast Corridor, including the capability to meet reliable
4 trip times under section 703(1)(E) of the Railroad Revitalization and Regu-
5 latory Reform Act of 1976 (Public Law 94–210, 90 Stat. 121) in regularly
6 scheduled revenue transportation in the Corridor, when the Northeast Cor-
7 ridor improvement program is completed. Amtrak must decide that equip-
8 ment complies with this subsection before buying equipment with financial
9 assistance of the Government. Amtrak shall submit a request for an author-
10 ization of appropriations for production of the equipment.

11 (j) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT
12 TRANSPORTATION.—(1) Amtrak may make an agreement with a rail freight
13 carrier or a regional transportation authority under which the carrier will
14 carry out an alternate off-corridor routing of rail freight transportation over
15 rail lines in the Northeast Corridor between the District of Columbia and
16 New York metropolitan areas, including intermediate points. The agreement
17 shall be for at least 5 years.

18 (2) Amtrak shall apply to the Interstate Commerce Commission for ap-
19 proval of the agreement and all related agreements accompanying the appli-
20 cation as soon as the agreement is made. If the Commission finds that ap-
21 proval is necessary to carry out this chapter, the Commission shall approve
22 the application and related agreements not later than 90 days after receiv-
23 ing the application.

24 (3) If an agreement is not made under paragraph (1) of this subsection,
25 Amtrak, with the consent of the other parties, may apply to the Interstate
26 Commerce Commission. Not later than 90 days after the application, the
27 Commission shall decide on the terms of an agreement if it decides that
28 doing so is necessary to carry out this chapter. The decision of the Commis-
29 sion is binding on the other parties.

30 (k) COORDINATION.—(1) The Secretary of Transportation shall coordi-
31 nate—

32 (A) transportation programs related to the Northeast Corridor to en-
33 sure that the programs are integrated and consistent with the North-
34 east Corridor improvement program; and

35 (B) amounts from departments, agencies, and instrumentalities of
36 the Government to achieve urban redevelopment and revitalization in
37 the vicinity of urban rail stations in the Northeast Corridor served by
38 intercity and commuter rail passenger transportation.

39 (2) If the Secretary finds significant noncompliance with this section, the
40 Secretary may deny financing to a noncomplying program until the non-
41 compliance is corrected.

1 (l) COMPLETION.—Amtrak shall give the highest priority to completing
2 the program.

3 **§ 24903. Program master plan for Boston-New York main**
4 **line**

5 (a) CONTENTS.—Not later than October 27, 1993, in consultation with
6 Amtrak and the commuter and freight rail carriers operating over the
7 Northeast Corridor main line between Boston, Massachusetts, and New
8 York, New York, the Secretary of Transportation shall submit to the Com-
9 mittee on Energy and Commerce of the House of Representatives and the
10 Committee on Commerce, Science, and Transportation of the Senate a pro-
11 gram master plan for a coordinated program of improvements to that main
12 line that will allow the establishment of regularly scheduled, safe, and de-
13 pendable rail passenger transportation between Boston, Massachusetts, and
14 New York, New York, in not more than 3 hours, including intermediate
15 stops. The plan shall include—

16 (1) a description of the implications of the improvements for the re-
17 gional transportation system, including the probable effects on general
18 travel trends and on travel volumes in other transportation modes and
19 the implications for State and local governments in achieving compli-
20 ance with the Clean Air Act (42 U.S.C. 7401 et seq.);

21 (2) an identification of the coordinated program of improvements
22 and the specific projects of that program, including the estimated costs,
23 schedules, timing, and relationship of those projects with other
24 projects;

25 (3) an identification of the financial responsibility for the specific
26 projects of that program and the sources of the amounts for the
27 projects;

28 (4) an operating plan for the construction period of the improve-
29 ments that shows a coordinated approach to scheduling intercity and
30 commuter trains;

31 (5) an operating plan for the coordinated scheduling of intercity and
32 commuter trains for the period after the program is completed, includ-
33 ing priority scheduling, dispatching, and occupancy of tracks for appro-
34 priately frequent, regularly scheduled intercity rail passenger transpor-
35 tation between Boston, Massachusetts, and New York, New York, in
36 not more than 3 hours, including intermediate stops;

37 (6) a comprehensive plan to control future congestion in the North-
38 east Corridor attributable to increases in intercity and commuter rail
39 passenger transportation;

40 (7) an assessment of long-term operational safety needs and a list
41 of specific projects designed to maximize operational safety; and

1 (8) comments that Amtrak submits to the Secretary on the plan.

2 (b) SUBMITTING MODIFICATIONS OF PLAN TO CONGRESS.—The Sec-
3 retary shall submit to Congress any modification made to the program mas-
4 ter plan and comments that Amtrak submits on the modification.

5 **§ 24904. General authority**

6 (a) GENERAL.—To carry out this chapter and the Regional Rail Reorga-
7 nization Act of 1973 (45 U.S.C. 701 et seq.), Amtrak may—

8 (1) acquire, maintain, and dispose of any interest in property used
9 to provide improved high-speed rail transportation under section 24902
10 of this title;

11 (2) acquire any interest in real property that Amtrak considers nec-
12 essary to carry out the goals of section 24902;

13 (3) provide for rail freight, intercity rail passenger, and commuter
14 rail passenger transportation over property acquired under this section;

15 (4) improve rail rights of way between Boston, Massachusetts, and
16 the District of Columbia (including the route through Springfield, Mas-
17 sachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New
18 York, from the Northeast Corridor main line) to achieve the goals of
19 section 24902 of providing improved high-speed rail passenger trans-
20 portation between Boston, Massachusetts, and the District of Colum-
21 bia, and intermediate intercity markets;

22 (5) acquire, build, improve, and install passenger stations, commu-
23 nications and electric power facilities and equipment, public and private
24 highway and pedestrian crossings, and other facilities and equipment
25 necessary to provide improved high-speed rail passenger transportation
26 over rights of way improved under clause (4) of this subsection;

27 (6) make agreements with other carriers and commuter authorities
28 to grant, acquire, or make arrangements for rail freight or commuter
29 rail passenger transportation over, rights of way and facilities acquired
30 under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701
31 et seq.) and the Railroad Revitalization and Regulatory Reform Act of
32 1976 (45 U.S.C. 801 et seq.);

33 (7) appoint a general manager of the Northeast Corridor improve-
34 ment program; and

35 (8) make agreements with telecommunications common carriers, sub-
36 ject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), to
37 continue existing, and establish new and improved, passenger radio mo-
38 bile telephone service in the high-speed rail passenger transportation
39 area specified in section 24902(a)(1) and (2).

1 (b) COMPENSATORY AGREEMENTS.—Rail freight and commuter rail pas-
2 senger transportation provided under subsection (a)(3) of this section shall
3 be provided under compensatory agreements with the responsible carriers.

4 (c) COMPENSATION FOR TRANSPORTATION OVER CERTAIN RIGHTS OF
5 WAY AND FACILITIES.—(1) An agreement under subsection (a)(6) of this
6 section shall provide for reasonable reimbursement of costs but may not
7 cross-subsidize intercity rail passenger, commuter rail passenger, and rail
8 freight transportation.

9 (2) If the parties do not agree, the Interstate Commerce Commission
10 shall order that the transportation continue over facilities acquired under
11 the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and
12 the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C.
13 801 et seq.) and shall determine compensation (without allowing cross-sub-
14 sidization between intercity rail passenger and rail freight transportation)
15 for the transportation not later than 120 days after the dispute is submit-
16 ted. The Commission shall assign to a rail freight carrier obtaining trans-
17 portation under this subsection the costs Amtrak incurs only for the benefit
18 of the carrier, plus a proportionate share of all other costs of providing
19 transportation under this paragraph incurred for the common benefit of
20 Amtrak and the carrier. The proportionate share shall be based on relative
21 measures of volume of car operations, tonnage, or other factors that reason-
22 ably reflect the relative use of rail property covered by this subsection.

23 (3) This subsection does not prevent the parties from making an agree-
24 ment under subsection (a)(6) of this section after the Commission makes
25 a decision under this subsection.

26 **§ 24905. Coordination board and safety committee**

27 (a) NORTHEAST CORRIDOR COORDINATION BOARD.—(1) The Northeast
28 Corridor Coordination Board is composed of the following members:

29 (A) one individual from each commuter authority (as defined in sec-
30 tion 1135(a) of the Omnibus Budget Reconciliation Act of 1981 (45
31 U.S.C. 1104)) that provides or makes a contract to provide commuter
32 rail passenger transportation over the main line of the Northeast Cor-
33 ridor.

34 (B) 2 individuals selected by Amtrak.

35 (C) one individual selected by the Consolidated Rail Corporation.

36 (2) The Board shall recommend to Amtrak—

37 (A) policies that ensure equitable access to the Northeast Corridor,
38 considering the need for equitable access by commuter and intercity
39 rail passenger transportation and the requirements of section 24308(c)
40 of this title; and

41 (B) equitable policies for the Northeast Corridor related to—

- 1 (i) dispatching;
- 2 (ii) public information;
- 3 (iii) maintaining equipment and facilities;
- 4 (iv) major capital facility investments; and
- 5 (v) harmonizing equipment acquisitions, rates, and schedules.

6 (3) The Board may recommend to the board of directors and President
7 of Amtrak action necessary to resolve differences on providing transpor-
8 tation, except for facilities and transportation matters under section
9 24308(a) or 24904(a)(5) and (c) of this title.

10 (b) NORTHEAST CORRIDOR SAFETY COMMITTEE.—(1) The Northeast
11 Corridor Safety Committee is composed of members appointed by the Sec-
12 retary of Transportation. The members shall be representatives of—

- 13 (A) the Secretary;
- 14 (B) Amtrak;
- 15 (C) freight carriers operating more than 150,000 train miles a year
16 on the main line of the Northeast Corridor;
- 17 (D) commuter agencies;
- 18 (E) rail passengers;
- 19 (F) rail labor; and
- 20 (G) other individuals and organizations the Secretary decides have
21 a significant interest in rail safety.

22 (2) The Secretary shall consult with the Committee about safety improve-
23 ments on the Northeast Corridor main line. The Committee shall meet at
24 least once every 2 years to consider safety matters on the main line.

25 (3) At the beginning of the first session of each Congress, the Secretary
26 shall submit a report to Congress on the status of efforts to improve safety
27 on the Northeast Corridor main line. The report shall include the safety rec-
28 ommendations of the Committee and the comments of the Secretary on
29 those recommendations.

30 (4) The Committee shall cease to exist on January 1, 1999, or on another
31 date the Secretary decides is appropriate. The Secretary shall notify Con-
32 gress in writing of a decision to terminate the Committee on another date.

33 **§ 24906. Eliminating highway at-grade crossings**

34 (a) PLAN.—In consultation with the States on the main line of the North-
35 east Corridor, the Secretary of Transportation shall develop a plan not later
36 than September 30, 1993, to eliminate all highway at-grade crossings of the
37 main line by not later than December 31, 1997. The plan may provide that
38 eliminating a crossing is not required if—

- 39 (1) impracticable or unnecessary; and
- 40 (2) using the crossing is consistent with conditions the Secretary
41 considers appropriate to ensure safety.

1 (b) AMTRAK'S SHARE OF COSTS.—Amtrak shall pay 20 percent of the
2 cost of eliminating each highway at-grade crossing under the plan.

3 **§ 24907. Note and mortgage**

4 (a) GENERAL AUTHORITY.—To secure amounts expended by the United
5 States Government to acquire and improve rail property designated under
6 section 206(c)(1)(C) and (D) of the Regional Rail Reorganization Act of
7 1973 (45 U.S.C. 716(c)(1)(C) and (D)), the Secretary of Transportation
8 may obtain a note of indebtedness from, and make a mortgage agreement
9 with, Amtrak to establish a mortgage lien on the property for the Govern-
10 ment. The note and mortgage may not supersede section 24904 of this title.

11 (b) EXEMPTIONS FROM LAWS AND REGULATIONS.—The note and agree-
12 ment under subsection (a) of this section, and a transaction related to the
13 note or agreement, are exempt from any United States, State, or local law
14 or regulation that regulates securities or the issuance of securities. The
15 note, agreement, or transaction under this section has the same immunities
16 from other laws that section 601 of the Act (45 U.S.C. 791) gives to trans-
17 actions that comply with or carry out the final system plan. The transfer
18 of rail property because of the note, agreement, or transaction has the same
19 exemptions, privileges, and immunities that the Act (45 U.S.C. 701 et seq.)
20 gives to a transfer ordered or approved by the special court under section
21 303(b) of the Act (45 U.S.C. 743(b)).

22 (c) IMMUNITY FROM LIABILITY AND INDEMNIFICATION.—Amtrak, its
23 board of directors, and its individual directors are not liable because Amtrak
24 has given or issued the note or agreement to the Government under sub-
25 section (a) of this section. Immunity granted under this subsection also ap-
26 plies to a transaction related to the note or agreement. The Government
27 shall indemnify Amtrak, its board, and individual directors against costs
28 and expenses actually and reasonably incurred in defending a civil action
29 testing the validity of the note, agreement, or transaction.

30 **§ 24908. Transfer taxes and levies and recording charges**

31 A transfer of an interest in rail property under this chapter is exempt
32 from a tax or levy related to the transfer that is imposed by the United
33 States Government, a State, or a political subdivision of a State. On pay-
34 ment of the appropriate and generally applicable charge for the service per-
35 formed, a transferee or transferor may record an instrument and, consistent
36 with the final system plan, the release or removal of a pre-existing lien or
37 encumbrance of record related to the interest transferred.

38 **§ 24909. Authorization of appropriations**

39 (a) GENERAL.—(1) Not more than \$2,313,000,000 may be appropriated
40 to the Secretary of Transportation to achieve the goals of section

1 24902(a)(1) of this title. From this amount, the following amounts shall be
2 expended by Amtrak:

3 (A) at least \$27,000,000 for equipment modification and replace-
4 ment that a State or a local or regional transportation authority must
5 bear because of the electrification conversion system of the Northeast
6 Corridor under this chapter.

7 (B) \$30,000,000—

8 (i) to improve the main line track between the Northeast Cor-
9 ridor main line and Atlantic City, New Jersey, to ensure that the
10 track, consistent with a plan New Jersey developed in consultation
11 with Amtrak to provide rail passenger transportation between the
12 Northeast Corridor main line and Atlantic City, New Jersey,
13 would be of sufficient quality to allow safe rail passenger transpor-
14 tation at a minimum of 79 miles an hour not later than September
15 30, 1985; and

16 (ii) to promote rail passenger use of the track.

17 (C) necessary amounts to—

18 (i) develop Union Station in the District of Columbia;

19 (ii) install 189 track-miles, and renew 133 track-miles, of con-
20 crete ties with continuously welded rail between the District of Co-
21 lumbia and New York, New York;

22 (iii) install reverse signaling between Philadelphia, Pennsylva-
23 nia, and Morrisville, Pennsylvania, on numbers 2 and 3 track;

24 (iv) restore ditch drainage in concrete tie locations between the
25 District of Columbia and New York, New York;

26 (v) undercut 83 track-miles between the District of Columbia
27 and New York, New York;

28 (vi) rehabilitate bridges between the District of Columbia and
29 New York, New York (including Hi line);

30 (vii) develop a maintenance of way equipment repair facility be-
31 tween the District of Columbia and New York, New York, and
32 build maintenance of way bases at Philadelphia, Pennsylvania,
33 Sunnyside, New York, and Cedar Hill, Connecticut;

34 (viii) stabilize the roadbed between the District of Columbia and
35 New York, New York;

36 (ix) automate the Bush River Drawbridge at milepost 72.14;

37 (x) improve the New York Service Facility to develop rolling
38 stock repair capability;

39 (xi) install a rail car washer facility at Philadelphia, Pennsylva-
40 nia;

1 (xii) restore storage tracks and buildings at the Washington
2 Service Facility;

3 (xiii) install centralized traffic control from Landlith, Delaware,
4 to Philadelphia, Pennsylvania;

5 (xiv) improve track, including high speed surfacing, ballast
6 cleaning, and associated equipment repair and material distribu-
7 tion;

8 (xv) rehabilitate interlockings between the District of Columbia
9 and New York, New York;

10 (xvi) paint the Connecticut River, Groton, and Pelham Bay
11 bridges;

12 (xvii) provide additional catenary renewal and power supply up-
13 grading between the District of Columbia and New York, New
14 York;

15 (xviii) rehabilitate structural, electrical, and mechanical systems
16 at the 30th Street Station in Philadelphia, Pennsylvania;

17 (xix) install evacuation and fire protection facilities in tunnels
18 in New York, New York;

19 (xx) improve the communication and signal systems between
20 Wilmington, Delaware, and Boston, Massachusetts, on the North-
21 east Corridor main line, and between Philadelphia, Pennsylvania,
22 and Harrisburg, Pennsylvania, on the Harrisburg Line;

23 (xxi) improve the electric traction systems between Wilmington,
24 Delaware, and Newark, New Jersey;

25 (xxii) install baggage rack restraints, seat back guards, and seat
26 lock devices on 348 passenger cars operating in the Northeast
27 Corridor;

28 (xxiii) install 44 event recorders and 10 electronic warning de-
29 vices on locomotives operating within the Northeast Corridor; and

30 (xxiv) acquire cab signal test boxes and install 9 wayside loop
31 code transmitters for use within the Northeast Corridor.

32 (2) The following additional amounts may be appropriated to the Sec-
33 retary for expenditure by Amtrak:

34 (A) not more than \$150,000,000 to achieve the goal of section
35 24902(a)(3) of this title.

36 (B) not more than \$120,000,000 to acquire interests in property in
37 the Northeast Corridor.

38 (C) not more than \$650,000 to develop and use mobile radio fre-
39 quencies for passenger radio mobile telephone service on high-speed rail
40 passenger transportation.

1 (D) not more than \$20,000,000 to acquire and improve interests in
 2 rail property designated under section 206(c)(1)(D) of the Regional
 3 Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).

4 (E) not more than \$37,000,000 to carry out section 24902(a)(7) and
 5 (j) of this title.

6 (b) EMERGENCY MAINTENANCE.—Not more than \$25,000,000 of the
 7 amount appropriated under the Act of February 28, 1975 (Public Law 94–
 8 6, 89 Stat. 11), may be used by Amtrak for emergency maintenance on rail
 9 property designated under section 206(c)(1)(C) of the Regional Rail Reor-
 10 ganization Act of 1973 (45 U.S.C. 716(c)(1)(C)).

11 (c) PRIORITY IN USING CERTAIN AMOUNTS.—Amounts appropriated
 12 under subsection (a)(2)(B) and (D) of this section shall be used first to
 13 repay, with interest, obligations guaranteed under section 602 of the Rail
 14 Passenger Service Act, if the proceeds of those obligations were used to pay
 15 the expenses of acquiring interests in property referred to in subsection
 16 (a)(2)(B) and (D).

17 (d) PROHIBITION ON SUBSIDIZING COMMUTER AND FREIGHT OPERATING
 18 LOSSES.—Amounts appropriated under this section may not be used to sub-
 19 sidize operating losses of commuter rail or rail freight transportation.

20 (e) SUBSTITUTING AND DEFERRING CERTAIN IMPROVEMENTS.—(1) A
 21 project for which amounts are authorized under subsection (a)(1)(C) of this
 22 section is a part of the Northeast Corridor improvement program and is not
 23 a substitute for improvements specified in the document “Corridor Master
 24 Plan II, NECIP Restructured Program” of January, 1982. However, Am-
 25 trak may defer the project to carry out the improvement and rehabilitation
 26 for which amounts are authorized under subsection (a)(1)(B) of this section.
 27 The total cost of the project that Amtrak defers may not be substantially
 28 more than the amount Amtrak is required to expend or reserve under sub-
 29 section (a)(1)(B).

30 (2) Section 24902 of this title is deemed not to be fulfilled until the
 31 projects under subsection (a)(1)(C) of this section are completed.

32 (f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection
 33 (a)(1) and (2)(A) and (C)–(E) of this section remain available until ex-
 34 pended.

35 (g) AUTHORIZATIONS INCREASED BY PRIOR YEAR DEFICIENCIES.—An
 36 amount greater than that authorized for a fiscal year may be appropriated
 37 to the extent that the amount appropriated for any prior fiscal year is less
 38 than the amount authorized for that year.

39 PART D—MISCELLANEOUS

40 CHAPTER 261—LAW ENFORCEMENT

Sec.
 26101. Rail police officers.

26102. Limit on certain accident or incident liability.

1 **§ 26101. Rail police officers**

2 Under regulations prescribed by the Secretary of Transportation, a rail
 3 police officer who is employed by a rail carrier and certified or commis-
 4 sioned as a police officer under the laws of a State may enforce the laws
 5 of any jurisdiction in which the rail carrier owns property, to the extent of
 6 the authority of a police officer certified or commissioned under the laws
 7 of that jurisdiction, to protect—

8 (1) employees, passengers, or patrons of the rail carrier;

9 (2) property, equipment, and facilities owned, leased, operated, or
 10 maintained by the rail carrier;

11 (3) property moving in interstate or foreign commerce in the posses-
 12 sion of the rail carrier; and

13 (4) personnel, equipment, and material moving by rail that are vital
 14 to the national defense.

15 **§ 26102. Limit on certain accident or incident liability**

16 (a) GENERAL.—When a publicly financed commuter transportation au-
 17 thority established under Virginia law makes a contract to indemnify Am-
 18 trak for liability for operations conducted by or for the authority or to in-
 19 demnify a rail carrier over whose tracks those operations are conducted, li-
 20 ability against Amtrak, the authority, or the carrier for all claims (including
 21 punitive damages) arising from an accident or incident in the District of
 22 Columbia related to those operations may not be more than the limits of
 23 the liability coverage the authority maintains to indemnify Amtrak or the
 24 carrier.

25 (b) MINIMUM REQUIRED LIABILITY COVERAGE.—A publicly financed
 26 commuter transportation authority referred to in subsection (a) of this sec-
 27 tion must maintain a total minimum liability coverage of at least
 28 \$200,000,000.

29 (c) EFFECTIVENESS.—This section is effective only after Amtrak or a rail
 30 carrier seeking an indemnification contract under this section makes an op-
 31 erating agreement with a publicly financed commuter transportation author-
 32 ity established under Virginia law to provide access to its property for reve-
 33 nue transportation related to the operations of the authority.

34 **SUBTITLE VI—MOTOR VEHICLE AND DRIVER**
 35 **PROGRAMS**

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PART A—GENERAL

2

CHAPTER 301—MOTOR VEHICLE SAFETY

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SUBCHAPTER I—GENERAL

§ 30101. Purpose and policy

The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—

- (1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and
- (2) to carry out needed safety research and development.

§ 30102. Definitions

(a) GENERAL DEFINITIONS.—In this chapter—

(1) “dealer” means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

(2) “defect” includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.

(3) “distributor” means a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale.

(4) “interstate commerce” means commerce between a place in a State and a place in another State or between places in the same State through another State.

(5) “manufacturer” means a person—

(A) manufacturing or assembling motor vehicles or motor vehicle equipment; or

(B) importing motor vehicles or motor vehicle equipment for resale.

(6) “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

(7) “motor vehicle equipment” means—

(A) any system, part, or component of a motor vehicle as originally manufactured;

(B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or

(C) any device or an article or apparel (except medicine or eyeglasses prescribed by a licensed practitioner) that is not a system, part, or component of a motor vehicle and is manufactured, sold, delivered, offered, or intended to be used only to safeguard motor vehicles and highway users against risk of accident, injury, or death.

(8) “motor vehicle safety” means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against

1 unreasonable risk of accidents occurring because of the design, con-
2 struction, or performance of a motor vehicle, and against unreasonable
3 risk of death or injury in an accident, and includes nonoperational safe-
4 ty of a motor vehicle.

5 (9) “motor vehicle safety standard” means a minimum standard for
6 motor vehicle or motor vehicle equipment performance.

7 (10) “State” means a State of the United States, the District of Co-
8 lumbia, Puerto Rico, the Northern Mariana Islands, Guam, American
9 Samoa, and the Virgin Islands.

10 (11) “United States district court” means a district court of the
11 United States, a United States court for Guam, the Virgin Islands, and
12 American Samoa, and the district court for the Northern Mariana Is-
13 lands.

14 (b) LIMITED DEFINITIONS.—(1) In sections 30117(b), 30118–30121,
15 and 30166(f) of this title—

16 (A) “adequate repair” does not include repair resulting in substan-
17 tially impaired operation of a motor vehicle or motor vehicle equipment;

18 (B) “first purchaser” means the first purchaser of a motor vehicle
19 or motor vehicle equipment other than for resale;

20 (C) “original equipment” means motor vehicle equipment (including
21 a tire) installed in or on a motor vehicle at the time of delivery to the
22 first purchaser;

23 (D) “replacement equipment” means motor vehicle equipment (in-
24 cluding a tire) that is not original equipment;

25 (E) a brand name owner of a tire marketed under a brand name not
26 owned by the manufacturer of the tire is deemed to be the manufac-
27 turer of the tire;

28 (F) a defect in original equipment, or noncompliance of original
29 equipment with a motor vehicle safety standard prescribed under this
30 chapter, is deemed to be a defect or noncompliance of the motor vehicle
31 in or on which the equipment was installed at the time of delivery to
32 the first purchaser;

33 (G) a manufacturer of a motor vehicle in or on which original equip-
34 ment was installed when delivered to the first purchaser is deemed to
35 be the manufacturer of the equipment; and

36 (H) a retreader of a tire is deemed to be the manufacturer of the
37 tire.

38 (2) The Secretary of Transportation may prescribe regulations changing
39 paragraph (1)(C), (D), (F), or (G) of this subsection.

§ 30103. Relationship to other laws

(a) UNIFORMITY OF REGULATIONS.—The Secretary of Transportation may not prescribe a safety regulation related to a motor vehicle subject to subchapter II of chapter 105 of this title that differs from a motor vehicle safety standard prescribed under this chapter. However, the Secretary may prescribe, for a motor vehicle operated by a carrier subject to subchapter II of chapter 105, a safety regulation that imposes a higher standard of performance after manufacture than that required by an applicable standard in effect at the time of manufacture.

(b) PREEMPTION.—(1) When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. However, the United States Government, a State, or a political subdivision of a State may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under this chapter.

(2) A State may enforce a standard that is identical to a standard prescribed under this chapter.

(c) ANTITRUST LAWS.—This chapter does not—

(1) exempt from the antitrust laws conduct that is unlawful under those laws; or

(2) prohibit under the antitrust laws conduct that is lawful under those laws.

(d) WARRANTY OBLIGATIONS AND ADDITIONAL LEGAL RIGHTS AND REMEDIES.—Sections 30117(b), 30118–30121, 30166(f), and 30167(a) and (b) of this title do not establish or affect a warranty obligation under a law of the United States or a State. A remedy under those sections and sections 30161 and 30162 of this title is in addition to other rights and remedies under other laws of the United States or a State.

(e) COMMON LAW LIABILITY.—Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

§ 30104. Authorization of appropriations

The following amounts may be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out this chapter:

(1) \$71,333,436 for the fiscal year ending September 30, 1993.

(2) \$74,044,106 for the fiscal year ending September 30, 1994.

(3) \$76,857,782 for the fiscal year ending September 30, 1995.

SUBCHAPTER II—STANDARDS AND COMPLIANCE

§ 30111. Standards

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;

(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85–684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.

(c) COOPERATION.—The Secretary may advise, assist, and cooperate with departments, agencies, and instrumentalities of the United States Government, States, and other public and private agencies in developing motor vehicle safety standards.

(d) EFFECTIVE DATES OF STANDARDS.—The Secretary shall specify the effective date of a motor vehicle safety standard prescribed under this chapter in the order prescribing the standard. A standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed. However, the Secretary may prescribe a different effective date after finding, for good cause shown, that a different effective date is in the public interest and publishing the reasons for the finding.

(e) 5-YEAR PLAN FOR TESTING STANDARDS.—The Secretary shall establish and periodically review and update on a continuing basis a 5-year plan for testing motor vehicle safety standards prescribed under this chapter that the Secretary considers capable of being tested. In developing the plan and establishing testing priorities, the Secretary shall consider factors the Secretary considers appropriate, consistent with section 30101 of this title and the Secretary's other duties and powers under this chapter. The Secretary may change at any time those priorities to address matters the Secretary considers of greater priority. The initial plan may be the 5-year plan for compliance testing in effect on December 18, 1991.

§ 30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment

(a) GENERAL.—Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a person may not

1 manufacture for sale, sell, offer for sale, introduce or deliver for introduc-
2 tion in interstate commerce, or import into the United States, any motor
3 vehicle or motor vehicle equipment manufactured on or after the date an
4 applicable motor vehicle safety standard prescribed under this chapter takes
5 effect unless the vehicle or equipment complies with the standard and is covered
6 by a certification issued under section 30115 of this title.

7 (b) NONAPPLICATION.—This section does not apply to—

8 (1) the sale, offer for sale, or introduction or delivery for introduc-
9 tion in interstate commerce of a motor vehicle or motor vehicle equip-
10 ment after the first purchase of the vehicle or equipment in good faith
11 other than for resale;

12 (2) a person—

13 (A) establishing that the person had no reason to know, despite
14 exercising reasonable care, that a motor vehicle or motor vehicle
15 equipment does not comply with applicable motor vehicle safety
16 standards prescribed under this chapter; or

17 (B) holding, without knowing about the noncompliance and be-
18 fore the vehicle or equipment is first purchased in good faith other
19 than for resale, a certificate issued by a manufacturer or importer
20 stating the vehicle or equipment complies with applicable stand-
21 ards prescribed under this chapter;

22 (3) a motor vehicle or motor vehicle equipment intended only for ex-
23 port, labeled for export on the vehicle or equipment and on the outside
24 of any container of the vehicle or equipment, and exported;

25 (4) a motor vehicle the Secretary of Transportation decides under
26 section 30141 of this title is capable of complying with applicable
27 standards prescribed under this chapter;

28 (5) a motor vehicle imported for personal use by an individual who
29 receives an exemption under section 30142 of this title;

30 (6) a motor vehicle under section 30143 of this title imported by an
31 individual employed outside the United States;

32 (7) a motor vehicle under section 30144 of this title imported on a
33 temporary basis;

34 (8) a motor vehicle or item of motor vehicle equipment under section
35 30145 of this title requiring further manufacturing; or

36 (9) a motor vehicle that is at least 25 years old.

37 **§ 30113. General exemptions**

38 (a) DEFINITION.—In this section, “low-emission motor vehicle” means a
39 motor vehicle meeting the standards for new motor vehicles applicable to the
40 vehicle under section 202 of the Clean Air Act (42 U.S.C. 7521) when the

1 vehicle is manufactured and emitting an air pollutant in an amount signifi-
2 cantly below one of those standards.

3 (b) AUTHORITY TO EXEMPT AND PROCEDURES.—(1) The Secretary of
4 Transportation may exempt, on a temporary basis, motor vehicles from a
5 motor vehicle safety standard prescribed under this chapter on terms the
6 Secretary considers appropriate. An exemption may be renewed. A renewal
7 may be granted only on reapplication and must conform to the requirements
8 of this subsection.

9 (2) The Secretary may begin a proceeding under this subsection when a
10 manufacturer applies for an exemption or a renewal of an exemption. The
11 Secretary shall publish notice of the application and provide an opportunity
12 to comment. An application for an exemption or for a renewal of an exemp-
13 tion shall be filed at a time and in the way, and contain information, this
14 section and the Secretary require.

15 (3) The Secretary may act under this subsection on finding that—

16 (A) an exemption is consistent with the public interest and this chap-
17 ter; and

18 (B)(i) compliance with the standard would cause substantial eco-
19 nomic hardship to a manufacturer that has tried to comply with the
20 standard in good faith;

21 (ii) the exemption would make easier the development or field evalua-
22 tion of a new motor vehicle safety feature providing a safety level at
23 least equal to the safety level of the standard;

24 (iii) the exemption would make the development or field evaluation
25 of a low-emission motor vehicle easier and would not unreasonably
26 lower the safety level of that vehicle; or

27 (iv) compliance with the standard would prevent the manufacturer
28 from selling a motor vehicle with an overall safety level at least equal
29 to the overall safety level of nonexempt vehicles.

30 (c) CONTENTS OF APPLICATIONS.—A manufacturer applying for an ex-
31 emption under subsection (b) of this section shall include the following in-
32 formation in the application:

33 (1) if the application is made under subsection (b)(3)(B)(i) of this
34 section, a complete financial statement describing the economic hard-
35 ship and a complete description of the manufacturer's good faith effort
36 to comply with each motor vehicle safety standard prescribed under
37 this chapter from which the manufacturer is requesting an exemption.

38 (2) if the application is made under subsection (b)(3)(B)(ii) of this
39 section, a record of the research, development, and testing establishing
40 the innovative nature of the safety feature and a detailed analysis es-

1 tablishing that the safety level of the feature at least equals the safety
2 level of the standard.

3 (3) if the application is made under subsection (b)(3)(B)(iii) of this
4 section, a record of the research, development, and testing establishing
5 that the motor vehicle is a low-emission motor vehicle and that the
6 safety level of the vehicle is not lowered unreasonably by exemption
7 from the standard.

8 (4) if the application is made under subsection (b)(3)(B)(iv) of this
9 section, a detailed analysis showing how the vehicle provides an overall
10 safety level at least equal to the overall safety level of nonexempt vehi-
11 cles.

12 (d) ELIGIBILITY.—A manufacturer is eligible for an exemption under sub-
13 section (b)(3)(B)(i) of this section only if the Secretary determines that the
14 manufacturer's total motor vehicle production in the most recent year of
15 production is not more than 10,000. A manufacturer is eligible for an ex-
16 emption under subsection (b)(3)(B)(ii), (iii), or (iv) of this section only if
17 the Secretary determines the exemption is for not more than 2,500 vehicles
18 to be sold in the United States in any 12-month period.

19 (e) MAXIMUM PERIOD.—An exemption or renewal under subsection
20 (b)(3)(B)(i) of this section may be granted for not more than 3 years. An
21 exemption or renewal under subsection (b)(3)(B)(ii), (iii), or (iv) of this sec-
22 tion may be granted for not more than 2 years.

23 (f) DISCLOSURE.—The Secretary may make public, by the 10th day after
24 an application is filed, information contained in the application or relevant
25 to the application unless the information concerns or is related to a trade
26 secret or other confidential information not relevant to the application.

27 (g) NOTICE OF DECISION.—The Secretary shall publish in the Federal
28 Register a notice of each decision granting an exemption under this section
29 and the reasons for granting it.

30 (h) PERMANENT LABEL REQUIREMENT.—The Secretary shall require a
31 permanent label to be fixed to a motor vehicle granted an exemption under
32 this section. The label shall either name or describe each motor vehicle safe-
33 ty standard prescribed under this chapter from which the vehicle is exempt.
34 The Secretary may require that written notice of an exemption be delivered
35 by appropriate means to the dealer and the first purchaser of the vehicle
36 other than for resale.

37 **§ 30114. Special exemptions**

38 The Secretary of Transportation may exempt a motor vehicle or item of
39 motor vehicle equipment from section 30112(a) of this title on terms the
40 Secretary decides are necessary for research, investigations, demonstrations,
41 training, or competitive racing events.

1 **§ 30115. Certification of compliance**

2 A manufacturer or distributor of a motor vehicle or motor vehicle equip-
3 ment shall certify to the distributor or dealer at delivery that the vehicle
4 or equipment complies with applicable motor vehicle safety standards pre-
5 scribed under this chapter. A person may not issue the certificate if, in exer-
6 cising reasonable care, the person has reason to know the certificate is false
7 or misleading in a material respect. Certification of a vehicle must be shown
8 by a label or tag permanently fixed to the vehicle. Certification of equipment
9 may be shown by a label or tag on the equipment or on the outside of the
10 container in which the equipment is delivered.

11 **§ 30116. Defects and noncompliance found before sale to**
12 **purchaser**

13 (a) ACTIONS REQUIRED OF MANUFACTURERS AND DISTRIBUTORS.—If,
14 after a manufacturer or distributor sells a motor vehicle or motor vehicle
15 equipment to a distributor or dealer and before the distributor or dealer
16 sells the vehicle or equipment, it is decided that the vehicle or equipment
17 contains a defect related to motor vehicle safety or does not comply with
18 applicable motor vehicle safety standards prescribed under this chapter—

19 (1) the manufacturer or distributor immediately shall repurchase the
20 vehicle or equipment at the price paid by the distributor or dealer, plus
21 transportation charges and reasonable reimbursement of at least one
22 percent a month of the price paid prorated from the date of notice of
23 noncompliance or defect to the date of repurchase; or

24 (2) if a vehicle, the manufacturer or distributor immediately shall
25 give to the distributor or dealer at the manufacturer's or distributor's
26 own expense, the part or equipment needed to make the vehicle comply
27 with the standards or correct the defect.

28 (b) DISTRIBUTOR OR DEALER INSTALLATION.—The distributor or dealer
29 shall install the part or equipment referred to in subsection (a)(2) of this
30 section. If the distributor or dealer installs the part or equipment with rea-
31 sonable diligence after it is received, the manufacturer shall reimburse the
32 distributor or dealer for the reasonable value of the installation and a rea-
33 sonable reimbursement of at least one percent a month of the manufactur-
34 er's or distributor's selling price prorated from the date of notice of non-
35 compliance or defect to the date the motor vehicle complies with applicable
36 motor vehicle safety standards prescribed under this chapter or the defect
37 is corrected.

38 (c) ESTABLISHING AMOUNT DUE AND CIVIL ACTIONS.—The parties shall
39 establish the value of installation and the amount of reimbursement under
40 this section. If the parties do not agree, or if a manufacturer or distributor
41 refuses to comply with subsection (a) or (b) of this section, the distributor

1 or dealer purchasing the motor vehicle or motor vehicle equipment may
2 bring a civil action. The action may be brought in a United States district
3 court for the judicial district in which the manufacturer or distributor re-
4 sides, is found, or has an agent, to recover damages, court costs, and a rea-
5 sonable attorney's fee. An action under this section must be brought not
6 later than 3 years after the claim accrues.

7 **§ 30117. Providing information to, and maintaining records**
8 **on, purchasers**

9 (a) PROVIDING INFORMATION AND NOTICE.—The Secretary of Transpor-
10 tation may require that each manufacturer of a motor vehicle or motor vehi-
11 cle equipment provide technical information related to performance and
12 safety required to carry out this chapter. The Secretary may require the
13 manufacturer to give the following notice of that information when the Sec-
14 retary decides it is necessary:

15 (1) to each prospective purchaser of a vehicle or equipment before
16 the first sale other than for resale at each location at which the vehicle
17 or equipment is offered for sale by a person having a legal relationship
18 with the manufacturer, in a way the Secretary decides is appropriate.

19 (2) to the first purchaser of a vehicle or equipment other than for
20 resale when the vehicle or equipment is bought, in printed matter
21 placed in the vehicle or attached to or accompanying the equipment.

22 (b) MAINTAINING PURCHASER RECORDS AND PROCEDURES.—(1) A man-
23 ufacturer of a motor vehicle or tire (except a retreaded tire) shall cause to
24 be maintained a record of the name and address of the first purchaser of
25 each vehicle or tire it produces and, to the extent prescribed by regulations
26 of the Secretary, shall cause to be maintained a record of the name and
27 address of the first purchaser of replacement equipment (except a tire) that
28 the manufacturer produces. The Secretary may prescribe by regulation the
29 records to be maintained and reasonable procedures for maintaining the
30 records under this subsection, including procedures to be followed by dis-
31 tributors and dealers to assist the manufacturer in obtaining the informa-
32 tion required by this subsection. A procedure shall be reasonable for the
33 type of vehicle or tire involved, and shall provide reasonable assurance that
34 a customer list of a distributor or dealer, or similar information, will be
35 made available to a person (except the distributor or dealer) only when nec-
36 essary to carry out this subsection and sections 30118–30121, 30166(f),
37 and 30167(a) and (b) of this title. Availability of assistance from a distribu-
38 tor or dealer does not affect an obligation of a manufacturer under this sub-
39 section.

40 (2)(A) Except as provided in paragraph (3) of this subsection, the Sec-
41 retary may require a distributor or dealer to maintain a record under para-

1 graph (1) of this subsection only if the business of the distributor or dealer
2 is owned or controlled by a manufacturer of tires.

3 (B) The Secretary shall require each distributor and dealer whose busi-
4 ness is not owned or controlled by a manufacturer of tires to give a registra-
5 tion form (containing the tire identification number) to the first purchaser
6 of a tire. The Secretary shall prescribe the form, which shall be standard-
7 ized for all tires and designed to allow the purchaser to complete and return
8 it directly to the manufacturer of the tire. The manufacturer shall give suf-
9 ficient copies of forms to distributors and dealers.

10 (3)(A) The Secretary shall evaluate from time to time how successful the
11 procedures under paragraph (2) of this subsection have been in helping to
12 maintain records about first purchasers of tires. After each evaluation, the
13 Secretary shall decide—

14 (i) the extent to which distributors and dealers have complied with
15 the procedures;

16 (ii) the extent to which distributors and dealers have encouraged
17 first purchasers of tires to register the tires; and

18 (iii) whether to prescribe for manufacturers, distributors, or dealers
19 other requirements that the Secretary decides will increase significantly
20 the percentage of first purchasers of tires about whom records are
21 maintained.

22 (B) The Secretary may prescribe a requirement under subparagraph (A)
23 of this paragraph only if the Secretary decides it is necessary to reduce the
24 risk to motor vehicle safety, after considering—

25 (i) the cost of the requirement to manufacturers and the burden of
26 the requirement on distributors and dealers, compared to the increase
27 in the percentage of first purchasers of tires about whom records would
28 be maintained as a result of the requirement;

29 (ii) the extent to which distributors and dealers have complied with
30 the procedures in paragraph (2) of this subsection; and

31 (iii) the extent to which distributors and dealers have encouraged
32 first purchasers of tires to register the tires.

33 (C) A manufacturer of tires shall reimburse distributors and dealers of
34 that manufacturer's tires for all reasonable costs incurred by the distribu-
35 tors and dealers in complying with a requirement prescribed by the Sec-
36 retary under subparagraph (A) of this paragraph.

37 (D) After making a decision under subparagraph (A) of this paragraph,
38 the Secretary shall submit to each House of Congress a report containing
39 a detailed statement of the decision and an explanation of the reasons for
40 the decision.

1 **§ 30118. Notification of defects and noncompliance**

2 (a) NOTIFICATION BY SECRETARY.—The Secretary of Transportation
3 shall notify the manufacturer of a motor vehicle or replacement equipment
4 immediately after making an initial decision (through testing, inspection, in-
5 vestigation, or research carried out under this chapter, examining commu-
6 nications under section 30166(f) of this title, or otherwise) that the vehicle
7 or equipment contains a defect related to motor vehicle safety or does not
8 comply with an applicable motor vehicle safety standard prescribed under
9 this chapter. The notification shall include the information on which the de-
10 cision is based. The Secretary shall publish a notice of each decision under
11 this subsection in the Federal Register. Subject to section 30167(a) of this
12 title, the notification and information are available to any interested person.

13 (b) DEFECT AND NONCOMPLIANCE PROCEEDINGS AND ORDERS.—(1)
14 The Secretary may make a final decision that a motor vehicle or replace-
15 ment equipment contains a defect related to motor vehicle safety or does
16 not comply with an applicable motor vehicle safety standard prescribed
17 under this chapter only after giving the manufacturer an opportunity to
18 present information, views, and arguments showing that there is no defect
19 or noncompliance or that the defect does not affect motor vehicle safety.
20 Any interested person also shall be given an opportunity to present informa-
21 tion, views, and arguments.

22 (2) If the Secretary decides under paragraph (1) of this subsection that
23 the vehicle or equipment contains the defect or does not comply, the Sec-
24 retary shall order the manufacturer to—

25 (A) give notification under section 30119 of this title to the owners,
26 purchasers, and dealers of the vehicle or equipment of the defect or
27 noncompliance; and

28 (B) remedy the defect or noncompliance under section 30120 of this
29 title.

30 (c) NOTIFICATION BY MANUFACTURER.—A manufacturer of a motor ve-
31 hicle or replacement equipment shall notify the Secretary by certified mail,
32 and the owners, purchasers, and dealers of the vehicle or equipment as pro-
33 vided in section 30119(d) of this section, if the manufacturer—

34 (1) learns the vehicle or equipment contains a defect and decides in
35 good faith that the defect is related to motor vehicle safety; or

36 (2) decides in good faith that the vehicle or equipment does not com-
37 ply with an applicable motor vehicle safety standard prescribed under
38 this chapter.

39 (d) EXEMPTIONS.—On application of a manufacturer, the Secretary shall
40 exempt the manufacturer from this section if the Secretary decides a defect
41 or noncompliance is inconsequential to motor vehicle safety. The Secretary

1 may take action under this subsection only after notice in the Federal Reg-
2 ister and an opportunity for any interested person to present information,
3 views, and arguments.

4 (e) HEARINGS ABOUT MEETING NOTIFICATION REQUIREMENTS.—On the
5 motion of the Secretary or on petition of any interested person, the Sec-
6 retary may conduct a hearing to decide whether the manufacturer has rea-
7 sonably met the notification requirements under this section. Any interested
8 person may make written and oral presentations of information, views, and
9 arguments on whether the manufacturer has reasonably met the notification
10 requirements. If the Secretary decides that the manufacturer has not rea-
11 sonably met the notification requirements, the Secretary shall order the
12 manufacturer to take specified action to meet those requirements and may
13 take any other action authorized under this chapter.

14 **§ 30119. Notification procedures**

15 (a) CONTENTS OF NOTIFICATION.—Notification by a manufacturer re-
16 quired under section 30118 of this title of a defect or noncompliance shall
17 contain—

18 (1) a clear description of the defect or noncompliance;

19 (2) an evaluation of the risk to motor vehicle safety reasonably relat-
20 ed to the defect or noncompliance;

21 (3) the measures to be taken to obtain a remedy of the defect or
22 noncompliance;

23 (4) a statement that the manufacturer giving notice will remedy the
24 defect or noncompliance without charge under section 30120 of this
25 title;

26 (5) the earliest date on which the defect or noncompliance will be
27 remedied without charge, and for tires, the period during which the de-
28 fect or noncompliance will be remedied without charge under section
29 30120 of this title;

30 (6) the procedure the recipient of a notice is to follow to inform the
31 Secretary of Transportation when a manufacturer, distributor, or deal-
32 er does not remedy the defect or noncompliance without charge under
33 section 30120 of this title; and

34 (7) other information the Secretary prescribes by regulation.

35 (b) EARLIEST REMEDY DATE.—The date specified by a manufacturer in
36 a notification under subsection (a)(5) of this section or section 30121(c)(2)
37 of this title is the earliest date that parts and facilities reasonably can be
38 expected to be available to remedy the defect or noncompliance. The Sec-
39 retary may disapprove the date.

40 (c) TIME FOR NOTIFICATION.—Notification required under section 30118
41 of this title shall be given within a reasonable time—

1 (1) prescribed by the Secretary, after the manufacturer receives no-
2 tice of a final decision under section 30118(b) of this title; or

3 (2) after the manufacturer first decides that a safety-related defect
4 or noncompliance exists under section 30118(c) of this title.

5 (d) MEANS OF PROVIDING NOTIFICATION.—(1) Notification required
6 under section 30118 of this title about a motor vehicle shall be sent by first
7 class mail—

8 (A) to each person registered under State law as the owner and
9 whose name and address are reasonably ascertainable by the manufac-
10 turer through State records or other available sources; or

11 (B) if a registered owner is not notified under clause (A) of this
12 paragraph, to the most recent purchaser known to the manufacturer.

13 (2) Notification required under section 30118 of this title about replace-
14 ment equipment (except a tire) shall be sent by first class mail to the most
15 recent purchaser known to the manufacturer. In addition, if the Secretary
16 decides that public notice is required for motor vehicle safety, public notice
17 shall be given in the way required by the Secretary after consulting with
18 the manufacturer.

19 (3) Notification required under section 30118 of this title about a tire
20 shall be sent by first class mail (or, if the manufacturer prefers, by certified
21 mail) to the most recent purchaser known to the manufacturer. In addition,
22 if the Secretary decides that public notice is required for motor vehicle safe-
23 ty, public notice shall be given in the way required by the Secretary after
24 consulting with the manufacturer. In deciding whether public notice is re-
25 quired, the Secretary shall consider—

26 (A) the magnitude of the risk to motor vehicle safety caused by the
27 defect or noncompliance; and

28 (B) the cost of public notice compared to the additional number of
29 owners the notice may reach.

30 (4) A dealer to whom a motor vehicle or replacement equipment was de-
31 livered shall be notified by certified mail or quicker means if available.

32 (e) SECOND NOTIFICATION.—If the Secretary decides that a notification
33 sent by a manufacturer under this section has not resulted in an adequate
34 number of motor vehicles or items of replacement equipment being returned
35 for remedy, the Secretary may order the manufacturer to send a 2d notifi-
36 cation in the way the Secretary prescribes by regulation.

37 (f) NOTIFICATION BY LESSOR TO LESSEE.—(1) In this subsection,
38 “leased motor vehicle” means a motor vehicle that is leased to a person for
39 at least 4 months by a lessor that has leased at least 5 motor vehicles in
40 the 12 months before the date of the notification.

1 (2) A lessor that receives a notification required by section 30118 of this
2 title about a leased motor vehicle shall provide a copy of the notification
3 to the lessee in the way the Secretary prescribes by regulation.

4 **§ 30120. Remedies for defects and noncompliance**

5 (a) WAYS TO REMEDY.—(1) Subject to subsections (f) and (g) of this
6 section, when notification of a defect or noncompliance is required under
7 section 30118(b) or (c) of this title, the manufacturer of the defective or
8 noncomplying motor vehicle or replacement equipment shall remedy the de-
9 fect or noncompliance without charge when the vehicle or equipment is pre-
10 sented for remedy. Subject to subsections (b) and (c) of this section, the
11 manufacturer shall remedy the defect or noncompliance in any of the follow-
12 ing ways the manufacturer chooses:

13 (A) if a vehicle—

14 (i) by repairing the vehicle;

15 (ii) by replacing the vehicle with an identical or reasonably
16 equivalent vehicle; or

17 (iii) by refunding the purchase price, less a reasonable allowance
18 for depreciation.

19 (B) if replacement equipment, by repairing the equipment or replac-
20 ing the equipment with identical or reasonably equivalent equipment.

21 (2) The Secretary of Transportation may prescribe regulations to allow
22 the manufacturer to impose conditions on the replacement of a motor vehi-
23 cle or refund of its price.

24 (b) TIRE REMEDIES.—(1) A manufacturer of a tire, including an original
25 equipment tire, shall remedy a defective or noncomplying tire if the owner
26 or purchaser presents the tire for remedy not later than 60 days after the
27 later of—

28 (A) the day the owner or purchaser receives notification under sec-
29 tion 30119 of this title; or

30 (B) if the manufacturer decides to replace the tire, the day the
31 owner or purchaser receives notification that a replacement is available.

32 (2) If the manufacturer decides to replace the tire and the replacement
33 is not available during the 60-day period, the owner or purchaser must
34 present the tire for remedy during a subsequent 60-day period that begins
35 only after the owner or purchaser receives notification that a replacement
36 will be available during the subsequent period. If tires are available during
37 the subsequent period, only a tire presented for remedy during that period
38 must be remedied.

39 (c) ADEQUACY OF REPAIRS.—(1) If a manufacturer decides to repair a
40 defective or noncomplying motor vehicle or replacement equipment and the

1 repair is not done adequately within a reasonable time, the manufacturer
2 shall—

3 (A) replace the vehicle or equipment without charge with an identical
4 or reasonably equivalent vehicle or equipment; or

5 (B) for a vehicle, refund the purchase price, less a reasonable allow-
6 ance for depreciation.

7 (2) Failure to repair a motor vehicle or replacement equipment ade-
8 quately not later than 60 days after its presentation is prima facie evidence
9 of failure to repair within a reasonable time. However, the Secretary may
10 extend, by order, the 60-day period if good cause for an extension is shown
11 and the reason is published in the Federal Register before the period ends.
12 Presentation of a vehicle or equipment for repair before the date specified
13 by a manufacturer in a notice under section 30119(a)(5) or 30121(c)(2) of
14 this title is not a presentation under this subsection.

15 (d) FILING MANUFACTURER'S REMEDY PROGRAM.—A manufacturer
16 shall file with the Secretary a copy of the manufacturer's program under
17 this section for remedying a defect or noncompliance. The Secretary shall
18 make the program available to the public and publish a notice of availability
19 in the Federal Register.

20 (e) HEARINGS ABOUT MEETING REMEDY REQUIREMENTS.—On the mo-
21 tion of the Secretary or on application by any interested person, the Sec-
22 retary may conduct a hearing to decide whether the manufacturer has rea-
23 sonably met the remedy requirements under this section. Any interested per-
24 son may make written and oral presentations of information, views, and ar-
25 guments on whether the manufacturer has reasonably met the remedy re-
26 quirements. If the Secretary decides a manufacturer has not reasonably met
27 the remedy requirements, the Secretary shall order the manufacturer to
28 take specified action to meet those requirements and may take any other
29 action authorized under this chapter.

30 (f) FAIR REIMBURSEMENT TO DEALERS.—A manufacturer shall pay fair
31 reimbursement to a dealer providing a remedy without charge under this
32 section.

33 (g) NONAPPLICATION.—(1) The requirement that a remedy be provided
34 without charge does not apply if the motor vehicle or replacement equipment
35 was bought by the first purchaser more than 8 calendar years, or the tire,
36 including an original equipment tire, was bought by the first purchaser
37 more than 3 calendar years, before notice is given under section 30118(c)
38 of this title or an order is issued under section 30118(b) of this title, which-
39 ever is earlier.

1 (2) This section does not apply during any period in which enforcement
2 of an order under section 30118(b) of this title is restrained or the order
3 is set aside in a civil action to which section 30121(d) of this title applies.

4 (h) EXEMPTIONS.—On application of a manufacturer, the Secretary shall
5 exempt the manufacturer from this section if the Secretary decides a defect
6 or noncompliance is inconsequential to motor vehicle safety. The Secretary
7 may take action under this subsection only after notice in the Federal Reg-
8 ister and an opportunity for any interested person to present information,
9 views, and arguments.

10 (i) LIMITATION ON SALE OR LEASE.—(1) If notification is required by
11 an order under section 30118(b) of this title or is required under section
12 30118(c) of this title and the manufacturer has provided to a dealer notifi-
13 cation about a new motor vehicle or new item of replacement equipment in
14 the dealer's possession at the time of notification that contains a defect re-
15 lated to motor vehicle safety or does not comply with an applicable motor
16 vehicle safety standard prescribed under this chapter, the dealer may sell
17 or lease the motor vehicle or item of replacement equipment only if—

18 (A) the defect or noncompliance is remedied as required by this sec-
19 tion before delivery under the sale or lease; or

20 (B) when the notification is required by an order under section
21 30118(b) of this title, enforcement of the order is restrained or the
22 order is set aside in a civil action to which section 30121(d) of this
23 title applies.

24 (2) This subsection does not prohibit a dealer from offering for sale or
25 lease the vehicle or equipment.

26 **§ 30121. Provisional notification and civil actions to enforce**

27 (a) PROVISIONAL NOTIFICATION.—(1) The Secretary of Transportation
28 may order a manufacturer to issue a provisional notification if a civil action
29 about an order issued under section 30118(b) of this title has been brought
30 under section 30163 of this title. The provisional notification shall con-
31 tain—

32 (A) a statement that the Secretary has decided that a defect related
33 to motor vehicle safety or noncompliance with a motor vehicle safety
34 standard prescribed under this chapter exists and that the manufac-
35 turer is contesting the decision in a civil action in a United States dis-
36 trict court;

37 (B) a clear description of the Secretary's stated basis for the deci-
38 sion;

39 (C) the Secretary's evaluation of the risk to motor vehicle safety rea-
40 sonably related to the defect or noncompliance;

1 (D) measures the Secretary considers necessary to avoid an unrea-
2 sonable risk to motor vehicle safety resulting from the defect or non-
3 compliance;

4 (E) a statement that the manufacturer will remedy the defect or
5 noncompliance without charge under section 30120 of this title, but
6 that the requirement to remedy without charge is conditioned on the
7 outcome of the civil action; and

8 (F) other information the Secretary prescribes by regulation or in-
9 cludes in the order requiring the notice.

10 (2) A notification under this subsection does not relieve a manufacturer
11 of liability for not giving notification required by an order under section
12 30118(b) of this title.

13 (b) CIVIL ACTIONS FOR NOT NOTIFYING.—(1) A manufacturer that does
14 not notify owners and purchasers under section 30119(c) and (d) of this
15 title is liable to the United States Government for a civil penalty, unless
16 the manufacturer prevails in a civil action referred to in subsection (a) of
17 this section or the court in that action enjoins enforcement of the order.
18 Enforcement may be enjoined only if the court decides that the failure to
19 notify is reasonable and that the manufacturer has demonstrated the likeli-
20 hood of prevailing on the merits. If enforcement is enjoined, the manufac-
21 turer is not liable during the time the order is stayed.

22 (2) A manufacturer that does not notify owners and purchasers as re-
23 quired under subsection (a) of this section is liable for a civil penalty re-
24 gardless of whether the manufacturer prevails in an action on the validity
25 of the order issued under section 30118(b) of this title.

26 (c) ORDERS TO MANUFACTURERS.—If the Secretary prevails in a civil ac-
27 tion referred to in subsection (a) of this section, the Secretary shall order
28 the manufacturer—

29 (1) to notify each owner, purchaser, and dealer described in section
30 30119(d) of this title of the outcome of the action and other informa-
31 tion the Secretary requires, and notification under this clause may be
32 combined with notification required under section 30118(b) of this title;

33 (2) to specify the earliest date under section 30119(b) of this title
34 on which the defect or noncompliance will be remedied without charge
35 under section 30120 of this title; and

36 (3) if notification was required under subsection (a) of this section,
37 to reimburse an owner or purchaser for reasonable and necessary ex-
38 penses (in an amount that is not more than the amount specified in
39 the order of the Secretary under subsection (a)) incurred for repairing
40 the defect or noncompliance during the period beginning on the date

1 that notification was required to be issued and ending on the date the
2 owner or purchaser receives the notification under this subsection.

3 (d) VENUE.—Notwithstanding section 30163(c) of this title, a civil action
4 about an order issued under section 30118(b) of this title must be brought
5 in the United States district court for a judicial district in the State in
6 which the manufacturer is incorporated or the District of Columbia. On mo-
7 tion of a party, the court may transfer the action to another district court
8 if good cause is shown. All actions related to the same order under section
9 30118(b) shall be consolidated in an action in one judicial district under an
10 order of the court in which the first action was brought. If the first action
11 is transferred to another court, that court shall issue the consolidation
12 order.

13 **§ 30122. Making safety devices and elements inoperative**

14 (a) DEFINITION.—In this section, “motor vehicle repair business” means
15 a person holding itself out to the public to repair for compensation a motor
16 vehicle or motor vehicle equipment.

17 (b) PROHIBITION.—A manufacturer, distributor, dealer, or motor vehicle
18 repair business may not knowingly make inoperative any part of a device
19 or element of design installed on or in a motor vehicle or motor vehicle
20 equipment in compliance with an applicable motor vehicle safety standard
21 prescribed under this chapter unless the manufacturer, distributor, dealer,
22 or repair business reasonably believes the vehicle or equipment will not be
23 used (except for testing or a similar purpose during maintenance or repair)
24 when the device or element is inoperative.

25 (c) REGULATIONS.—The Secretary of Transportation may prescribe regu-
26 lations—

27 (1) to exempt a person from this section if the Secretary decides the
28 exemption is consistent with motor vehicle safety and section 30101 of
29 this title; and

30 (2) to define “make inoperative”.

31 (d) NONAPPLICATION.—This section does not apply to a safety belt inter-
32 lock or buzzer designed to indicate a safety belt is not in use as described
33 in section 30124 of this title.

34 **§ 30123. Tires**

35 (a) LABELING REQUIREMENT.—The Secretary of Transportation shall re-
36 quire that a pneumatic tire subject to a motor vehicle safety standard pre-
37 scribed under this chapter be labeled permanently and conspicuously with
38 safety information the Secretary decides is necessary to carry out section
39 30101 of this title.

40 (b) CONTENTS OF LABEL.—Labeling required on a tire under subsection
41 (a) of this section shall include—

- 1 (1)(A) identification of the manufacturer;
2 (B) for a retreaded tire, identification of the retreader; or
3 (C) for a tire containing a brand name (other than the name of the
4 manufacturer), a code mark allowing a seller to identify the manufac-
5 turer to the purchaser;
- 6 (2) the composition of material used in the ply of the tire;
7 (3) the number of plies in the tire;
8 (4) the maximum allowable load for the tire; and
9 (5)(A) a statement that the tire complies with minimum safe per-
10 formance standards prescribed under this chapter; or
11 (B) a mark or symbol the Secretary prescribes for use by a manufac-
12 turer or retreader complying with those standards.
- 13 (c) ADDITIONAL INFORMATION.—The Secretary may require that addi-
14 tional safety information be disclosed to a purchaser when a tire is sold.
- 15 (d) REGROOVED TIRE LIMITATIONS.—(1) In this subsection, “regrooved
16 tire” means a tire with a new tread produced by cutting into the tread of
17 a worn tire.
- 18 (2) The Secretary may authorize the sale, offer for sale, introduction for
19 sale, or delivery for introduction in interstate commerce, of a regrooved tire
20 or a motor vehicle equipped with regrooved tires if the Secretary decides the
21 tires are designed and made in a way consistent with section 30101 of this
22 title. A person may not sell, offer for sale, introduce for sale, or deliver for
23 introduction in interstate commerce, a regrooved tire or a vehicle equipped
24 with regrooved tires unless authorized by the Secretary.
- 25 (e) UNIFORM QUALITY GRADING SYSTEM, NOMENCLATURE, AND MAR-
26 KETING PRACTICES.—The Secretary shall prescribe through standards a
27 uniform quality grading system for motor vehicle tires to help consumers
28 make an informed choice when purchasing tires. The Secretary also shall
29 cooperate with industry and the Federal Trade Commission to the greatest
30 extent practicable to eliminate deceptive and confusing tire nomenclature
31 and marketing practices. A tire standard or regulation prescribed under this
32 chapter supersedes an order or administrative interpretation of the Commis-
33 sion.
- 34 (f) MAXIMUM LOAD STANDARDS.—The Secretary shall require a motor
35 vehicle to be equipped with tires that meet maximum load standards when
36 the vehicle is loaded with a reasonable amount of luggage and the total
37 number of passengers the vehicle is designed to carry. The vehicle shall be
38 equipped with those tires by the manufacturer or by the first purchaser
39 when the vehicle is first bought in good faith other than for resale.

1 **§ 30124. Buzzers indicating nonuse of safety belts**

2 A motor vehicle safety standard prescribed under this chapter may not
3 require or allow a manufacturer to comply with the standard by using a
4 safety belt interlock designed to prevent starting or operating a motor vehi-
5 cle if an occupant is not using a safety belt or a buzzer designed to indicate
6 a safety belt is not in use, except a buzzer that operates only during the
7 8-second period after the ignition is turned to the “start” or “on” position.

8 **§ 30125. Schoolbuses and schoolbus equipment**

9 (a) DEFINITIONS.—In this section—

10 (1) “schoolbus” means a passenger motor vehicle designed to carry
11 a driver and more than 10 passengers, that the Secretary of Transpor-
12 tation decides is likely to be used significantly to transport preprimary,
13 primary, and secondary school students to or from school or an event
14 related to school.

15 (2) “schoolbus equipment” means equipment designed primarily for
16 a schoolbus or manufactured or sold to replace or improve a system,
17 part, or component of a schoolbus or as an accessory or addition to
18 a schoolbus.

19 (b) STANDARDS.—The Secretary shall prescribe motor vehicle safety
20 standards for schoolbuses and schoolbus equipment manufactured in, or im-
21 ported into, the United States. Standards shall include minimum perform-
22 ance requirements for—

23 (1) emergency exits;

24 (2) interior protection for occupants;

25 (3) floor strength;

26 (4) seating systems;

27 (5) crashworthiness of body and frame (including protection against
28 rollover hazards);

29 (6) vehicle operating systems;

30 (7) windows and windshields; and

31 (8) fuel systems.

32 (c) TEST DRIVING BY MANUFACTURERS.—The Secretary may require by
33 regulation a schoolbus to be test-driven by a manufacturer before introduc-
34 tion in commerce.

35 **§ 30126. Used motor vehicles**

36 To ensure a continuing and effective national safety program, it is the
37 policy of the United States Government to encourage and strengthen State
38 inspection of used motor vehicles. Therefore, the Secretary of Transpor-
39 tation shall prescribe uniform motor vehicle safety standards applicable to
40 all used motor vehicles. The standards shall be stated in terms of motor ve-
41 hicle safety performance.

1 **§ 30127. Automatic occupant crash protection and seat belt**
2 **use**

3 (a) DEFINITIONS.—In this section—

4 (1) “bus” means a motor vehicle with motive power (except a trailer)
5 designed to carry more than 10 individuals.

6 (2) “multipurpose passenger vehicle” means a motor vehicle with
7 motive power (except a trailer), designed to carry not more than 10
8 individuals, that is constructed either on a truck chassis or with special
9 features for occasional off-road operation.

10 (3) “passenger car” means a motor vehicle with motive power (ex-
11 cept a multipurpose passenger vehicle, motorcycle, or trailer) designed
12 to carry not more than 10 individuals.

13 (4) “truck” means a motor vehicle with motive power (except a trail-
14 er) designed primarily to transport property or special purpose equip-
15 ment.

16 (b) INFLATABLE RESTRAINT REQUIREMENTS.—(1) Not later than Sep-
17 tember 1, 1993, the Secretary of Transportation shall prescribe under this
18 chapter an amendment to Federal Motor Vehicle Safety Standard 208 is-
19 sued under the National Traffic and Motor Vehicle Safety Act of 1966. The
20 amendment shall require that the automatic occupant crash protection sys-
21 tem for both of the front outboard seating positions for each of the following
22 vehicles be an inflatable restraint (with lap and shoulder belts) complying
23 with the occupant protection requirements under section 4.1.2.1 of Standard
24 208:

25 (A) 95 percent of each manufacturer’s annual production of pas-
26 senger cars manufactured after August 31, 1996, and before Septem-
27 ber 1, 1997.

28 (B) 80 percent of each manufacturer’s annual production of buses,
29 multipurpose passenger vehicles, and trucks (except walk-in van-type
30 trucks and vehicles designed to be sold only to the United States Postal
31 Service) with a gross vehicle weight rating of not more than 8,500
32 pounds and an unloaded vehicle weight of not more than 5,500 pounds
33 manufactured after August 31, 1997, and before September 1, 1998.

34 (C) 100 percent of each manufacturer’s annual production of pas-
35 senger cars manufactured after August 31, 1997.

36 (D) 100 percent of each manufacturer’s annual production of vehi-
37 cles described in clause (B) of this paragraph manufactured after Au-
38 gust 31, 1998.

39 (2) Manufacturers may not use credits and incentives available before
40 September 1, 1998, under the provisions of Standard 208 (as amended by

1 this section) to comply with the requirements of paragraph (1)(D) of this
2 subsection after August 31, 1998.

3 (c) OWNER MANUAL REQUIREMENTS.—In amending Standard 208, the
4 Secretary of Transportation shall require, to be effective as soon as possible
5 after the amendment is prescribed, that owner manuals for passenger cars,
6 buses, multipurpose passenger vehicles, and trucks equipped with an inflat-
7 able restraint include a statement in an easily understandable format stat-
8 ing that—

9 (1) either or both of the front outboard seating positions of the vehi-
10 cle are equipped with an inflatable restraint referred to as an “airbag”
11 and a lap and shoulder belt;

12 (2) the “airbag” is a supplemental restraint and is not a substitute
13 for lap and shoulder belts;

14 (3) lap and shoulder belts also must be used correctly by an occu-
15 pant in a front outboard seating position to provide restraint or protec-
16 tion from frontal crashes as well as other types of crashes or accidents;
17 and

18 (4) occupants should always wear their lap and shoulder belts, if
19 available, or other safety belts, whether or not there is an inflatable
20 restraint.

21 (d) SEAT BELT USE LAWS.—Congress finds that it is in the public inter-
22 est for each State to adopt and enforce mandatory seat belt use laws and
23 for the United States Government to adopt and enforce mandatory seat belt
24 use regulations.

25 (e) TEMPORARY EXEMPTIONS.—(1) On application of a manufacturer,
26 the Secretary of Transportation may exempt, on a temporary basis, motor
27 vehicles of that manufacturer from any requirement under subsections (b)
28 and (c) of this section on terms the Secretary considers appropriate. An ex-
29 emption may be renewed.

30 (2) The Secretary of Transportation may grant an exemption under para-
31 graph (1) of this subsection if the Secretary finds that there has been a
32 disruption in the supply of any component of an inflatable restraint or in
33 the use and installation of that component by the manufacturer because of
34 an unavoidable event not under the control of the manufacturer that will
35 prevent the manufacturer from meeting its anticipated production volume
36 of vehicles with those restraints.

37 (3) Only an affected manufacturer may apply for an exemption. The Sec-
38 retary of Transportation shall prescribe in the amendment to Standard 208
39 required under this section the information an affected manufacturer must
40 include in its application under this subsection. The manufacturer shall
41 specify in the application the models, lines, and types of vehicles affected.

1 The Secretary may consolidate similar applications from different manufac-
2 turers.

3 (4) An exemption or renewal of an exemption is conditioned on the com-
4 mitment of the manufacturer to recall the exempted vehicles for installation
5 of the omitted inflatable restraints within a reasonable time that the manu-
6 facturer proposes and the Secretary of Transportation approves after the
7 components become available in sufficient quantities to satisfy both antici-
8 pated production and recall volume requirements.

9 (5) The Secretary of Transportation shall publish in the Federal Register
10 a notice of each application under this subsection and each decision to grant
11 or deny a temporary exemption and the reasons for the decision.

12 (6) The Secretary of Transportation shall require a label for each exempted
13 vehicle that can be removed only after recall and installation of the re-
14 quired inflatable restraint. The Secretary shall require that written notice
15 of the exemption be provided to the dealer and the first purchaser of each
16 exempted vehicle other than for resale, with the notice being provided in a
17 way, and containing the information, the Secretary considers appropriate.

18 (f) APPLICATION.—(1) This section revises, but does not replace, Stand-
19 ard 208 as in effect on December 18, 1991, including the amendment of
20 March 26, 1991 (56 Fed. Reg. 12472), to Standard 208, extending the re-
21 quirements for automatic crash protection, with incentives for more innova-
22 tive automatic crash protection, to trucks, buses, and multipurpose pas-
23 senger vehicles. This section may not be construed as—

24 (A) affecting another provision of law carried out by the Secretary
25 of Transportation applicable to passenger cars, buses, multipurpose
26 passenger vehicles, or trucks; or

27 (B) establishing a precedent related to developing or prescribing a
28 Government motor vehicle safety standard.

29 (2) This section and amendments to Standard 208 made under this sec-
30 tion may not be construed as indicating an intention by Congress to affect
31 any liability of a motor vehicle manufacturer under applicable law related
32 to vehicles with or without inflatable restraints.

33 (g) REPORT.—(1) On October 1, 1992, and every 6 months after that
34 date through October 1, 2000, the Secretary of Transportation shall submit
35 reports on the effectiveness of occupant restraint systems expressed as a
36 percentage reduction in fatalities or injuries of restrained occupants com-
37 pared to unrestrained occupants for—

38 (A) a combination of inflated restraints and lap and shoulder belts;

39 (B) inflated restraints only; and

40 (C) lap and shoulder belts only.

1 (2) In consultation with the Secretaries of Labor and Defense, the Sec-
 2 retary of Transportation also shall provide information and analysis on lap
 3 and shoulder belt use, nationally and in each State by—

4 (A) military personnel;

5 (B) Government, State, and local law enforcement officers;

6 (C) other Government and State employees; and

7 (D) the public.

8 (h) AIRBAGS FOR GOVERNMENT CARS.—In cooperation with the Adminis-
 9 trator of General Services and the heads of appropriate departments, agen-
 10 cies, and instrumentalities of the Government, the Secretary of Transpor-
 11 tation shall establish a program, consistent with applicable procurement
 12 laws of the Government and available appropriations, requiring that all pas-
 13 senger cars acquired—

14 (1) after September 30, 1994, for use by the Government be
 15 equipped, to the maximum extent practicable, with driver-side inflatable
 16 restraints; and

17 (2) after September 30, 1996, for use by the Government be
 18 equipped, to the maximum extent practicable, with inflatable restraints
 19 for both front outboard seating positions.

20 SUBCHAPTER III—IMPORTING NONCOMPLYING MOTOR
 21 VEHICLES AND EQUIPMENT

22 **§ 30141. Importing motor vehicles capable of complying with**
 23 **standards**

24 (a) GENERAL.—Section 30112(a) of this title does not apply to a motor
 25 vehicle if—

26 (1) on the initiative of the Secretary of Transportation or on petition
 27 of a manufacturer or importer registered under subsection (c) of this
 28 section, the Secretary decides—

29 (A) the vehicle is—

30 (i) substantially similar to a motor vehicle originally manu-
 31 factured for import into and sale in the United States;

32 (ii) certified under section 30115 of this title;

33 (iii) the same model year (as defined under regulations of
 34 the Secretary of Transportation) as the model of the motor
 35 vehicle it is being compared to; and

36 (iv) capable of being readily altered to comply with applica-
 37 ble motor vehicle safety standards prescribed under this chap-
 38 ter; or

39 (B) if there is no substantially similar United States motor vehi-
 40 cle, the safety features of the vehicle comply with or are capable
 41 of being altered to comply with those standards based on destruc-

1 tive test information or other evidence the Secretary of Transpor-
2 tation decides is adequate;

3 (2) the vehicle is imported by a registered importer; and

4 (3) the registered importer pays the annual fee the Secretary of
5 Transportation establishes under subsection (e) of this section to pay
6 for the costs of carrying out the registration program for importers
7 under subsection (c) of this section and any other fees the Secretary
8 of Transportation establishes to pay for the costs of—

9 (A) processing bonds provided to the Secretary of the Treasury
10 under subsection (d) of this section; and

11 (B) making the decisions under this subchapter.

12 (b) PROCEDURES ON DECIDING ON MOTOR VEHICLE CAPABILITY.—(1)
13 The Secretary of Transportation shall establish by regulation procedures for
14 making a decision under subsection (a)(1) of this section and the informa-
15 tion a petitioner must provide to show clearly that the motor vehicle is capa-
16 ble of being brought into compliance with applicable motor vehicle safety
17 standards prescribed under this chapter. In establishing the procedures, the
18 Secretary shall provide for a minimum period of public notice and written
19 comment consistent with ensuring expeditious, but complete, consideration
20 and avoiding delay by any person. In making a decision under those proce-
21 dures, the Secretary shall consider test information and other information
22 available to the Secretary, including any information provided by the manu-
23 facturer. If the Secretary makes a negative decision, the Secretary may not
24 make another decision for the same model until at least 3 calendar months
25 have elapsed after the negative decision.

26 (2) The Secretary of Transportation shall publish each year in the Fed-
27 eral Register a list of all decisions made under subsection (a)(1) of this sec-
28 tion. Each published decision applies to the model of the motor vehicle for
29 which the decision was made. A positive decision permits another importer
30 registered under subsection (c) of this section to import a vehicle of the
31 same model under this section if the importer complies with all the terms
32 of the decision.

33 (c) REGISTRATION.—(1) The Secretary of Transportation shall establish
34 procedures for registering a person who complies with requirements pre-
35 scribed by the Secretary by regulation under this subsection, including—

36 (A) recordkeeping requirements;

37 (B) inspection of records and facilities related to motor vehicles the
38 person has imported, altered, or both; and

39 (C) requirements that ensure that the importer (or a successor in
40 interest) will be able technically and financially to carry out responsibil-
41 ities under sections 30117(b), 30118–30121, and 30166(f) of this title.

1 (2) The Secretary of Transportation shall deny registration to a person
2 whose registration is revoked under paragraph (4) of this subsection.

3 (3) The Secretary of Transportation may deny registration to a person
4 that is or was owned or controlled by, or under common ownership or con-
5 trol with, a person whose registration was revoked under paragraph (4) of
6 this subsection.

7 (4) The Secretary of Transportation shall establish procedures for—

8 (A) revoking or suspending a registration issued under paragraph
9 (1) of this subsection for not complying with a requirement of this sub-
10 chapter or section 30112, 30115, 30117–30122, 30125(c), 30127, or
11 30166 of this title or regulations prescribed under this subchapter or
12 those sections;

13 (B) automatically suspending a registration for not paying a fee
14 under subsection (a)(3) of this section in a timely manner or for know-
15 ingly filing a false or misleading certification under section 30146 of
16 this title; and

17 (C) reinstating suspended registrations.

18 (d) BONDS.—(1) A person importing a motor vehicle under this section
19 shall provide a bond to the Secretary of the Treasury (acting for the Sec-
20 retary of Transportation) and comply with the terms the Secretary of
21 Transportation decides are appropriate to ensure that the vehicle—

22 (A) will comply with applicable motor vehicle safety standards pre-
23 scribed under this chapter within a reasonable time (specified by the
24 Secretary of Transportation) after the vehicle is imported; or

25 (B) will be exported (at no cost to the United States Government)
26 by the Secretary of the Treasury or abandoned to the Government.

27 (2) The amount of the bond provided under this subsection shall be at
28 least equal to the dutiable value of the motor vehicle (as determined by the
29 Secretary of the Treasury) but not more than 150 percent of that value.

30 (e) FEE REVIEW, ADJUSTMENT, AND USE.—The Secretary of Transpor-
31 tation shall review and make appropriate adjustments at least every 2 years
32 in the amounts of the fees required to be paid under subsection (a)(3) of
33 this section. The Secretary of Transportation shall establish the fees for
34 each fiscal year before the beginning of that year. All fees collected remain
35 available until expended without fiscal year limit to the extent provided in
36 advance by appropriation laws. The amounts are only for use by the Sec-
37 retary of Transportation—

38 (1) in carrying out this section and sections 30146(a)–(c)(1), (d),
39 and (e) and 30147(b) of this title; and

1 (2) in advancing to the Secretary of the Treasury amounts for costs
2 incurred under this section and section 30146 of this title to reimburse
3 the Secretary of the Treasury for those costs.

4 **§ 30142. Importing motor vehicles for personal use**

5 (a) GENERAL.—Section 30112(a) of this title does not apply to an im-
6 ported motor vehicle if—

7 (1) the vehicle is imported for personal use, and not for resale, by
8 an individual (except an individual described in sections 30143 and
9 30144 of this title);

10 (2) the vehicle is imported after January 31, 1990; and

11 (3) the individual takes the actions required under subsection (b) of
12 this section to receive an exemption.

13 (b) EXEMPTIONS.—(1) To receive an exemption under subsection (a) of
14 this section, an individual must—

15 (A) provide the Secretary of the Treasury (acting for the Secretary
16 of Transportation) with—

17 (i) an appropriate bond in an amount determined under section
18 30141(d) of this title;

19 (ii) a copy of an agreement with an importer registered under
20 section 30141(c) of this title for bringing the motor vehicle into
21 compliance with applicable motor vehicle safety standards pre-
22 scribed under this chapter; and

23 (iii) a certification that the vehicle meets the requirement of sec-
24 tion 30141(a)(1)(A) or (B) of this title; and

25 (B) comply with appropriate terms the Secretary of Transportation
26 imposes to ensure that the vehicle—

27 (i) will be brought into compliance with those standards within
28 a reasonable time (specified by the Secretary of Transportation)
29 after the vehicle is imported; or

30 (ii) will be exported (at no cost to the United States Govern-
31 ment) by the Secretary of the Treasury or abandoned to the Gov-
32 ernment.

33 (2) For good cause shown, the Secretary of Transportation may allow an
34 individual additional time, but not more than 30 days after the day on
35 which the motor vehicle is offered for import, to comply with paragraph
36 (1)(A)(ii) of this subsection.

37 **§ 30143. Motor vehicles imported by individuals employed**
38 **outside the United States**

39 (a) DEFINITION.—In this section, “assigned place of employment”
40 means—

1 (1) the principal location at which an individual is permanently or
2 indefinitely assigned to work; and

3 (2) for a member of the uniformed services, the individual's perma-
4 nent duty station.

5 (b) GENERAL.—Section 30112(a) of this title does not apply to a motor
6 vehicle imported for personal use, and not for resale, by an individual—

7 (1) whose assigned place of employment was outside the United
8 States as of October 31, 1988, and who has not had an assigned place
9 of employment in the United States from that date through the date
10 the vehicle is imported into the United States;

11 (2) who previously had not imported a motor vehicle into the United
12 States under this section or section 108(g) of the National Traffic and
13 Motor Vehicle Safety Act of 1966 or, before October 31, 1988, under
14 section 108(b)(3) of that Act;

15 (3) who acquired, or made a binding contract to acquire, the vehicle
16 before October 31, 1988;

17 (4) who imported the vehicle into the United States not later than
18 October 31, 1992; and

19 (5) who satisfies section 108(b)(3) of that Act as in effect on Octo-
20 ber 30, 1988.

21 (c) CERTIFICATION.—Subsection (b) of this section is carried out by cer-
22 tification in the form the Secretary of Transportation or the Secretary of
23 the Treasury may prescribe.

24 **§ 30144. Importing motor vehicles on a temporary basis**

25 (a) GENERAL.—Section 30112(a) of this title does not apply to a motor
26 vehicle imported on a temporary basis for personal use by an individual who
27 is a member of—

28 (1)(A) the personnel of the government of a foreign country on as-
29 signment in the United States or a member of the Secretariat of a pub-
30 lic international organization designated under the International Orga-
31 nization Immunities Act (22 U.S.C. 288 et seq.); and

32 (B) the class of individuals for whom the Secretary of State has au-
33 thorized free importation of motor vehicles; or

34 (2) the armed forces of a foreign country on assignment in the Unit-
35 ed States.

36 (b) VERIFICATION.—The Secretary of Transportation or the Secretary of
37 the Treasury may require verification, that the Secretary of Transportation
38 considers appropriate, that an individual is a member described under sub-
39 section (a) of this section. The Secretary of Transportation shall ensure that
40 a motor vehicle imported under this section will be exported (at no cost to

1 the United States Government) or abandoned to the Government when the
2 individual no longer—

3 (1) resides in the United States; and

4 (2) is a member described under subsection (a) of this section.

5 (c) SALE IN THE UNITED STATES.—A motor vehicle imported under this
6 section may not be sold when in the United States.

7 **§ 30145. Importing motor vehicles or equipment requiring**
8 **further manufacturing**

9 Section 30112(a) of this title does not apply to a motor vehicle or motor
10 vehicle equipment if the vehicle or equipment—

11 (1) requires further manufacturing to perform its intended function
12 as decided under regulations prescribed by the Secretary of Transpor-
13 tation; and

14 (2) is accompanied at the time of importation by a written statement
15 issued by the manufacturer indicating the applicable motor vehicle safe-
16 ty standard prescribed under this chapter with which it does not com-
17 ply.

18 **§ 30146. Release of motor vehicles and bonds**

19 (a) COMPLIANCE CERTIFICATION AND BOND.—(1) Except as provided in
20 subsections (c) and (d) of this section, an importer registered under section
21 30141(c) of this title may license or register an imported motor vehicle for
22 use on public streets, roads, or highways, or release custody of a motor vehi-
23 cle imported by the registered importer or imported by an individual under
24 section 30142 of this title and altered by the registered importer to meet
25 applicable motor vehicle safety standards prescribed under this chapter to
26 a person for license or registration for use on public streets, roads, or high-
27 ways, only after 30 days after the registered importer certifies to the Sec-
28 retary of Transportation, in the way the Secretary prescribes, that the
29 motor vehicle complies with each standard prescribed in the year the vehicle
30 was manufactured and that applies in that year to that vehicle. A vehicle
31 may not be released if the Secretary gives written notice before the end of
32 the 30-day period that the Secretary will inspect the vehicle under sub-
33 section (c) of this section.

34 (2) The Secretaries of Transportation and the Treasury shall prescribe
35 regulations—

36 (A) ensuring the release of a motor vehicle and bond required under
37 section 30141(d) of this title at the end of the 30-day period, unless
38 the Secretary of Transportation issues a notice of an inspection under
39 subsection (c) of this section; and

40 (B) providing that the Secretary of Transportation shall release the
41 vehicle and bond promptly after an inspection under subsection (c) of

1 this section showing compliance with the standards applicable to the ve-
2 hicle.

3 (3) Each registered importer shall include on each motor vehicle released
4 under this subsection a label prescribed by the Secretary of Transportation
5 identifying the importer and stating that the vehicle has been altered by the
6 importer to comply with the standards applicable to the vehicle.

7 (b) RELIANCE ON MANUFACTURER'S CERTIFICATION.—In making a cer-
8 tification under subsection (a)(1) of this section, the registered importer
9 may rely on the manufacturer's certification for the model to which the
10 motor vehicle involved is substantially similar if the importer certifies that
11 any alteration made by the importer did not affect the compliance of the
12 safety features of the vehicle and the importer keeps records verifying the
13 certification for the period the Secretary of Transportation prescribes.

14 (c) EVIDENCE OF COMPLIANCE.—(1) The Secretary of Transportation
15 may require that the certification under subsection (a)(1) of this section be
16 accompanied by evidence of compliance the Secretary considers appropriate
17 or may inspect the certified motor vehicle, or both. If the Secretary gives
18 notice of an inspection, an importer may release the vehicle only after—

19 (A) an inspection showing the motor vehicle complies with applicable
20 motor vehicle safety standards prescribed under this chapter for which
21 the inspection was made; and

22 (B) release of the vehicle by the Secretary.

23 (2) The Secretary of Transportation shall inspect periodically a represent-
24 ative number of motor vehicles for which certifications have been filed under
25 subsection (a)(1) of this section. In carrying out a motor vehicle testing pro-
26 gram under this chapter, the Secretary shall include a representative num-
27 ber of motor vehicles for which certifications have been filed under sub-
28 section (a)(1).

29 (d) CHALLENGING THE CERTIFICATION.—A motor vehicle or bond may
30 not be released under subsection (a) of this section if the Secretary of
31 Transportation, not later than 30 days after receiving a certification under
32 subsection (a)(1) of this section, gives written notice that the Secretary be-
33 lieves or has reason to believe that the certification is false or contains a
34 misrepresentation. The vehicle and bond may be released only after the Sec-
35 retary is satisfied with the certification and any modification of the certifi-
36 cation.

37 (e) BOND RELEASE.—A release of a bond required under section
38 30141(d) of this title is deemed an acceptance of a certification or comple-
39 tion of an inspection under this section but is not a decision by the Sec-
40 retary of Transportation under section 30118(a) or (b) of this title of com-

1 pliance with applicable motor vehicle safety standards prescribed under this
2 chapter.

3 **§ 30147. Responsibility for defects and noncompliance**

4 (a) DEEMING DEFECT OR NONCOMPLIANCE TO CERTAIN VEHICLES AND
5 IMPORTER AS MANUFACTURER.—(1) In carrying out sections 30117(b),
6 30118–30121, and 30166(f) of this title—

7 (A) for a defect or noncompliance with an applicable motor vehicle
8 safety standard prescribed under this chapter for a motor vehicle origi-
9 nally manufactured for import into the United States, an imported
10 motor vehicle having a valid certification under section 30146(a)(1) of
11 this title and decided to be substantially similar to that motor vehicle
12 shall be deemed as having the same defect or as not complying with
13 the same standard unless the manufacturer or importer registered
14 under section 30141(c) of this title demonstrates otherwise to the Sec-
15 retary of Transportation; and

16 (B) the registered importer shall be deemed to be the manufacturer
17 of any motor vehicle that the importer imports or brings into compli-
18 ance with the standards for an individual under section 30142 of this
19 title.

20 (2) The Secretary shall publish in the Federal Register notice of any de-
21 fect or noncompliance under paragraph (1)(A) of this subsection.

22 (b) FINANCIAL RESPONSIBILITY REQUIREMENT.—The Secretary shall re-
23 quire by regulation each registered importer (including any successor in in-
24 terest) to provide and maintain evidence, satisfactory to the Secretary, of
25 sufficient financial responsibility to meet its obligations under sections
26 30117(b), 30118–30121, and 30166(f) of this title.

27 SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

28 **§ 30161. Judicial review of standards**

29 (a) FILING AND VENUE.—A person adversely affected by an order pre-
30 scribing a motor vehicle safety standard under this chapter may apply for
31 review of the order by filing a petition for review in the court of appeals
32 of the United States for the circuit in which the person resides or has its
33 principal place of business. The petition must be filed not later than 59 days
34 after the order is issued.

35 (b) NOTIFYING SECRETARY.—The clerk of the court shall send imme-
36 diately a copy of the petition to the Secretary of Transportation. The Sec-
37 retary shall file with the court a record of the proceeding in which the order
38 was prescribed.

39 (c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the
40 court may order the Secretary to receive additional evidence and evidence
41 in rebuttal if the court is satisfied that the additional evidence is material

1 and there were reasonable grounds for not presenting the evidence in the
2 proceeding before the Secretary.

3 (2) The Secretary may modify findings of fact or make new findings be-
4 cause of the additional evidence presented. The Secretary shall file a modi-
5 fied or new finding, a recommendation to modify or set aside the order, and
6 the additional evidence with the court.

7 (d) CERTIFIED COPIES OF RECORDS OF PROCEEDINGS.—The Secretary
8 shall give any interested person a certified copy of the transcript of the
9 record in a proceeding under this section on request and payment of costs.
10 A certified copy of the record of the proceeding is admissible in a proceeding
11 arising out of a matter under this chapter, regardless of whether the pro-
12 ceeding under this section has begun or becomes final.

13 (e) FINALITY OF JUDGMENT AND SUPREME COURT REVIEW.—A judg-
14 ment of a court under this section is final and may be reviewed only by
15 the Supreme Court under section 1254 of title 28.

16 **§ 30162. Petitions by interested persons for standards and**
17 **enforcement**

18 (a) FILING.—Any interested person may file a petition with the Secretary
19 of Transportation requesting the Secretary to begin a proceeding—

20 (1) to prescribe a motor vehicle safety standard under this chapter;

21 or

22 (2) to decide whether to issue an order under section 30118(b) of
23 this title.

24 (b) STATEMENT OF FACTS.—The petition must state facts that the per-
25 son claims establish that a motor vehicle safety standard or order referred
26 to in subsection (a) of this section is necessary and briefly describe the
27 order the Secretary should issue.

28 (c) PROCEEDINGS.—The Secretary may hold a public hearing or conduct
29 an investigation or proceeding to decide whether to grant the petition.

30 (d) ACTIONS OF SECRETARY.—The Secretary shall grant or deny a peti-
31 tion not later than 120 days after the petition is filed. If a petition is grant-
32 ed, the Secretary shall begin the proceeding promptly. If a petition is de-
33 nied, the Secretary shall publish the reasons for the denial in the Federal
34 Register.

35 **§ 30163. Actions by the Attorney General**

36 (a) CIVIL ACTIONS TO ENFORCE.—The Attorney General may bring a
37 civil action in a United States district court to enjoin—

38 (1) a violation of this chapter or a regulation prescribed or order is-
39 sued under this chapter; and

40 (2) the sale, offer for sale, or introduction or delivery for introduc-
41 tion, in interstate commerce, or the importation into the United States,

1 of a motor vehicle or motor vehicle equipment for which it is decided,
2 before the first purchase in good faith other than for resale, that the
3 vehicle or equipment—

4 (A) contains a defect related to motor vehicle safety about which
5 notice was given under section 30118(c) of this title or an order
6 was issued under section 30118(b) of this title; or

7 (B) does not comply with an applicable motor vehicle safety
8 standard prescribed under this chapter.

9 (b) PRIOR NOTICE.—When practicable, the Secretary of Transportation
10 shall notify a person against whom a civil action under subsection (a) of
11 this section is planned, give the person an opportunity to present that per-
12 son's views, and, except for a knowing and willful violation of this chapter,
13 give the person a reasonable opportunity to remedy the defect or comply
14 with the applicable motor vehicle safety standard prescribed under this
15 chapter. Failure to give notice and an opportunity to remedy the defect or
16 comply with the applicable motor vehicle safety standard prescribed under
17 this chapter does not prevent a court from granting appropriate relief.

18 (c) VENUE.—Except as provided in section 30121(d) of this title, a civil
19 action under this section or section 30165(a) of this title may be brought
20 in the judicial district in which the violation occurred or the defendant is
21 found, resides, or does business. Process in the action may be served in any
22 other judicial district in which the defendant resides or is found.

23 (d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating
24 an injunction or restraining order issued under subsection (a) of this sec-
25 tion, the violation of which is also a violation of this chapter, the defendant
26 may demand a jury trial. The defendant shall be tried as provided in rule
27 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

28 (e) SUBPENAS FOR WITNESSES.—In a civil action brought under this sec-
29 tion, a subpoena for a witness may be served in any judicial district.

30 **§ 30164. Service of process**

31 (a) DESIGNATING AGENTS.—A manufacturer offering a motor vehicle or
32 motor vehicle equipment for import shall designate an agent on whom serv-
33 ice of notices and process in administrative and judicial proceedings may be
34 made. The designation shall be in writing and filed with the Secretary of
35 Transportation. The designation may be changed in the same way as origi-
36 nally made.

37 (b) SERVICE.—An agent may be served at the agent's office or usual
38 place of residence. Service on the agent is deemed to be service on the man-
39 ufacturer. If a manufacturer does not designate an agent, service may be
40 made by posting the notice or process in the office of the Secretary.

§ 30165. Civil penalty

(a) PENALTY.—A person that violates section 30112, 30115, 30117–30122, 30123(d), 30125(c), 30127, 30141–30147, or 30166 of this title or a regulation prescribed under those sections is liable to the United States Government for a civil penalty of not more than \$1,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by those sections. The maximum penalty under this subsection for a related series of violations is \$800,000.

(b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) CONSIDERATIONS.—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(d) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.

§ 30166. Inspections, investigations, and records

(a) DEFINITION.—In this section, “motor vehicle accident” means an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.

(b) AUTHORITY TO INSPECT AND INVESTIGATE.—(1) The Secretary of Transportation may conduct an inspection or investigation—

(A) that may be necessary to enforce this chapter or a regulation prescribed or order issued under this chapter; or

(B) related to a motor vehicle accident and designed to carry out this chapter.

(2) The Secretary of Transportation shall cooperate with State and local officials to the greatest extent possible in an inspection or investigation under paragraph (1)(B) of this subsection.

(c) MATTERS THAT CAN BE INSPECTED AND IMPOUNDMENT.—In carrying out this chapter, an officer or employee designated by the Secretary of Transportation—

(1) at reasonable times, may inspect and copy any record related to this chapter;

(2) on request, may inspect records of a manufacturer, distributor, or dealer to decide whether the manufacturer, distributor, or dealer has

1 complied or is complying with this chapter or a regulation prescribed
2 or order issued under this chapter; and

3 (3) at reasonable times, in a reasonable way, and on display of prop-
4 er credentials and written notice to an owner, operator, or agent in
5 charge, may—

6 (A) enter and inspect with reasonable promptness premises in
7 which a motor vehicle or motor vehicle equipment is manufactured,
8 held for introduction in interstate commerce, or held for sale after
9 introduction in interstate commerce;

10 (B) enter and inspect with reasonable promptness premises at
11 which a vehicle or equipment involved in a motor vehicle accident
12 is located;

13 (C) inspect with reasonable promptness that vehicle or equip-
14 ment; and

15 (D) impound for not more than 72 hours a vehicle or equipment
16 involved in a motor vehicle accident.

17 (d) REASONABLE COMPENSATION.—When a motor vehicle (except a vehi-
18 cle subject to subchapter II of chapter 105 of this title) or motor vehicle
19 equipment is inspected or temporarily impounded under subsection (c)(3) of
20 this section, the Secretary of Transportation shall pay reasonable compensa-
21 tion to the owner of the vehicle if the inspection or impoundment results
22 in denial of use, or reduction in value, of the vehicle.

23 (e) RECORDS AND MAKING REPORTS.—The Secretary of Transportation
24 reasonably may require a manufacturer of a motor vehicle or motor vehicle
25 equipment to keep records, and a manufacturer, distributor, or dealer to
26 make reports, to enable the Secretary to decide whether the manufacturer,
27 distributor, or dealer has complied or is complying with this chapter or a
28 regulation prescribed or order issued under this chapter. This subsection
29 does not impose a recordkeeping requirement on a distributor or dealer in
30 addition to those imposed under subsection (f) of this section and section
31 30117(b) of this title or a regulation prescribed or order issued under sub-
32 section (f) or section 30117(b).

33 (f) PROVIDING COPIES OF COMMUNICATIONS ABOUT DEFECTS AND NON-
34 COMPLIANCE.—A manufacturer shall give the Secretary of Transportation
35 a true or representative copy of each communication to the manufacturer's
36 dealers or to owners or purchasers of a motor vehicle or replacement equip-
37 ment produced by the manufacturer about a defect or noncompliance with
38 a motor vehicle safety standard prescribed under this chapter in a vehicle
39 or equipment that is sold or serviced.

1 (g) ADMINISTRATIVE AUTHORITY ON REPORTS, ANSWERS, AND HEAR-
2 INGS.—(1) In carrying out this chapter, the Secretary of Transportation
3 may—

4 (A) require, by general or special order, any person to file reports
5 or answers to specific questions, including reports or answers under
6 oath; and

7 (B) conduct hearings, administer oaths, take testimony, and require
8 (by subpoena or otherwise) the appearance and testimony of witnesses
9 and the production of records the Secretary considers advisable.

10 (2) A witness summoned under this subsection is entitled to the same fee
11 and mileage the witness would have been paid in a court of the United
12 States.

13 (h) CIVIL ACTIONS TO ENFORCE AND VENUE.—A civil action to enforce
14 a subpoena or order under subsection (g) of this section may be brought in
15 the United States district court for the judicial district in which the pro-
16 ceeding is conducted. The court may punish a failure to obey an order of
17 the court to comply with a subpoena or order as a contempt of court.

18 (i) GOVERNMENTAL COOPERATION.—The Secretary of Transportation
19 may request a department, agency, or instrumentality of the United States
20 Government to provide records the Secretary considers necessary to carry
21 out this chapter. The head of the department, agency, or instrumentality
22 shall provide the record on request, may detail personnel on a reimbursable
23 basis, and otherwise shall cooperate with the Secretary. This subsection does
24 not affect a law limiting the authority of a department, agency, or instru-
25 mentality to provide information to another department, agency, or instru-
26 mentality.

27 (j) COOPERATION OF SECRETARY.—The Secretary of Transportation may
28 advise, assist, and cooperate with departments, agencies, and instrumental-
29 ities of the Government, States, and other public and private agencies in
30 developing a method for inspecting and testing to determine compliance with
31 a motor vehicle safety standard.

32 (k) PROVIDING INFORMATION.—The Secretary of Transportation shall
33 provide the Attorney General and, when appropriate, the Secretary of the
34 Treasury, information obtained that indicates a violation of this chapter or
35 a regulation prescribed or order issued under this chapter.

36 **§ 30167. Disclosure of information by the Secretary of Trans-**
37 **portation**

38 (a) CONFIDENTIALITY OF INFORMATION.—Information obtained under
39 this chapter related to a confidential matter referred to in section 1905 of
40 title 18 may be disclosed only in the following ways:

41 (1) to other officers and employees carrying out this chapter.

1 (2) when relevant to a proceeding under this chapter.

2 (3) to the public if the confidentiality of the information is preserved.

3 (4) to the public when the Secretary of Transportation decides that
4 disclosure is necessary to carry out section 30101 of this title.

5 (b) DEFECT AND NONCOMPLIANCE INFORMATION.—Subject to subsection
6 (a) of this section, the Secretary shall disclose information obtained under
7 this chapter related to a defect or noncompliance that the Secretary decides
8 will assist in carrying out sections 30117(b) and 30118–30121 of this title
9 or that is required to be disclosed under section 30118(a) of this title. A
10 requirement to disclose information under this subsection is in addition to
11 the requirements of section 552 of title 5.

12 (c) INFORMATION ABOUT MANUFACTURER’S INCREASED COSTS.—A
13 manufacturer opposing an action of the Secretary under this chapter be-
14 cause of increased cost shall submit to the Secretary information about the
15 increased cost, including the manufacturer’s cost and the cost to retail pur-
16 chasers, that allows the public and the Secretary to evaluate the manufac-
17 turer’s statement. The Secretary shall evaluate the information promptly
18 and, subject to subsection (a) of this section, shall make the information
19 and evaluation available to the public. The Secretary shall publish a notice
20 in the Federal Register that the information is available.

21 (d) WITHHOLDING INFORMATION FROM CONGRESS.—This section does
22 not authorize information to be withheld from a committee of Congress au-
23 thorized to have the information.

24 **§ 30168. Research, testing, development, and training**

25 (a) GENERAL AUTHORITY.—(1) The Secretary of Transportation shall
26 conduct research, testing, development, and training necessary to carry out
27 this chapter. The research, development, testing, and training shall in-
28 clude—

29 (A) collecting information to determine the relationship between
30 motor vehicle or motor vehicle equipment performance characteristics
31 and—

32 (i) accidents involving motor vehicles; and

33 (ii) the occurrence of death or personal injury resulting from
34 those accidents;

35 (B) obtaining experimental and other motor vehicles and motor vehi-
36 cle equipment for research or testing; and

37 (C) selling or otherwise disposing of test motor vehicles and motor
38 vehicle equipment and crediting the proceeds to current appropriations
39 available to carry out this chapter.

40 (2) The Secretary may carry out this subsection through grants to States,
41 interstate authorities, and nonprofit institutions.

1 (b) USE OF PUBLIC AGENCIES.—In carrying out this chapter, the Sec-
2 retary shall use the services, research, and testing facilities of public agen-
3 cies to the maximum extent practicable to avoid duplication.

4 (c) FACILITIES.—The Secretary may plan, design, and build a new facil-
5 ity or modify an existing facility to conduct research, development, and test-
6 ing in traffic safety, highway safety, and motor vehicle safety. An expendi-
7 ture of more than \$100,000 for planning, design, or construction may be
8 made only if the planning, design, or construction is approved by substan-
9 tially similar resolutions by the Committees on Energy and Commerce and
10 Public Works and Transportation of the House of Representatives and the
11 Committees on Commerce, Science, and Transportation and Environment
12 and Public Works of the Senate. To obtain that approval, the Secretary
13 shall submit to Congress a prospectus on the proposed facility. The prospec-
14 tus shall include—

15 (1) a brief description of the facility being planned, designed, or
16 built;

17 (2) the location of the facility;

18 (3) an estimate of the maximum cost of the facility;

19 (4) a statement identifying private and public agencies that will use
20 the facility and the contribution each agency will make to the cost of
21 the facility; and

22 (5) a justification of the need for the facility.

23 (d) INCREASING COSTS OF APPROVED FACILITIES.—The estimated maxi-
24 mum cost of a facility approved under subsection (c) of this section may
25 be increased by an amount equal to the percentage increase in construction
26 costs from the date the prospectus is submitted to Congress. However, the
27 increase in the cost of the facility may not be more than 10 percent of the
28 estimated maximum cost included in the prospectus. The Secretary shall de-
29 cide what increase in construction costs has occurred.

30 (e) AVAILABILITY OF INFORMATION, PATENTS, AND DEVELOPMENTS.—
31 When the United States Government makes more than a minimal contribu-
32 tion to a research or development activity under this chapter, the Secretary
33 shall include in the arrangement for the activity a provision to ensure that
34 all information, patents, and developments related to the activity are avail-
35 able to the public. However, the owner of a background patent may not be
36 deprived of a right under the patent.

37 **§ 30169. Annual reports**

38 (a) GENERAL REPORT.—The Secretary of Transportation shall submit to
39 the President to submit to Congress on July 1 of each year a report on
40 the administration of this chapter for the prior calendar year. The report
41 shall include—

- 1 (1) a thorough statistical compilation of accidents and injuries;
- 2 (2) motor vehicle safety standards in effect or prescribed under this
- 3 chapter;
- 4 (3) the degree of observance of the standards;
- 5 (4) a summary of current research grants and contracts and a de-
- 6 scription of the problems to be considered under those grants and con-
- 7 tracts;
- 8 (5) an analysis and evaluation of research activities completed and
- 9 technological progress achieved;
- 10 (6) enforcement actions;
- 11 (7) the extent to which technical information was given the scientific
- 12 community and consumer-oriented information was made available to
- 13 the public; and
- 14 (8) recommendations for legislation needed to promote cooperation
- 15 among the States in improving traffic safety and strengthening the na-
- 16 tional traffic safety program.
- 17 (b) REPORT ON IMPORTING MOTOR VEHICLES.—Not later than 18
- 18 months after regulations are first prescribed under section 2(e)(1)(B) of the
- 19 Imported Vehicle Safety Compliance Act of 1988, the Secretary shall submit
- 20 to Congress a report of the actions taken to carry out subchapter III of
- 21 this chapter and the effectiveness of those actions, including any testing by
- 22 the Secretary under section 30146(c)(2) of this title. After the first report,
- 23 the Secretary shall submit a report to Congress under this subsection not
- 24 later than July 31 of each year.

25 **CHAPTER 303—NATIONAL DRIVER REGISTER**

Sec.

30301. Definitions.
30302. National Driver Register.
30303. State participation.
30304. Reports by chief driver licensing officials.
30305. Access to Register information.
30306. National Driver Register Advisory Committee.
30307. Criminal penalties.
30308. Authorization of appropriations.

26 **§ 30301. Definitions**

27 In this chapter—

- 28 (1) “alcohol” has the same meaning given that term in regulations
- 29 prescribed by the Secretary of Transportation.
- 30 (2) “chief driver licensing official” means the official in a State who
- 31 is authorized to—
- 32 (A) maintain a record about a motor vehicle operator’s license
- 33 issued by the State; and
- 34 (B) issue, deny, revoke, suspend, or cancel a motor vehicle oper-
- 35 ator’s license issued by the State.

1 (3) “controlled substance” has the same meaning given that term in
2 section 102 of the Comprehensive Drug Abuse Prevention and Control
3 Act of 1970 (21 U.S.C. 802).

4 (4) “motor vehicle” means a vehicle, machine, tractor, trailer, or
5 semitrailer propelled or drawn by mechanical power and used on public
6 streets, roads, or highways, but does not include a vehicle operated only
7 on a rail line.

8 (5) “motor vehicle operator’s license” means a license issued by a
9 State authorizing an individual to operate a motor vehicle on public
10 streets, roads, or highways.

11 (6) “participating State” means a State that has notified the Sec-
12 retary under section 30303 of this title of its participation in the Na-
13 tional Driver Register.

14 (7) “State” means a State of the United States, the District of Co-
15 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the
16 Northern Mariana Islands, the Trust Territory of the Pacific Islands,
17 and any other territory or possession of the United States.

18 (8) “State of record” means a State that has given the Secretary
19 a report under section 30304 of this title about an individual who is
20 the subject of a request for information made under section 30305 of
21 this title.

22 **§ 30302. National Driver Register**

23 (a) ESTABLISHMENT AND CONTENTS.—The Secretary of Transportation
24 shall establish as soon as practicable and maintain a National Driver Reg-
25 ister to assist chief driver licensing officials of participating States in ex-
26 changing information about the motor vehicle driving records of individuals.
27 The Register shall contain an index of the information reported to the Sec-
28 retary under section 30304 of this title. The Register shall enable the Sec-
29 retary (electronically or, until all States can participate electronically, by
30 United States mail)—

31 (1) to receive information submitted under section 30304 of this title
32 by the chief driver licensing official of a State of record;

33 (2) to receive a request for information made by the chief driver li-
34 censing official of a participating State under section 30305 of this
35 title;

36 (3) to refer the request to the chief driver licensing official of a State
37 of record; and

38 (4) in response to the request, to relay information provided by a
39 chief driver licensing official of a State of record to the chief driver li-
40 censing official of a participating State, without interception of the in-
41 formation.

1 (b) ACCURACY OF INFORMATION.—The Secretary is not responsible for
2 the accuracy of information relayed to the chief driver licensing official of
3 a participating State. However, the Secretary shall maintain the Register
4 in a way that ensures against inadvertent alteration of information during
5 a relay.

6 (c) TRANSITION FROM PRIOR REGISTER.—(1) The Secretary shall pro-
7 vide by regulation for the orderly transition from the register maintained
8 under the Act of July 14, 1960 (Public Law 86–660, 74 Stat. 526), as re-
9 stated by section 401 of the National Traffic and Motor Vehicle Safety Act
10 of 1966 (Public Law 89–563, 80 Stat. 730), to the Register maintained
11 under this chapter.

12 (2)(A) The Secretary shall delete from the Register a report or informa-
13 tion that was compiled under the Act of July 14, 1960 (Public Law 86–
14 660, 74 Stat. 526), as restated by section 401 of the National Traffic and
15 Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), and
16 transferred to the Register, after the earlier of—

17 (i) the date the State of record removes it from the State’s file;

18 (ii) 7 years after the date the report or information is entered in the
19 Register; or

20 (iii) the date a fully electronic Register system is established.

21 (B) The report or information shall be disposed of under chapter 33 of
22 title 44.

23 (3) If the chief driver licensing official of a participating State finds that
24 information provided for inclusion in the Register is erroneous or is related
25 to a conviction of a traffic offense that subsequently is reversed, the official
26 immediately shall notify the Secretary. The Secretary shall provide for the
27 immediate deletion of the information from the Register.

28 (d) ASSIGNMENT OF PERSONNEL.—In carrying out this chapter, the Sec-
29 retary shall assign personnel necessary to ensure the effective operation of
30 the Register.

31 **§ 30303. State participation**

32 (a) NOTIFICATION.—A State may become a participating State under this
33 chapter by notifying the Secretary of Transportation of its intention to be
34 bound by section 30304 of this title.

35 (b) WITHDRAWAL.—A participating State may end its status as a partici-
36 pating State by notifying the Secretary of its withdrawal from participation
37 in the National Driver Register.

38 (c) FORM AND WAY OF NOTIFICATION.—Notification by a State under
39 this section shall be made in the form and way the Secretary prescribes by
40 regulation.

1 **§ 30304. Reports by chief driver licensing officials**

2 (a) INDIVIDUALS COVERED.—As soon as practicable, the chief driver li-
3 censing official of each participating State shall submit to the Secretary of
4 Transportation a report containing the information specified by subsection
5 (b) of this section for each individual—

6 (1) who is denied a motor vehicle operator’s license by that State for
7 cause;

8 (2) whose motor vehicle operator’s license is revoked, suspended, or
9 canceled by that State for cause; or

10 (3) who is convicted under the laws of that State of any of the fol-
11 lowing motor vehicle-related offenses or comparable offenses:

12 (A) operating a motor vehicle while under the influence of, or
13 impaired by, alcohol or a controlled substance.

14 (B) a traffic violation arising in connection with a fatal traffic
15 accident, reckless driving, or racing on the highways.

16 (C) failing to give aid or provide identification when involved in
17 an accident resulting in death or personal injury.

18 (D) perjury or knowingly making a false affidavit or statement
19 to officials about activities governed by a law or regulation on the
20 operation of a motor vehicle.

21 (b) CONTENTS.—(1) Except as provided in paragraph (2) of this sub-
22 section, a report under subsection (a) of this section shall contain—

23 (A) the individual’s legal name, date of birth, sex, and, at the Sec-
24 retary’s discretion, height, weight, and eye and hair color;

25 (B) the name of the State providing the information; and

26 (C) the social security account number if used by the State for driver
27 record or motor vehicle license purposes, and the motor vehicle opera-
28 tor’s license number if different from the social security account num-
29 ber.

30 (2) A report under subsection (a) of this section about an event that oc-
31 curs during the 2-year period before the State becomes a participating State
32 is sufficient if the report contains all of the information that is available
33 to the chief driver licensing official when the State becomes a participating
34 State.

35 (c) TIME FOR FILING.—If a report under subsection (a) of this section
36 is about an event that occurs—

37 (1) during the 2-year period before the State becomes a participating
38 State, the report shall be submitted not later than 6 months after the
39 State becomes a participating State; or

40 (2) after the State becomes a participating State, the report shall
41 be submitted not later than 31 days after the motor vehicle department

1 of the State receives any information specified in subsection (b)(1) of
2 this section that is the subject of the report.

3 (d) EVENTS OCCURRING BEFORE PARTICIPATION.—This section does not
4 require a State to report information about an event that occurs before the
5 2-year period before the State becomes a participating State.

6 **§ 30305. Access to Register information**

7 (a) REFERRALS OF INFORMATION REQUESTS.—(1) To carry out duties
8 related to driver licensing, driver improvement, or transportation safety, the
9 chief driver licensing official of a participating State may request the Sec-
10 retary of Transportation to refer, electronically or by United States mail,
11 a request for information about the motor vehicle driving record of an indi-
12 vidual to the chief driver licensing official of a State of record.

13 (2) The Secretary of Transportation shall relay, electronically or by Unit-
14 ed States mail, information received from the chief driver licensing official
15 of a State of record in response to a request under paragraph (1) of this
16 subsection to the chief driver licensing official of the participating State re-
17 questing the information. However, the Secretary may refuse to relay infor-
18 mation to the chief driver licensing official of a participating State that does
19 not comply with section 30304 of this title.

20 (b) REQUESTS TO OBTAIN INFORMATION.—(1) The Chairman of the Na-
21 tional Transportation Safety Board and the Administrator of the Federal
22 Highway Administration may request the chief driver licensing official of a
23 State to obtain information under subsection (a) of this section about an
24 individual who is the subject of an accident investigation conducted by the
25 Board or the Administrator. The Chairman and the Administrator may re-
26 ceive the information.

27 (2) An individual who is employed, or is seeking employment, as a driver
28 of a motor vehicle may request the chief driver licensing official of the State
29 in which the individual is employed or seeks employment to provide informa-
30 tion about the individual under subsection (a) of this section to the individ-
31 ual's employer or prospective employer. An employer or prospective em-
32 ployer may receive the information and shall make the information available
33 to the individual. Information may not be obtained from the National Driver
34 Register under this paragraph if the information was entered in the Reg-
35 ister more than 3 years before the request.

36 (3) An individual who has received, or is applying for, an airman's certifi-
37 cate may request the chief driver licensing official of a State to provide in-
38 formation about the individual under subsection (a) of this section to the
39 Administrator of the Federal Aviation Administration. The Administrator
40 may receive the information and shall make the information available to the
41 individual for review and written comment. The Administrator may use the

1 information to verify information required to be reported to the Adminis-
2 trator by an airman applying for an airman medical certificate and to evalu-
3 ate whether the airman meets the minimum standards prescribed by the Ad-
4 ministrator to be issued an airman medical certificate. The Administrator
5 may not otherwise divulge or use the information. Information may not be
6 obtained from the Register under this paragraph if the information was en-
7 tered in the Register more than 3 years before the request, unless the infor-
8 mation is about a revocation or suspension still in effect on the date of the
9 request.

10 (4) An individual who is employed, or is seeking employment, by a rail
11 carrier as an operator of a locomotive may request the chief driver licensing
12 official of a State to provide information about the individual under sub-
13 section (a) of this section to the individual's employer or prospective em-
14 ployer or to the Secretary of Transportation. Information may not be ob-
15 tained from the Register under this paragraph if the information was en-
16 tered in the Register more than 3 years before the request, unless the infor-
17 mation is about a revocation or suspension still in effect on the date of the
18 request.

19 (5) An individual who holds, or is applying for, a license or certificate
20 of registry under section 7101 of title 46, or a merchant mariner's docu-
21 ment under section 7302 of title 46, may request the chief driver licensing
22 official of a State to provide information about the individual under sub-
23 section (a) of this section to the Secretary of the department in which the
24 Coast Guard is operating. The Secretary may receive the information and
25 shall make the information available to the individual for review and written
26 comment before denying, suspending, or revoking the license, certificate, or
27 document of the individual based on the information and before using the
28 information in an action taken under chapter 77 of title 46. The Secretary
29 may not otherwise divulge or use the information, except for purposes of
30 section 7101, 7302, or 7703 of title 46. Information may not be obtained
31 from the Register under this paragraph if the information was entered in
32 the Register more than 3 years before the request, unless the information
33 is about a revocation or suspension still in effect on the date of the request.

34 (6) An individual may request the chief driver licensing official of a State
35 to obtain information about the individual under subsection (a) of this sec-
36 tion—

37 (A) to learn whether information about the individual is being pro-
38 vided;

39 (B) to verify the accuracy of the information; or

40 (C) to obtain a certified copy of the information.

1 (7) A request under this subsection shall be made in the form and way
2 the Secretary of Transportation prescribes by regulation.

3 (c) RELATIONSHIP TO OTHER LAWS.—A request for, or receipt of, infor-
4 mation from the Register is subject to sections 552 and 552a of title 5, and
5 other applicable laws of the United States or a State, except that—

6 (1) the Secretary of Transportation may not relay or otherwise pro-
7 vide information specified in section 30304(b)(1)(A) or (C) of this title
8 to a person not authorized by this section to receive the information;

9 (2) a request for, or receipt of, information by a chief driver licens-
10 ing official, or by a person authorized by subsection (b) of this section
11 to request and receive the information, is deemed to be a routine use
12 under section 552a(b) of title 5; and

13 (3) receipt of information by a person authorized by this section to
14 receive the information is deemed to be a disclosure under section
15 552a(c) of title 5, except that the Secretary of Transportation is not
16 required to retain the accounting made under section 552a(c)(1) for
17 more than 7 years after the disclosure.

18 (d) AVAILABILITY OF INFORMATION PROVIDED UNDER PRIOR LAW.—In-
19 formation provided by a State under the Act of July 14, 1960 (Public Law
20 86–660, 74 Stat. 526), as restated by section 401 of the National Traffic
21 and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730),
22 and under this chapter, shall be available under this section during the tran-
23 sition from the register maintained under that Act to the Register main-
24 tained under this chapter.

25 **§ 30306. National Driver Register Advisory Committee**

26 (a) ORGANIZATION.—There is a National Driver Register Advisory Com-
27 mittee.

28 (b) DUTIES.—The Committee shall advise the Secretary of Transpor-
29 tation on—

30 (1) the efficiency of the maintenance and operation of the National
31 Driver Register; and

32 (2) the effectiveness of the Register in assisting States in exchanging
33 information about motor vehicle driving records.

34 (c) COMPOSITION AND APPOINTMENT.—The Committee is composed of
35 15 members appointed by the Secretary as follows:

36 (1) 3 members appointed from among individuals who are specially
37 qualified to serve on the Committee because of their education, train-
38 ing, or experience, and who are not officers or employees of the United
39 States Government or a State.

1 (2) 3 members appointed from among groups outside the Govern-
2 ment that represent the interests of bus and trucking organizations,
3 enforcement officials, labor, or safety organizations.

4 (3) 9 members, geographically representative of the participating
5 States, appointed from among individuals who are chief driver licensing
6 officials of participating States.

7 (d) TERMS.—(1) Except as provided in paragraph (2) of this subsection,
8 the term of each member is 3 years.

9 (2) A vacancy on the Committee shall be filled in the same way as an
10 original appointment. A member appointed to fill a vacancy serves for the
11 remainder of the term of that member's predecessor. After a member's term
12 ends, the member may continue to serve until a successor takes office.

13 (e) PAY AND EXPENSES.—Members of the Committee serve without pay.
14 However, the Secretary may reimburse a member for reasonable travel ex-
15 penses incurred by the member in attending meetings of the Committee.

16 (f) MEETINGS, CHAIRMAN, VICE CHAIRMAN, AND QUORUM.—(1) The
17 Committee shall meet at least once a year.

18 (2) The Committee shall elect a Chairman and a Vice Chairman from
19 among its members.

20 (3) Eight members are a quorum.

21 (4) The Committee shall meet at the call of the Chairman or a majority
22 of the members.

23 (g) PERSONNEL AND SERVICES.—The Secretary may provide the Com-
24 mittee with personnel, penalty mail privileges, and similar services the Sec-
25 retary considers necessary to assist the Committee in carrying out its duties
26 and powers under this section.

27 (h) REPORTS.—At least once a year, the Committee shall submit to the
28 Secretary a report on the matters specified in subsection (b) of this section.
29 The report shall include any recommendations of the Committee for changes
30 in the Register.

31 (i) RELATIONSHIP TO OTHER LAWS.—The Committee is exempt from
32 sections 10(e) and (f) and 14 of the Federal Advisory Committee Act (5
33 App. U.S.C.).

34 **§ 30307. Criminal penalties**

35 (a) GENERAL PENALTY.—A person (except an individual described in sec-
36 tion 30305(b)(6) of this title) shall be fined under title 18, imprisoned for
37 not more than one year, or both, if—

38 (1) the person receives under section 30305 of this title information
39 specified in section 30304(b)(1)(A) or (C) of this title;

40 (2) disclosure of the information is not authorized by section 30305
41 of this title; and

1 (3) the person willfully discloses the information knowing that disclo-
2 sure is not authorized.

3 (b) INFORMATION PENALTY.—A person knowingly and willfully request-
4 ing, or under false pretenses obtaining, information specified in section
5 30304(b)(1)(A) or (C) of this title from a person receiving the information
6 under section 30305 of this title shall be fined under title 18, imprisoned
7 for not more than one year, or both.

8 **§ 30308. Authorization of appropriations**

9 (a) GENERAL.—The Secretary of Transportation shall make available
10 from amounts made available to carry out section 402 of title 23
11 \$4,000,000 for each of the fiscal years ending September 30, 1993, and
12 September 30, 1994, to carry out this chapter.

13 (b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this sec-
14 tion remain available until expended.

15 **CHAPTER 305—NATIONAL AUTOMOBILE TITLE**
16 **INFORMATION SYSTEM**

Sec.

30501. Definitions.

30502. National Automobile Title Information System.

30503. State participation.

30504. Reporting requirements.

30505. Penalties and enforcement.

17 **§ 30501. Definitions**

18 In this chapter—

19 (1) “automobile” has the same meaning given that term in section
20 32901(a) of this title.

21 (2) “certificate of title” means a document issued by a State showing
22 ownership of an automobile.

23 (3) “insurance carrier” means an individual or entity engaged in the
24 business of underwriting automobile insurance.

25 (4) “junk automobile” means an automobile that—

26 (A) is incapable of operating on public streets, roads, and high-
27 ways; and

28 (B) has no value except as a source of parts or scrap.

29 (5) “junk yard” means an individual or entity engaged in the busi-
30 ness of acquiring or owning junk automobiles for—

31 (A) resale in their entirety or as spare parts; or

32 (B) rebuilding, restoration, or crushing.

33 (6) “operator” means the individual or entity authorized or des-
34 ignated as the operator of the National Automobile Title Information
35 System under section 30502(b) of this title, or the Secretary of Trans-
36 portation, if there is no authorized or designated individual or entity.

1 (7) “salvage automobile” means an automobile that is damaged by
2 collision, fire, flood, accident, trespass, or other event, to the extent
3 that its fair salvage value plus the cost of repairing the automobile for
4 legal operation on public streets, roads, and highways would be more
5 than the fair market value of the automobile immediately before the
6 event that caused the damage.

7 (8) “salvage yard” means an individual or entity engaged in the
8 business of acquiring or owning salvage automobiles for—

9 (A) resale in their entirety or as spare parts; or

10 (B) rebuilding, restoration, or crushing.

11 (9) “State” means a State of the United States or the District of
12 Columbia.

13 **§ 30502. National Automobile Title Information System**

14 (a) ESTABLISHMENT OR DESIGNATION.—(1) In cooperation with the
15 States and not later than January 31, 1996, the Secretary of Transpor-
16 tation shall establish a National Automobile Title Information System that
17 will provide individuals and entities referred to in subsection (e) of this sec-
18 tion with instant and reliable access to information maintained by the
19 States related to automobile titling described in subsection (d) of this sec-
20 tion. However, if the Secretary decides that the existing information system
21 meets the requirements of subsections (d) and (e) of this section and will
22 permit the Secretary to carry out this chapter as early as possible, the Sec-
23 retary, in consultation with the Attorney General, may designate an existing
24 information system as the National Automobile Title Information System.

25 (2) In cooperation with the Attorney General and the States, the Sec-
26 retary shall ascertain the extent to which title and related information to
27 be included in the system established under paragraph (1) of this subsection
28 will be adequate, timely, reliable, uniform, and capable of assisting in efforts
29 to prevent the introduction or reintroduction of stolen vehicles and parts
30 into interstate commerce.

31 (b) OPERATION.—The Secretary may authorize the operation of the Sys-
32 tem established or designated under subsection (a)(1) of this section by
33 agreement with one or more States, or by designating, after consulting with
34 the States, a third party that represents the interests of the States.

35 (c) USER FEES.—Operation of the System established or designated
36 under subsection (a)(1) of this section shall be paid for by user fees and
37 should be self-sufficient and not be dependent on amounts from the United
38 States Government. The amount of fees the operator collects and keeps
39 under this subsection subject to annual appropriation laws, excluding fees
40 the operator collects and pays to an entity providing information to the op-
41 erator, may be not more than the costs of operating the System.

1 (d) INFORMATION REQUIREMENTS.—The System established or des-
2 ignated under subsection (a)(1) of this section shall permit a user of the
3 System at least to establish instantly and reliably—

4 (1) the validity and status of a document purporting to be a certifi-
5 cate of title;

6 (2) whether an automobile bearing a known vehicle identification
7 number is titled in a particular State;

8 (3) whether an automobile known to be titled in a particular State
9 is or has been a junk automobile or a salvage automobile;

10 (4) for an automobile known to be titled in a particular State, the
11 odometer mileage disclosure required under section 32705 of this title
12 for that automobile on the date the certificate of title for that auto-
13 mobile was issued and any later mileage information, if noted by the
14 State; and

15 (5) whether an automobile bearing a known vehicle identification
16 number has been reported as a junk automobile or a salvage auto-
17 mobile under section 30504 of this title.

18 (e) AVAILABILITY OF INFORMATION.—(1) The operator shall make avail-
19 able—

20 (A) to a participating State on request of that State, information in
21 the System about any automobile;

22 (B) to a Government, State, or local law enforcement official on re-
23 quest of that official, information in the System about a particular
24 automobile, junk yard, or salvage yard;

25 (C) to a prospective purchaser of an automobile on request of that
26 purchaser, including an auction company or entity engaged in the busi-
27 ness of purchasing used automobiles, information in the System about
28 that automobile; and

29 (D) to a prospective or current insurer of an automobile on request
30 of that insurer, information in the System about that automobile.

31 (2) The operator may release only the information reasonably necessary
32 to satisfy the requirements of paragraph (1) of this subsection. The opera-
33 tor may not collect an individual's social security account number or permit
34 users of the System to obtain an individual's address or social security ac-
35 count number.

36 **§ 30503. State participation**

37 (a) STATE INFORMATION.—Each State shall make titling information
38 maintained by that State available for use in operating the National Auto-
39 mobile Title Information System established or designated under section
40 30502 of this title.

1 (b) VERIFICATION CHECKS.—Each State shall establish a practice of per-
2 forming an instant title verification check before issuing a certificate of title
3 to an individual or entity claiming to have purchased an automobile from
4 an individual or entity in another State. The check shall consist of—

5 (1) communicating to the operator—

6 (A) the vehicle identification number of the automobile for
7 which the certificate of title is sought;

8 (B) the name of the State that issued the most recent certificate
9 of title for the automobile; and

10 (C) the name of the individual or entity to whom the certificate
11 of title was issued; and

12 (2) giving the operator an opportunity to communicate to the partici-
13 pating State the results of a search of the information.

14 (c) GRANTS TO STATES.—(1) In cooperation with the States and not
15 later than January 1, 1994, the Secretary of Transportation shall—

16 (A) conduct a review of systems used by the States to compile and
17 maintain information about the titling of automobiles; and

18 (B) determine for each State the cost of making titling information
19 maintained by that State available to the operator to meet the require-
20 ments of section 30502(d) of this title.

21 (2) The Secretary may make grants to participating States to be used
22 in making titling information maintained by those States available to the
23 operator if—

24 (A) the grant to a State is not more than the lesser of—

25 (i) 25 percent of the cost of making titling information main-
26 tained by that State available to the operator as determined by the
27 Secretary under paragraph (1)(B) of this subsection; or

28 (ii) \$300,000; and

29 (B) the Secretary decides that the grants are reasonable and nec-
30 essary to establish the System.

31 (d) REPORT TO CONGRESS.—Not later than January 1, 1997, the Sec-
32 retary shall report to Congress on which States have met the requirements
33 of this section. If a State has not met the requirements, the Secretary shall
34 describe the impediments that have resulted in the State's failure to meet
35 the requirements.

36 **§ 30504. Reporting requirements**

37 (a) JUNK YARD AND SALVAGE YARD OPERATORS.—(1) Beginning at a
38 time established by the Secretary of Transportation that is not sooner than
39 the 3d month before the establishment or designation of the National Auto-
40 mobile Title Information System under section 30502 of this title, an indi-
41 vidual or entity engaged in the business of operating a junk yard or salvage

1 yard shall file a monthly report with the operator of the System. The report
 2 shall contain an inventory of all junk automobiles or salvage automobiles ob-
 3 tained by the junk yard or salvage yard during the prior month. The inven-
 4 tory shall contain—

5 (A) the vehicle identification number of each automobile obtained;

6 (B) the date on which the automobile was obtained;

7 (C) the name of the individual or entity from whom the automobile
 8 was obtained; and

9 (D) a statement of whether the automobile was crushed or disposed
 10 of for sale or other purposes.

11 (2) Paragraph (1) of this subsection does not apply to an individual or
 12 entity—

13 (A) required by State law to report the acquisition of junk auto-
 14 mobiles or salvage automobiles to State or local authorities if those au-
 15 thorities make that information available to the operator; or

16 (B) issued a verification under section 33110 of this title stating
 17 that the automobile or parts from the automobile are not reported as
 18 stolen.

19 (b) INSURANCE CARRIERS.—Beginning at a time established by the Sec-
 20 retary that is not sooner than the 3d month before the establishment or des-
 21 ignation of the System, an individual or entity engaged in business as an
 22 insurance carrier shall file a monthly report with the operator. The report
 23 may be filed directly or through a designated agent. The report shall con-
 24 tain an inventory of all automobiles of the current model year or any of the
 25 4 prior model years that the carrier, during the prior month, has obtained
 26 possession of and has decided are junk automobiles or salvage automobiles.
 27 The inventory shall contain—

28 (1) the vehicle identification number of each automobile obtained;

29 (2) the date on which the automobile was obtained;

30 (3) the name of the individual or entity from whom the automobile
 31 was obtained; and

32 (4) the name of the owner of the automobile at the time of the filing
 33 of the report.

34 (c) PROCEDURES AND PRACTICES.—The Secretary shall establish by reg-
 35 ulation procedures and practices to facilitate reporting in the least burden-
 36 some and costly fashion.

37 **§ 30505. Penalties and enforcement**

38 (a) PENALTY.—An individual or entity violating this chapter is liable to
 39 the United States Government for a civil penalty of not more than \$1,000
 40 for each violation.

1 (b) COLLECTION AND COMPROMISE.—(1) The Secretary of Transpor-
 2 tation shall impose a civil penalty under this section. The Attorney General
 3 shall bring a civil action to collect the penalty. The Secretary may com-
 4 promise the amount of the penalty. In determining the amount of the pen-
 5 alty or compromise, the Secretary shall consider the appropriateness of the
 6 penalty to the size of the business of the individual or entity charged and
 7 the gravity of the violation.

8 (2) The Government may deduct the amount of a civil penalty imposed
 9 or compromised under this section from amounts it owes the individual or
 10 entity liable for the penalty.

11 PART B—COMMERCIAL

12 CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

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- 31161. Procedures to ensure timely correction of safety violations.
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13 SUBCHAPTER I—STATE GRANTS

14 §31101. Definitions

15 In this subchapter—

1 (1) “commercial motor vehicle” means (except in section 31106) a
 2 self-propelled or towed vehicle used on the highways in commerce prin-
 3 cipally to transport passengers or cargo, if the vehicle—

4 (A) has a gross vehicle weight rating of at least 10,000 pounds;

5 (B) is designed to transport more than 10 passengers including
 6 the driver; or

7 (C) is used in transporting material found by the Secretary of
 8 Transportation to be hazardous under section 5103 of this title.

9 (2) “employee” means a driver of a commercial motor vehicle (in-
 10 cluding an independent contractor when personally operating a com-
 11 mercial motor vehicle), a mechanic, a freight handler, or an individual
 12 not an employer, who—

13 (A) directly affects commercial motor vehicle safety in the
 14 course of employment by a commercial motor carrier; and

15 (B) is not an employee of the United States Government, a
 16 State, or a political subdivision of a State acting in the course of
 17 employment.

18 (3) “employer”—

19 (A) means a person engaged in a business affecting commerce
 20 that owns or leases a commercial motor vehicle in connection with
 21 that business, or assigns an employee to operate the vehicle in
 22 commerce; but

23 (B) does not include the Government, a State, or a political sub-
 24 division of a State.

25 (4) “State” means a State of the United States, the District of Co-
 26 lumbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and
 27 the Northern Mariana Islands.

28 **§ 31102. Grants to States**

29 (a) GENERAL AUTHORITY.—Subject to this section and the availability of
 30 amounts, the Secretary of Transportation may make grants to States for
 31 the development or implementation of programs for the enforcement of reg-
 32 ulations, standards, and orders of the United States Government on com-
 33 mercial motor vehicle safety and compatible State regulations, standards,
 34 and orders.

35 (b) STATE PLAN PROCEDURES AND CONTENTS.—(1) The Secretary shall
 36 prescribe procedures for a State to submit a plan under which the State
 37 agrees to adopt and assume responsibility for enforcing regulations, stand-
 38 ards, and orders of the Government on commercial motor vehicle safety or
 39 compatible State regulations, standards, and orders. The Secretary shall ap-
 40 prove the plan if the Secretary decides the plan is adequate to promote the
 41 objectives of this section and the plan—

1 (A) designates the State motor vehicle safety agency responsible for
2 administering the plan throughout the State;

3 (B) contains satisfactory assurances the agency has or will have the
4 legal authority, resources, and qualified personnel necessary to enforce
5 the regulations, standards, and orders;

6 (C) contains satisfactory assurances the State will devote adequate
7 amounts to the administration of the plan and enforcement of the regu-
8 lations, standards, and orders;

9 (D) provides that the total expenditure of amounts of the State and
10 its political subdivisions (not including amounts of the Government) for
11 commercial motor vehicle safety programs for enforcement of commer-
12 cial motor vehicle size and weight limitations, drug interdiction, and
13 State traffic safety laws and regulations under subsection (c) of this
14 section will be maintained at a level at least equal to the average level
15 of that expenditure for its last 3 full fiscal years before December 18,
16 1991;

17 (E) provides a right of entry and inspection to carry out the plan;

18 (F) provides that all reports required under this section be submitted
19 to the agency and that the agency will make the reports available to
20 the Secretary on request;

21 (G) provides that the agency will adopt the reporting requirements
22 and use the forms for recordkeeping, inspections, and investigations the
23 Secretary prescribes;

24 (H) requires registrants of commercial motor vehicles to make a dec-
25 laration of knowledge of applicable safety regulations, standards, and
26 orders of the Government and the State;

27 (I) provides that the State will grant maximum reciprocity for in-
28 spections conducted under the North American Inspection Standard
29 through the use of a nationally accepted system that allows ready iden-
30 tification of previously inspected commercial motor vehicles;

31 (J) ensures that activities described in subsection (c) of this section,
32 if financed with grants under subsection (a) of this section, will not di-
33 minish the effectiveness of the development and implementation of com-
34 mercial motor vehicle safety programs described in subsection (a);

35 (K) ensures that fines imposed and collected by the State for viola-
36 tions of commercial motor vehicle safety regulations will be reasonable
37 and appropriate and that, to the maximum extent practicable, the State
38 will attempt to implement the recommended fine schedule published by
39 the Commercial Vehicle Safety Alliance;

1 (L) ensures that the State agency will coordinate the plan prepared
2 under this section with the State highway safety plan under section
3 402 of title 23;

4 (M) ensures participation by the 48 contiguous States in
5 SAFETYNET not later than January 1, 1994;

6 (N) provides satisfactory assurances that the State will undertake ef-
7 forts that will emphasize and improve enforcement of State and local
8 traffic safety laws and regulations related to commercial motor vehicle
9 safety;

10 (O) provides satisfactory assurances that the State will promote ac-
11 tivities—

12 (i) to remove impaired commercial motor vehicle drivers from
13 the highways of the United States through adequate enforcement
14 of regulations on the use of alcohol and controlled substances and
15 by ensuring ready roadside access to alcohol detection and measur-
16 ing equipment;

17 (ii) to provide an appropriate level of training to State motor
18 carrier safety assistance program officers and employees on rec-
19 ognizing drivers impaired by alcohol or controlled substances;

20 (iii) to promote enforcement of the requirements related to the
21 licensing of commercial motor vehicle drivers, including checking
22 the status of commercial drivers' licenses; and

23 (iv) to improve enforcement of hazardous material transpor-
24 tation regulations by encouraging more inspections of shipper fa-
25 cilities affecting highway transportation and more comprehensive
26 inspection of the loads of commercial motor vehicles transporting
27 hazardous material; and

28 (P) provides satisfactory assurances that the State will promote ef-
29 fective—

30 (i) interdiction activities affecting the transportation of con-
31 trolled substances by commercial motor vehicle drivers and train-
32 ing on appropriate strategies for carrying out those interdiction
33 activities; and

34 (ii) use of trained and qualified officers and employees of politi-
35 cal subdivisions and local governments, under the supervision and
36 direction of the State motor vehicle safety agency, in the enforce-
37 ment of regulations affecting commercial motor vehicle safety and
38 hazardous material transportation safety.

39 (2) If the Secretary disapproves a plan under this subsection, the Sec-
40 retary shall give the State a written explanation and allow the State to mod-
41 ify and resubmit the plan for approval.

1 (3) In estimating the average level of State expenditure under paragraph
2 (1)(D) of this subsection, the Secretary—

3 (A) may allow the State to exclude State expenditures for Govern-
4 ment-sponsored demonstration or pilot programs; and

5 (B) shall require the State to exclude Government amounts and
6 State matching amounts used to receive Government financing under
7 subsection (a) of this section.

8 (c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use
9 amounts received under a grant under subsection (a) of this section for the
10 following activities if the activities are carried out in conjunction with an
11 appropriate inspection of the commercial motor vehicle to enforce Govern-
12 ment or State commercial motor vehicle safety regulations:

13 (1) enforcement of commercial motor vehicle size and weight limita-
14 tions at locations other than fixed weight facilities, at specific locations
15 such as steep grades or mountainous terrains where the weight of a
16 commercial motor vehicle can significantly affect the safe operation of
17 the vehicle, or at ports where intermodal shipping containers enter and
18 leave the United States.

19 (2) detection of the unlawful presence of a controlled substance (as
20 defined under section 102 of the Comprehensive Drug Abuse Preven-
21 tion and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor
22 vehicle or on the person of any occupant (including the operator) of
23 the vehicle.

24 (3) enforcement of State traffic laws and regulations designed to
25 promote the safe operation of commercial motor vehicles.

26 (d) CONTINUOUS EVALUATION OF PLANS.—On the basis of reports sub-
27 mitted by a State motor vehicle safety agency of a State with a plan ap-
28 proved under this section and the Secretary's own investigations, the Sec-
29 retary shall make a continuing evaluation of the way the State is carrying
30 out the plan. If the Secretary finds, after notice and opportunity for com-
31 ment, the State plan previously approved is not being followed or has be-
32 come inadequate to ensure enforcement of the regulations, standards, or or-
33 ders, the Secretary shall withdraw approval of the plan and notify the State.
34 The plan stops being effective when the notice is received. A State adversely
35 affected by the withdrawal may seek judicial review under chapter 7 of title
36 5. Notwithstanding the withdrawal, the State may retain jurisdiction in ad-
37 ministrative or judicial proceedings begun before the withdrawal if the is-
38 sues involved are not related directly to the reasons for the withdrawal.

39 **§ 31103. United States Government's share of costs**

40 The Secretary of Transportation shall reimburse a State, from a grant
41 made under this subchapter, an amount that is not more than 80 percent

1 of the costs incurred by the State in a fiscal year in developing and imple-
2 menting programs to enforce commercial motor vehicle regulations, stand-
3 ards, or orders adopted under this subchapter or subchapter II of this chap-
4 ter. In determining those costs, the Secretary shall include in-kind contribu-
5 tions by the State. Amounts of the State and its political subdivisions re-
6 quired to be expended under section 31102(b)(1)(D) of this title may not
7 be included as part of the share not provided by the United States Govern-
8 ment. The Secretary may allocate among the States whose applications for
9 grants have been approved those amounts appropriated for grants to sup-
10 port those programs, under criteria that may be established.

11 **§31104. Availability of amounts**

12 (a) GENERAL.—Subject to section 9503(c)(1) of the Internal Revenue
13 Code of 1986 (26 U.S.C. 9503(c)(1)), the following amounts are available
14 from the Highway Trust Fund (except the Mass Transit Account) for the
15 Secretary of Transportation to incur obligations to carry out section 31102
16 of this title:

17 (1) not more than \$76,000,000 for the fiscal year ending September
18 30, 1993.

19 (2) not more than \$80,000,000 for the fiscal year ending September
20 30, 1994.

21 (3) not more than \$83,000,000 for the fiscal year ending September
22 30, 1995.

23 (4) not more than \$85,000,000 for the fiscal year ending September
24 30, 1996.

25 (5) not more than \$90,000,000 for the fiscal year ending September
26 30, 1997.

27 (b) AVAILABILITY AND REALLOCATION OF AMOUNTS.—(1) Amounts
28 made available under subsection (a) of this section remain available until
29 expended. Allocations to a State remain available for expenditure in the
30 State for the fiscal year in which they are allocated and for the next fiscal
31 year. Amounts not expended by a State during those 2 fiscal years are re-
32 leased to the Secretary for reallocation.

33 (2) Amounts made available under section 404(a)(2) of the Surface
34 Transportation Assistance Act of 1982 before October 1, 1991, that are not
35 obligated on October 1, 1992, are available for reallocation and obligation
36 under paragraph (1) of this subsection.

37 (c) REIMBURSEMENT FOR GOVERNMENT'S SHARE OF COSTS.—Amounts
38 made available under subsection (a) of this section shall be used to reim-
39 burse States proportionately for the United States Government's share of
40 costs incurred.

1 (d) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary
2 of a grant to a State under section 31102 of this title is a contractual obli-
3 gation of the Government for payment of the Government’s share of costs
4 incurred by the State in developing, implementing, or developing and imple-
5 menting programs to enforce commercial motor vehicle regulations, stand-
6 ards, and orders.

7 (e) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each
8 fiscal year or as soon after that date as practicable, the Secretary may de-
9 duct, from amounts made available under subsection (a) of this section for
10 that fiscal year, not more than 1.25 percent of those amounts for adminis-
11 trative expenses incurred in carrying out section 31102 of this title in that
12 fiscal year. The Secretary shall use at least 75 percent of those deducted
13 amounts to train non-Government employees and to develop related training
14 materials in carrying out section 31102.

15 (f) ALLOCATION CRITERIA.—On October 1 of each fiscal year or as soon
16 after that date as practicable, the Secretary, after making the deduction de-
17 scribed in subsection (e) of this section, shall allocate under criteria the Sec-
18 retary establishes the amounts available for that fiscal year among the
19 States with plans approved under section 31102 of this title. However, the
20 Secretary may designate specific eligible States among which to allocate
21 those amounts in allocating amounts available—

22 (1) for research, development, and demonstration under subsection
23 (g)(1)(F) of this section; and

24 (2) for public education under subsection (g)(1)(G) of this section.

25 (g) SPECIFIC ALLOCATIONS.—(1) Of amounts made available under sub-
26 section (a) of this section—

27 (A) for each fiscal year beginning after September 30, 1992, the
28 Secretary shall obligate at least \$1,500,000 to make grants to States
29 for training inspectors to enforce regulations prescribed by the Sec-
30 retary related to the transportation of hazardous material by commer-
31 cial motor vehicles;

32 (B) for each of the fiscal years ending September 30, 1993–1997,
33 the Secretary may obligate not more than \$2,000,000 to carry out sec-
34 tion 31106 of this title;

35 (C) for each of the fiscal years ending September 30, 1993–1997,
36 the Secretary may obligate not more than \$2,000,000 to carry out sec-
37 tion 31107 of this title;

38 (D) for each of the fiscal years ending September 30, 1993–1995,
39 the Secretary shall obligate at least \$4,250,000, and for each of the
40 fiscal years ending September 30, 1996, and 1997, the Secretary shall
41 obligate at least \$5,000,000, for traffic enforcement activities related

1 to commercial motor vehicle drivers that are carried out in conjunction
2 with an appropriate inspection of a commercial motor vehicle for com-
3 pliance with Government or State commercial motor vehicle safety reg-
4 ulations;

5 (E) for each of the fiscal years ending September 30, 1993–1995,
6 the Secretary shall obligate at least \$1,000,000 to increase enforcement
7 of the licensing requirements of chapter 313 of this title by motor car-
8 rier safety assistance program officers and employees, including the
9 cost of purchasing equipment for, and conducting, inspections to check
10 the current status of licenses issued under chapter 313;

11 (F) for each fiscal year, the Secretary shall obligate at least
12 \$500,000 for research, development, and demonstration of technologies,
13 methodologies, analyses, or information systems designed to carry out
14 section 31102 of this title and that are beneficial to all jurisdictions;
15 and

16 (G) for each fiscal year, the Secretary shall obligate at least
17 \$350,000 to educate the motoring public on how to share the road
18 safely with commercial motor vehicles.

19 (2) The Secretary shall announce publicly amounts obligated under para-
20 graph (1)(F) of this subsection and award those amounts competitively,
21 when practicable, to any eligible State for up to 100 percent of the State
22 costs or to other persons as the Secretary decides.

23 (3) In carrying out educational activities referred to in paragraph (1)(G)
24 of this subsection, the Secretary shall consult with appropriate industry rep-
25 resentatives.

26 (h) PAYMENT TO STATES FOR COSTS.—Each State shall submit vouchers
27 for costs the State incurs under this section and section 31102 of this title.
28 The Secretary shall pay the State an amount not more than the Govern-
29 ment share of costs incurred as of the date of the vouchers.

30 (i) IMPROVED ALLOCATION FORMULA.—The Secretary shall prescribe
31 regulations to develop an improved formula and process for allocating
32 amounts made available for grants under section 31102(a) of this title
33 among States eligible for those amounts. In prescribing those regulations,
34 the Secretary shall—

35 (1) consider ways to provide incentives to States that demonstrate
36 innovative, successful, cost-efficient, or cost-effective programs to pro-
37 mote commercial motor vehicle safety and hazardous material transpor-
38 tation safety;

39 (2) place special emphasis on incentives to States that conduct traf-
40 fic safety enforcement activities that are coupled with motor carrier
41 safety inspections; and

1 (3) consider ways to provide incentives to States that increase com-
2 patibility of State commercial motor vehicle safety and hazardous mate-
3 rial transportation regulations with Government safety regulations and
4 promote other factors intended to promote effectiveness and efficiency
5 the Secretary decides are appropriate.

6 (j) INTRASTATE COMPATIBILITY.—The Secretary shall prescribe regula-
7 tions specifying tolerance guidelines and standards for ensuring compatibil-
8 ity of intrastate commercial motor vehicle safety laws and regulations with
9 Government motor carrier safety regulations to be enforced under section
10 31102(a) of this title. To the extent practicable, the guidelines and stand-
11 ards shall allow for maximum flexibility while ensuring the degree of uni-
12 formity that will not diminish transportation safety. In reviewing State
13 plans and allocating amounts or making grants under section 153 of title
14 23, the Secretary shall ensure that the guidelines and standards are applied
15 uniformly.

16 **§ 31105. Employee protections**

17 (a) PROHIBITIONS.—(1) A person may not discharge an employee, or dis-
18 cipline or discriminate against an employee regarding pay, terms, or privi-
19 leges of employment, because—

20 (A) the employee, or another person at the employee's request, has
21 filed a complaint or begun a proceeding related to a violation of a com-
22 mercial motor vehicle safety regulation, standard, or order, or has testi-
23 fied or will testify in such a proceeding; or

24 (B) the employee refuses to operate a vehicle because—

25 (i) the operation violates a regulation, standard, or order of the
26 United States related to commercial motor vehicle safety or health;
27 or

28 (ii) the employee has a reasonable apprehension of serious in-
29 jury to the employee or the public because of the vehicle's unsafe
30 condition.

31 (2) Under paragraph (1)(B)(ii) of this subsection, an employee's appre-
32 hension of serious injury is reasonable only if a reasonable individual in the
33 circumstances then confronting the employee would conclude that the unsafe
34 condition establishes a real danger of accident, injury, or serious impairment
35 to health. To qualify for protection, the employee must have sought from
36 the employer, and been unable to obtain, correction of the unsafe condition.

37 (b) FILING COMPLAINTS AND PROCEDURES.—(1) An employee alleging
38 discharge, discipline, or discrimination in violation of subsection (a) of this
39 section, or another person at the employee's request, may file a complaint
40 with the Secretary of Labor not later than 180 days after the alleged viola-

1 tion occurred. On receiving the complaint, the Secretary shall notify the per-
2 son alleged to have committed the violation of the filing of the complaint.

3 (2)(A) Not later than 60 days after receiving a complaint, the Secretary
4 shall conduct an investigation, decide whether it is reasonable to believe the
5 complaint has merit, and notify the complainant and the person alleged to
6 have committed the violation of the findings. If the Secretary decides it is
7 reasonable to believe a violation occurred, the Secretary shall include with
8 the decision findings and a preliminary order for the relief provided under
9 paragraph (3) of this subsection.

10 (B) Not later than 30 days after the notice under subparagraph (A) of
11 this paragraph, the complainant and the person alleged to have committed
12 the violation may file objections to the findings or preliminary order, or
13 both, and request a hearing on the record. The filing of objections does not
14 stay a reinstatement ordered in the preliminary order. If a hearing is not
15 requested within the 30 days, the preliminary order is final and not subject
16 to judicial review.

17 (C) A hearing shall be conducted expeditiously. Not later than 120 days
18 after the end of the hearing, the Secretary shall issue a final order. Before
19 the final order is issued, the proceeding may be ended by a settlement
20 agreement made by the Secretary, the complainant, and the person alleged
21 to have committed the violation.

22 (3)(A) If the Secretary decides, on the basis of a complaint, a person vio-
23 lated subsection (a) of this section, the Secretary shall order the person to—

24 (i) take affirmative action to abate the violation;

25 (ii) reinstate the complainant to the former position with the same
26 pay and terms and privileges of employment; and

27 (iii) pay compensatory damages, including back pay.

28 (B) If the Secretary issues an order under subparagraph (A) of this para-
29 graph and the complainant requests, the Secretary may assess against the
30 person against whom the order is issued the costs (including attorney's fees)
31 reasonably incurred by the complainant in bringing the complaint. The Sec-
32 retary shall determine the costs that reasonably were incurred.

33 (c) JUDICIAL REVIEW AND VENUE.—A person adversely affected by an
34 order issued after a hearing under subsection (b) of this section may file
35 a petition for review, not later than 60 days after the order is issued, in
36 the court of appeals of the United States for the circuit in which the viola-
37 tion occurred or the person resided on the date of the violation. The review
38 shall be heard and decided expeditiously. An order of the Secretary subject
39 to review under this subsection is not subject to judicial review in a criminal
40 or other civil proceeding.

1 (d) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an
2 order issued under subsection (b) of this section, the Secretary shall bring
3 a civil action to enforce the order in the district court of the United States
4 for the judicial district in which the violation occurred.

5 **§31106. Commercial motor vehicle information system pro-**
6 **gram**

7 (a) DEFINITION.—In this section, “commercial motor vehicle” means a
8 self-propelled or towed vehicle used on highways in intrastate or interstate
9 commerce to transport passengers or property, if the vehicle—

10 (1) has a gross vehicle weight rating of at least 10,001 pounds;

11 (2) is designed to transport more than 15 passengers, including the
12 driver; or

13 (3) is used in transporting material found by the Secretary of Trans-
14 portation to be hazardous under section 5103 of this title and that ma-
15 terial is transported in a quantity requiring placarding under regula-
16 tions the Secretary prescribes under section 5103.

17 (b) INFORMATION SYSTEM.—(1) In cooperation with the States, the Sec-
18 retary may establish as part of the motor carrier safety information network
19 system of the Department of Transportation and similar State systems, an
20 information system to serve as a clearinghouse and depository of informa-
21 tion related to State registration and licensing of commercial motor vehicles
22 and the safety fitness of the commercial motor vehicle registrants. The Sec-
23 retary shall include in the system information on the safety fitness of each
24 of the registrants and other information the Secretary considers appro-
25 priate, including information on vehicle inspections and out-of-service or-
26 ders.

27 (2) The operation of the information system established under paragraph
28 (1) of this subsection shall be paid for by a schedule of user fees. The Sec-
29 retary may authorize the operation of the information system by contract,
30 through an agreement with one or more States, or by designating, after con-
31 sulting with the States, a third party that represents the interests of the
32 States.

33 (3) The Secretary shall prescribe standards to ensure—

34 (A) uniform information collection and reporting by the States nec-
35 essary to carry out this section; and

36 (B) the availability and reliability of the information to the States
37 and the Secretary from the information system.

38 (c) DEMONSTRATION PROJECT.—The Secretary shall make grants to
39 States to carry out a project to demonstrate ways of establishing an infor-
40 mation system that will link the motor carrier safety information network
41 system of the Department and similar State systems with the motor vehicle

1 registration and licensing systems of the States. The project shall be de-
2 signed—

3 (1) to allow a State when issuing license plates for a commercial
4 motor vehicle to establish through use of the information system the
5 safety fitness of the person seeking to register the vehicle; and

6 (2) to decide on types of sanctions that may be imposed on the reg-
7 istrant, or the types of conditions or limitations that may be imposed
8 on the operations of the registrant, to ensure the safety fitness of the
9 registrant.

10 (d) REVIEW OF STATE SYSTEMS.—Not later than December 18, 1992,
11 the Secretary, in cooperation with the States, shall review State motor vehi-
12 cle registration systems related to license tags for commercial motor vehicles
13 to decide whether those systems can be used in carrying out this section.

14 (e) REGULATIONS.—The Secretary shall prescribe regulations to carry
15 out this section.

16 (f) REPORT TO CONGRESS.—Not later than January 1, 1995, the Sec-
17 retary shall submit a report to Congress on the cost, benefits, and feasibility
18 of the information system established under subsection (b) of this section.
19 If the Secretary decides that the system would be beneficial on a nationwide
20 basis, the Secretary shall include in the report recommendations on legisla-
21 tion to implement a nationwide system.

22 (g) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to carry
23 out this section may be made available to the Secretary under section
24 31104(g)(1)(B) of this title.

25 **§ 31107. Truck and bus accident grant program**

26 (a) STATE GRANTS.—The Secretary of Transportation shall make grants
27 to States that agree to adopt or have adopted the recommendations of the
28 National Governors' Association related to police accident reports for truck
29 and bus accidents. The Secretary may make a grant under this section only
30 to assist a State in carrying out those recommendations, including—

31 (1) assisting the State in designing appropriate forms;

32 (2) drafting instruction manuals;

33 (3) training appropriate State and local officers on matters, includ-
34 ing training on accident investigation techniques to decide on the prob-
35 able cause of truck and bus accidents;

36 (4) analyzing and evaluating safety information to develop rec-
37 ommended changes to existing safety programs necessary to address
38 more effectively the causes of truck and bus accidents; and

39 (5) other activities the Secretary decides are appropriate to carry out
40 this section.

1 (b) COORDINATION WITH OTHER PROGRAMS.—The Secretary shall co-
 2 ordinate grants made under this section with highway safety programs
 3 under section 402 of title 23. The Secretary may require that the informa-
 4 tion from police reports for truck and bus accidents be included in reports
 5 made to the Secretary under the uniform information collection and report-
 6 ing program under section 402.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to carry
 8 out this section may be made available to the Secretary under section
 9 31104(g)(1)(C) of this title.

10 **§ 31108. Authorization of appropriations**

11 Not more than \$----- may be appropriated to the Secretary of
 12 Transportation for the fiscal year ending September 30, 19--, to carry out
 13 the safety duties and powers of the Federal Highway Administration.

14 SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS

15 **§ 31111. Length limitations**

16 (a) DEFINITIONS.—In this section—

17 (1) “maxi-cube vehicle” means a truck tractor combined with a
 18 semitrailer and a separable property-carrying unit designed to be load-
 19 ed and unloaded through the semitrailer, with the length of the sepa-
 20 rable property-carrying unit being not more than 34 feet and the
 21 length of the vehicle combination being not more than 65 feet.

22 (2) “truck tractor” means—

23 (A) a non-property-carrying power unit that operates in com-
 24 bination with a semitrailer or trailer; or

25 (B) a power unit that carries as property only motor vehicles
 26 when operating in combination with a semitrailer in transporting
 27 motor vehicles.

28 (b) GENERAL LIMITATIONS.—(1) Except as provided in this section, a
 29 State may not prescribe or enforce a regulation of commerce that—

30 (A) imposes a vehicle length limitation of less than 45 feet on a bus,
 31 of less than 48 feet on a semitrailer operating in a truck tractor-
 32 semitrailer combination, or of less than 28 feet on a semitrailer or
 33 trailer operating in a truck tractor-semitrailer-trailer combination, on
 34 any segment of the Dwight D. Eisenhower System of Interstate and
 35 Defense Highways (except a segment exempted under subsection (f) of
 36 this section) and those classes of qualifying Federal-aid Primary Sys-
 37 tem highways designated by the Secretary of Transportation under
 38 subsection (e) of this section;

39 (B) imposes an overall length limitation on a commercial motor vehi-
 40 cle operating in a truck tractor-semitrailer or truck tractor-semitrailer-
 41 trailer combination;

1 (C) has the effect of prohibiting the use of a semitrailer or trailer
2 of the same dimensions as those that were in actual and lawful use in
3 that State on December 1, 1982; or

4 (D) has the effect of prohibiting the use of an existing semitrailer
5 or trailer, of not more than 28.5 feet in length, in a truck tractor-
6 semitrailer-trailer combination if the semitrailer or trailer was operat-
7 ing lawfully on December 1, 1982, within a 65-foot overall length limit
8 in any State.

9 (2) A length limitation prescribed or enforced by a State under paragraph
10 (1)(A) of this subsection applies only to a semitrailer or trailer and not to
11 a truck tractor.

12 (c) MAXI-CUBE AND VEHICLE COMBINATION LIMITATIONS.—A State
13 may not prohibit a maxi-cube vehicle or a commercial motor vehicle com-
14 bination consisting of a truck tractor and 2 trailing units on any segment
15 of the Dwight D. Eisenhower System of Interstate and Defense Highways
16 (except a segment exempted under subsection (f) of this section) and those
17 classes of qualifying Federal-aid Primary System highways designated by
18 the Secretary under subsection (e) of this section.

19 (d) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—
20 Length calculated under this section does not include a safety or energy
21 conservation device the Secretary decides is necessary for safe and efficient
22 operation of a commercial motor vehicle. However, such a device may not
23 have by its design or use the ability to carry cargo.

24 (e) QUALIFYING HIGHWAYS.—The Secretary by regulation shall designate
25 as qualifying Federal-aid Primary System highways those highways of the
26 Federal-aid Primary System in existence on June 1, 1991, that can accom-
27 modate safely the applicable vehicle lengths provided in this section.

28 (f) EXEMPTIONS.—(1) If the chief executive officer of a State, after con-
29 sulting under paragraph (2) of this subsection, decides a segment of the
30 Dwight D. Eisenhower System of Interstate and Defense Highways is not
31 capable of safely accommodating a commercial motor vehicle having a length
32 described in subsection (b)(1)(A) of this section or the motor vehicle com-
33 bination described in subsection (c) of this section, the chief executive officer
34 may notify the Secretary of that decision and request the Secretary to ex-
35 empt that segment from either or both provisions.

36 (2) Before making a decision under paragraph (1) of this subsection, the
37 chief executive officer shall consult with units of local government in the
38 State in which the segment of the Dwight D. Eisenhower System of Inter-
39 state and Defense Highways is located and with the chief executive officer
40 of any adjacent State that may be directly affected by the exemption. As
41 part of the consultations, consideration shall be given to any potential alter-

1 native route that serves the area in which the segment is located and can
2 safely accommodate a commercial motor vehicle having a length described
3 in subsection (b)(1)(A) of this section or the motor vehicle combination de-
4 scribed in subsection (c) of this section.

5 (3) A chief executive officer's notification under this subsection must in-
6 clude specific evidence of safety problems supporting the officer's decision
7 and the results of consultations about alternative routes.

8 (4)(A) If the Secretary decides, on request of a chief executive officer or
9 on the Secretary's own initiative, a segment of the Dwight D. Eisenhower
10 System of Interstate and Defense Highways is not capable of safely accom-
11 modating a commercial motor vehicle having a length described in sub-
12 section (b)(1)(A) of this section or the motor vehicle combination described
13 in subsection (c) of this section, the Secretary shall exempt the segment
14 from either or both of those provisions. Before making a decision under this
15 paragraph, the Secretary shall consider any possible alternative route that
16 serves the area in which the segment is located.

17 (B) The Secretary shall make a decision about a specific segment not
18 later than 120 days after the date of receipt of notification from a chief
19 executive officer under paragraph (1) of this subsection or the date on
20 which the Secretary initiates action under subparagraph (A) of this para-
21 graph, whichever is applicable. If the Secretary finds the decision will not
22 be made in time, the Secretary immediately shall notify Congress, giving the
23 reasons for the delay, information about the resources assigned, and the
24 projected date for the decision.

25 (C) Before making a decision, the Secretary shall give an interested per-
26 son notice and an opportunity for comment. If the Secretary exempts a seg-
27 ment under this subsection before the final regulations under subsection (e)
28 of this section are prescribed, the Secretary shall include the exemption as
29 part of the final regulations. If the Secretary exempts the segment after the
30 final regulations are prescribed, the Secretary shall publish the exemption
31 as an amendment to the final regulations.

32 (g) ACCOMMODATING SPECIALIZED EQUIPMENT.—In prescribing regula-
33 tions to carry out this section, the Secretary may make decisions necessary
34 to accommodate specialized equipment, including automobile and vessel
35 transporters and maxi-cube vehicles.

36 **§31112. Property-carrying unit limitation**

37 (a) DEFINITIONS.—In this section—

38 (1) "property-carrying unit" means any part of a commercial motor
39 vehicle combination (except the truck tractor) used to carry property,
40 including a trailer, a semitrailer, or the property-carrying section of a
41 single unit truck.

1 (2) the length of the property-carrying units of a commercial motor
2 vehicle combination is the length measured from the front of the first
3 property-carrying unit to the rear of the last property-carrying unit.

4 (b) GENERAL LIMITATIONS.—A State may not allow by any means the
5 operation, on any segment of the Dwight D. Eisenhower System of Inter-
6 state and Defense Highways and those classes of qualifying Federal-aid Pri-
7 mary System highways designated by the Secretary of Transportation under
8 section 31111(e) of this title, of any commercial motor vehicle combination
9 (except a vehicle or load that cannot be dismantled easily or divided easily
10 and that has been issued a special permit under applicable State law) with
11 more than one property-carrying unit (not including the truck tractor)
12 whose property-carrying units are more than—

13 (1) the maximum combination trailer, semitrailer, or other type of
14 length limitation allowed by law or regulation of that State before June
15 2, 1991; or

16 (2) the length of the property-carrying units of those commercial
17 motor vehicle combinations, by specific configuration, in actual, lawful
18 operation on a regular or periodic basis (including continuing seasonal
19 operation) in that State before June 2, 1991.

20 (c) SPECIAL RULES FOR WYOMING, OHIO, AND ALASKA.—In addition to
21 the vehicles allowed under subsection (b) of this section—

22 (1) Wyoming may allow the operation of additional vehicle configura-
23 tions not in actual operation on June 1, 1991, but authorized by State
24 law not later than November 3, 1992, if the vehicle configurations com-
25 ply with the single axle, tandem axle, and bridge formula limits in sec-
26 tion 127(a) of title 23 and are not more than 117,000 pounds gross
27 vehicle weight;

28 (2) Ohio may allow the operation of commercial motor vehicle com-
29 binations with 3 property-carrying units of 28.5 feet each (not includ-
30 ing the truck tractor) not in actual operation on June 1, 1991, to be
31 operated in Ohio on the 1-mile segment of Ohio State Route 7 that
32 begins at and is south of exit 16 of the Ohio Turnpike; and

33 (3) Alaska may allow the operation of commercial motor vehicle com-
34 binations that were not in actual operation on June 1, 1991, but were
35 in actual operation before July 6, 1991.

36 (d) ADDITIONAL LIMITATIONS.—(1) A commercial motor vehicle combina-
37 tion whose operation in a State is not prohibited under subsections (b) and
38 (c) of this section may continue to operate in the State on highways de-
39 scribed in subsection (b) only if at least in compliance with all State laws,
40 regulations, limitations, and conditions, including routing-specific and con-
41 figuration-specific designations and all other restrictions in force in the

1 State on June 1, 1991. However, subject to regulations prescribed by the
2 Secretary under subsection (g)(2) of this section, the State may make minor
3 adjustments of a temporary and emergency nature to route designations and
4 vehicle operating restrictions in effect on June 1, 1991, for specific safety
5 purposes and road construction.

6 (2) This section does not prevent a State from further restricting in any
7 way or prohibiting the operation of any commercial motor vehicle combina-
8 tion subject to this section, except that a restriction or prohibition shall be
9 consistent with this section and sections 31113(a) and (b) and 31114 of this
10 title.

11 (3) A State making a minor adjustment of a temporary and emergency
12 nature as authorized by paragraph (1) of this subsection or further restrict-
13 ing or prohibiting the operation of a commercial motor vehicle combination
14 as authorized by paragraph (2) of this subsection shall advise the Secretary
15 not later than 30 days after the action. The Secretary shall publish a notice
16 of the action in the Federal Register.

17 (e) LIST OF STATE LENGTH LIMITATIONS.—(1) Not later than February
18 16, 1992, each State shall submit to the Secretary for publication a com-
19 plete list of State length limitations applicable to commercial motor vehicle
20 combinations operating in the State on the highways described in subsection
21 (b) of this section. The list shall indicate the applicable State laws and regu-
22 lations associated with the length limitations. If a State does not submit the
23 information as required, the Secretary shall complete and file the informa-
24 tion for the State.

25 (2) Not later than March 17, 1992, the Secretary shall publish an interim
26 list in the Federal Register consisting of all information submitted under
27 paragraph (1) of this subsection. The Secretary shall review for accuracy
28 all information submitted by a State under paragraph (1) and shall solicit
29 and consider public comment on the accuracy of the information.

30 (3) A law or regulation may not be included on the list submitted by a
31 State or published by the Secretary merely because it authorized, or could
32 have authorized, by permit or otherwise, the operation of commercial motor
33 vehicle combinations not in actual operation on a regular or periodic basis
34 before June 2, 1991.

35 (4) Except as revised under this paragraph or paragraph (5) of this sub-
36 section, the list shall be published as final in the Federal Register not later
37 than June 15, 1992. In publishing the final list, the Secretary shall make
38 any revisions necessary to correct inaccuracies identified under paragraph
39 (2) of this subsection. After publication of the final list, commercial motor
40 vehicle combinations prohibited under subsection (b) of this section may not
41 operate on the Dwight D. Eisenhower System of Interstate and Defense

1 Highways and other Federal-aid Primary System highways designated by
2 the Secretary except as published on the list. The list may be combined by
3 the Secretary with the list required under section 127(d) of title 23.

4 (5) On the Secretary's own motion or on request by any person (including
5 a State), the Secretary shall review the list published under paragraph (4)
6 of this subsection. If the Secretary decides there is reason to believe a mis-
7 take was made in the accuracy of the list, the Secretary shall begin a pro-
8 ceeding to decide whether a mistake was made. If the Secretary decides
9 there was a mistake, the Secretary shall publish the correction.

10 (f) LIMITATIONS ON STATUTORY CONSTRUCTION.—This section may not
11 be construed—

12 (1) to allow the operation on any segment of the Dwight D. Eisen-
13 hower System of Interstate and Defense Highways of a longer com-
14 bination vehicle prohibited under section 127(d) of title 23;

15 (2) to affect in any way the operation of a commercial motor vehicle
16 having only one property-carrying unit; or

17 (3) to affect in any way the operation in a State of a commercial
18 motor vehicle with more than one property-carrying unit if the vehicle
19 was in actual operation on a regular or periodic basis (including sea-
20 sonal operation) in that State before June 2, 1991, that was authorized
21 under State law or regulation or lawful State permit.

22 (g) REGULATIONS.—(1) In carrying out this section only, the Secretary
23 shall define by regulation loads that cannot be dismantled easily or divided
24 easily.

25 (2) Not later than June 15, 1992, the Secretary shall prescribe regula-
26 tions establishing criteria for a State to follow in making minor adjustments
27 under subsection (d) of this section.

28 **§ 31113. Width limitations**

29 (a) GENERAL LIMITATIONS.—(1) Except as provided in subsection (e) of
30 this section, a State (except Hawaii) may not prescribe or enforce a regula-
31 tion of commerce that imposes a vehicle width limitation of more or less
32 than 102 inches on a commercial motor vehicle operating on—

33 (A) a segment of the Dwight D. Eisenhower System of Interstate
34 and Defense Highways (except a segment exempted under subsection
35 (e) of this section);

36 (B) a qualifying Federal-aid highway designated by the Secretary of
37 Transportation, with traffic lanes designed to be at least 12 feet wide;
38 or

39 (C) a qualifying Federal-aid Primary System highway designated by
40 the Secretary if the Secretary decides the designation is consistent with
41 highway safety.

1 (2) Notwithstanding paragraph (1) of this subsection, a State may con-
2 tinue to enforce a regulation of commerce in effect on April 6, 1983, that
3 applies to a commercial motor vehicle of more than 102 inches in width,
4 until the date on which the State prescribes a regulation of commerce that
5 complies with this subsection.

6 (3) A Federal-aid highway (except an interstate highway) not designated
7 under this subsection on June 5, 1984, may be designated under this sub-
8 section only with the agreement of the chief executive officer of the State
9 in which the highway is located.

10 (b) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—
11 Width calculated under this section does not include a safety or energy con-
12 servation device the Secretary decides is necessary for safe and efficient op-
13 eration of a commercial motor vehicle.

14 (c) SPECIAL USE PERMITS.—A State may grant a special use permit to
15 a commercial motor vehicle that is more than 102 inches in width.

16 (d) STATE ENFORCEMENT.—Consistent with this section, a State may
17 enforce a commercial motor vehicle width limitation of 102 inches on a seg-
18 ment of the Dwight D. Eisenhower System of Interstate and Defense High-
19 ways (except a segment exempted under subsection (e) of this section) or
20 other qualifying Federal-aid highway designated by the Secretary.

21 (e) EXEMPTIONS.—(1) If the chief executive officer of a State, after con-
22 sulting under paragraph (2) of this subsection, decides a segment of the
23 Dwight D. Eisenhower System of Interstate and Defense Highways is not
24 capable of safely accommodating a commercial motor vehicle having the
25 width provided in subsection (a) of this section, the chief executive officer
26 may notify the Secretary of that decision and request the Secretary to ex-
27 empt that segment from subsection (a) to allow the State to impose a width
28 limitation of less than 102 inches for a vehicle (except a bus) on that seg-
29 ment.

30 (2) Before making a decision under paragraph (1) of this subsection, the
31 chief executive officer shall consult with units of local government in the
32 State in which the segment of the Dwight D. Eisenhower System of Inter-
33 state and Defense Highways is located and with the chief executive officer
34 of any adjacent State that may be directly affected by the exemption. As
35 part of the consultations, consideration shall be given to any potential alter-
36 native route that serves the area in which the segment is located and can
37 safely accommodate a commercial motor vehicle having the width provided
38 for in subsection (a) of this section.

39 (3) A chief executive officer's notification under this subsection must in-
40 clude specific evidence of safety problems supporting the officer's decision
41 and the results of consultations about alternative routes.

1 (4)(A) If the Secretary decides, on request of a chief executive officer or
2 on the Secretary's own initiative, a segment of the Dwight D. Eisenhower
3 System of Interstate and Defense Highways is not capable of safely accom-
4 modating a commercial motor vehicle having a width provided in subsection
5 (a) of this section, the Secretary shall exempt the segment from subsection
6 (a) to allow the State to impose a width limitation of less than 102 inches
7 for a vehicle (except a bus) on that segment. Before making a decision
8 under this paragraph, the Secretary shall consider any possible alternative
9 route that serves the area in which the segment is located.

10 (B) The Secretary shall make a decision about a specific segment not
11 later than 120 days after the date of receipt of notification from a chief
12 executive officer under paragraph (1) of this subsection or the date on
13 which the Secretary initiates action under subparagraph (A) of this para-
14 graph, whichever is applicable. If the Secretary finds the decision will not
15 be made in time, the Secretary immediately shall notify Congress, giving the
16 reasons for the delay, information about the resources assigned, and the
17 projected date for the decision.

18 (C) Before making a decision, the Secretary shall give an interested per-
19 son notice and an opportunity for comment. If the Secretary exempts a seg-
20 ment under this subsection before the final regulations under subsection (a)
21 of this section are prescribed, the Secretary shall include the exemption as
22 part of the final regulations. If the Secretary exempts the segment after the
23 final regulations are prescribed, the Secretary shall publish the exemption
24 as an amendment to the final regulations.

25 **§ 31114. Access to the Interstate System**

26 (a) PROHIBITION ON DENYING ACCESS.—A State may not enact or en-
27 force a law denying to a commercial motor vehicle subject to this subchapter
28 or subchapter I of this chapter reasonable access between—

29 (1) the Dwight D. Eisenhower System of Interstate and Defense
30 Highways (except a segment exempted under section 31111(f) or
31 31113(e) of this title) and other qualifying Federal-aid Primary System
32 highways designated by the Secretary of Transportation; and

33 (2) terminals, facilities for food, fuel, repairs, and rest, and points
34 of loading and unloading for household goods carriers, motor carriers
35 of passengers, or any truck tractor-semitrailer combination in which
36 the semitrailer has a length of not more than 28.5 feet and that gen-
37 erally operates as part of a vehicle combination described in section
38 31111(c) of this title.

39 (b) EXCEPTION.—This section does not prevent a State or local govern-
40 ment from imposing reasonable restrictions, based on safety considerations,
41 on a truck tractor-semitrailer combination in which the semitrailer has a

1 length of not more than 28.5 feet and that generally operates as part of
2 a vehicle combination described in section 31111(c) of this title.

3 **§31115. Enforcement**

4 On the request of the Secretary of Transportation, the Attorney General
5 shall bring a civil action for appropriate injunctive relief to ensure compli-
6 ance with this subchapter or subchapter I of this chapter. The action may
7 be brought in a district court of the United States in any State in which
8 the relief is required. On a proper showing, the court shall issue a tem-
9 porary restraining order or preliminary or permanent injunction. An injunc-
10 tion under this section may order a State or person to comply with this sub-
11 chapter, subchapter I, or a regulation prescribed under this subchapter or
12 subchapter I.

13 SUBCHAPTER III—SAFETY REGULATION

14 **§31131. Purposes and findings**

15 (a) PURPOSES.—The purposes of this subchapter are—

16 (1) to promote the safe operation of commercial motor vehicles;

17 (2) to minimize dangers to the health of operators of commercial
18 motor vehicles and other employees whose employment directly affects
19 motor carrier safety; and

20 (3) to ensure increased compliance with traffic laws and with the
21 commercial motor vehicle safety and health regulations and standards
22 prescribed and orders issued under this chapter.

23 (b) FINDINGS.—Congress finds—

24 (1) it is in the public interest to enhance commercial motor vehicle
25 safety and thereby reduce highway fatalities, injuries, and property
26 damage;

27 (2) improved, more uniform commercial motor vehicle safety meas-
28 ures and strengthened enforcement would reduce the number of fatali-
29 ties and injuries and the level of property damage related to commer-
30 cial motor vehicle operations;

31 (3) enhanced protection of the health of commercial motor vehicle
32 operators is in the public interest; and

33 (4) interested State governments can provide valuable assistance to
34 the United States Government in ensuring that commercial motor vehi-
35 cle operations are conducted safely and healthfully.

36 **§31132. Definitions**

37 In this subchapter—

38 (1) “commercial motor vehicle” means a self-propelled or towed vehi-
39 cle used on the highways in interstate commerce to transport pas-
40 sengers or property, if the vehicle—

41 (A) has a gross vehicle weight rating of at least 10,001 pounds;

1 (B) is designed to transport more than 15 passengers including
2 the driver; or

3 (C) is used in transporting material found by the Secretary of
4 Transportation to be hazardous under section 5103 of this title
5 and transported in a quantity requiring placarding under regula-
6 tions prescribed by the Secretary under section 5103.

7 (2) “employee” means an operator of a commercial motor vehicle (in-
8 cluding an independent contractor when operating a commercial motor
9 vehicle), a mechanic, a freight handler, or an individual not an em-
10 ployer, who—

11 (A) directly affects commercial motor vehicle safety in the
12 course of employment; and

13 (B) is not an employee of the United States Government, a
14 State, or a political subdivision of a State acting in the course of
15 the employment by the Government, a State, or a political subdivi-
16 sion of a State.

17 (3) “employer”—

18 (A) means a person engaged in a business affecting interstate
19 commerce that owns or leases a commercial motor vehicle in con-
20 nection with that business, or assigns an employee to operate it;
21 but

22 (B) does not include the Government, a State, or a political sub-
23 division of a State.

24 (4) “interstate commerce” means trade, traffic, or transportation in
25 the United States between a place in a State and—

26 (A) a place outside that State (including a place outside the
27 United States); or

28 (B) another place in the same State through another State or
29 through a place outside the United States.

30 (5) “intrastate commerce” means trade, traffic, or transportation in
31 a State that is not interstate commerce.

32 (6) “regulation” includes a standard or order.

33 (7) “State” means a State of the United States, the District of Co-
34 lumbia, and, in sections 31136 and 31140–31142 of this title, a politi-
35 cal subdivision of a State.

36 (8) “State law” includes a law enacted by a political subdivision of
37 a State.

38 (9) “State regulation” includes a regulation prescribed by a political
39 subdivision of a State.

40 (10) “United States” means the States of the United States and the
41 District of Columbia.

1 **§ 31133. General powers of the Secretary of Transportation**

2 (a) GENERAL.—In carrying out this subchapter and regulations pre-
3 scribed under section 31102 of this title, the Secretary of Transportation
4 may—

- 5 (1) conduct inspections and investigations;
6 (2) compile statistics;
7 (3) make reports;
8 (4) issue subpoenas;
9 (5) require production of records and property;
10 (6) take depositions;
11 (7) hold hearings;
12 (8) prescribe recordkeeping and reporting requirements;
13 (9) conduct or make contracts for studies, development, testing, eval-
14 uation, and training; and
15 (10) perform other acts the Secretary considers appropriate.

16 (b) CONSULTATION.—In conducting inspections and investigations under
17 subsection (a) of this section, the Secretary shall consult, as appropriate,
18 with employers and employees and their authorized representatives and offer
19 them a right of accompaniment.

20 (c) DELEGATION.—The Secretary may delegate to a State receiving a
21 grant under section 31102 of this title those duties and powers related to
22 enforcement (including conducting investigations) of this subchapter and
23 regulations prescribed under this subchapter that the Secretary considers
24 appropriate.

25 **§ 31134. Commercial Motor Vehicle Safety Regulatory Re-**
26 **view Panel**

27 (a) ESTABLISHMENT AND GENERAL DUTY.—The Secretary of Transpor-
28 tation shall establish the Commercial Motor Vehicle Safety Regulatory Re-
29 view Panel. The Panel shall analyze and review State laws and regulations
30 under sections 31140 and 31141 of this title.

31 (b) SPECIFIC DUTIES.—The Panel shall—

- 32 (1) carry out those duties and powers designated to be carried out
33 by the Panel under sections 31140 and 31141 of this title;
34 (2) conduct a study to—
35 (A) evaluate the need, if any, for additional assistance from the
36 United States Government to the States to enable them to enforce
37 the regulations prescribed by the Secretary under section 31136
38 of this title; and
39 (B) decide on other methods of furthering the purposes of this
40 subchapter; and

1 (3) make recommendations to the Secretary based on the results of
2 the study conducted under clause (2) of this subsection.

3 (c) COMPOSITION, APPOINTMENT, AND TERMS.—(1) The Panel shall be
4 composed of 15 members as follows:

5 (A) the Secretary or the Secretary's delegate.

6 (B) 7 individuals appointed by the Secretary from among individuals
7 who represent the interests of States and political subdivisions of
8 States and whose names have been submitted to the Secretary by the
9 Committee on Commerce, Science, and Transportation of the Senate or
10 the Committee on Public Works and Transportation of the House of
11 Representatives.

12 (C) 7 individuals appointed by the Secretary from among individuals
13 who represent the interests of business, consumer, labor, and safety
14 groups and whose names have been submitted to the Secretary by the
15 Committee on Commerce, Science, and Transportation of the Senate or
16 the Committee on Public Works and Transportation of the House of
17 Representatives.

18 (2) The Secretary shall select the individuals to be appointed under this
19 subsection on the basis of their knowledge, expertise, or experience related
20 to commercial motor vehicle safety. Half of the appointments shall be made
21 from names submitted by the Committee on Commerce, Science, and Trans-
22 portation of the Senate, and the other half from names submitted by the
23 Committee on Public Works and Transportation of the House of Represent-
24 atives. Each of these committees shall submit to the Secretary the names
25 of 20 individuals qualified to serve on the Panel.

26 (3) The term of each member of the Panel appointed under paragraph
27 (1)(B) and (C) of this subsection is 7 years.

28 (4) A vacancy on the Panel shall be filled in the way the original appoint-
29 ment was made. The vacancy does not affect the Panel's powers.

30 (d) CHAIRMAN, QUORUM, MEETINGS, AND PAY.—(1) The Secretary is
31 the Chairman of the Panel.

32 (2) Eight members of the Panel are a quorum, but the Panel may estab-
33 lish a lesser number as a quorum to hold hearings, take testimony, and re-
34 ceive evidence.

35 (3) The Panel shall meet at the call of the Chairman or a majority of
36 its members.

37 (4) Members of the Panel shall serve without pay, except that they shall
38 receive expenses under section 5703 of title 5.

39 (e) PERSONNEL, OFFICE SPACE, AND SUPPORT SERVICES.—On request
40 of the Panel, the Secretary shall—

1 (1) detail personnel of the Department of Transportation to the
2 Panel as necessary to assist the Panel in carrying out its duties and
3 powers; and

4 (2) provide office space, supplies, equipment, and other support serv-
5 ices to the Panel as necessary for the Panel to carry out its duties and
6 powers.

7 (f) HEARINGS AND OTHER ACTIONS.—To carry out the duties and pow-
8 ers of the Panel under this subchapter, the Panel or any member authorized
9 by the Panel may hold hearings, sit and act at times and places, take testi-
10 mony, and take other actions the Panel or the member considers advisable.
11 A member of the Panel may administer oaths to witnesses appearing before
12 the Panel or the member.

13 (g) TEMPORARY AND INTERMITTENT SERVICES.—Subject to regulations
14 the Panel may prescribe, the Chairman may procure the temporary or inter-
15 mittent services of experts or consultants under section 3109 of title 5.

16 **§ 31135. Duties of employers and employees**

17 Each employer and employee shall comply with regulations on commercial
18 motor vehicle safety prescribed by the Secretary of Transportation under
19 this subchapter that apply to the employer's or employee's conduct.

20 **§ 31136. United States Government regulations**

21 (a) MINIMUM SAFETY STANDARDS.—Subject to section 30103(a) of this
22 title, the Secretary of Transportation shall prescribe regulations on commer-
23 cial motor vehicle safety. The regulations shall prescribe minimum safety
24 standards for commercial motor vehicles. At a minimum, the regulations
25 shall ensure that—

26 (1) commercial motor vehicles are maintained, equipped, loaded, and
27 operated safely;

28 (2) the responsibilities imposed on operators of commercial motor ve-
29 hicles do not impair their ability to operate the vehicles safely;

30 (3) the physical condition of operators of commercial motor vehicles
31 is adequate to enable them to operate the vehicles safely; and

32 (4) the operation of commercial motor vehicles does not have a dele-
33 terious effect on the physical condition of the operators.

34 (b) ELIMINATING AND AMENDING EXISTING REGULATIONS.—The Sec-
35 retary may not eliminate or amend an existing motor carrier safety regula-
36 tion related only to the maintenance, equipment, loading, or operation (in-
37 cluding routing) of vehicles carrying material found to be hazardous under
38 section 5103 of this title until an equivalent or more stringent regulation
39 has been prescribed under section 5103.

1 (c) PROCEDURES AND CONSIDERATIONS.—(1) A regulation under this
2 section shall be prescribed under section 553 of title 5 (without regard to
3 sections 556 and 557 of title 5).

4 (2) Before prescribing regulations under this section, the Secretary shall
5 consider, to the extent practicable and consistent with the purposes of this
6 chapter—

7 (A) costs and benefits; and

8 (B) State laws and regulations on commercial motor vehicle safety,
9 to minimize their unnecessary preemption.

10 (d) EFFECT OF EXISTING REGULATIONS.—If the Secretary does not pre-
11 scribe regulations on commercial motor vehicle safety under this section,
12 regulations on commercial motor vehicle safety prescribed by the Secretary
13 before October 30, 1984, and in effect on October 30, 1984, shall be
14 deemed in this subchapter to be regulations prescribed by the Secretary
15 under this section.

16 (e) WAIVERS.—After notice and an opportunity for comment, the Sec-
17 retary may waive any part of a regulation prescribed under this section as
18 it applies to a person or class of persons, if the Secretary decides that the
19 waiver is consistent with the public interest and the safe operation of com-
20 mercial motor vehicles. Under this subsection, the Secretary shall waive the
21 regulations prescribed under this section as they apply to schoolbuses (as
22 defined in section 30125(a) of this title) unless the Secretary decides that
23 making the regulations applicable to schoolbuses is necessary for public
24 safety, considering all laws of the United States and States applicable to
25 schoolbuses. A waiver under this subsection shall be published in the Fed-
26 eral Register, with the reasons for the waiver.

27 (f) LIMITATIONS ON MUNICIPALITY AND COMMERCIAL ZONE EXEMP-
28 TIONS AND WAIVERS.—(1) The Secretary may not—

29 (A) exempt a person or commercial motor vehicle from a regulation
30 related to commercial motor vehicle safety only because the operations
31 of the person or vehicle are entirely in a municipality or commercial
32 zone of a municipality; or

33 (B) waive application to a person or commercial motor vehicle of a
34 regulation related to commercial motor vehicle safety only because the
35 operations of the person or vehicle are entirely in a municipality or
36 commercial zone of a municipality.

37 (2) If a person was authorized to operate a commercial motor vehicle in
38 a municipality or commercial zone of a municipality in the United States
39 for the entire period from November 19, 1987, through November 18, 1988,
40 and if the person is otherwise qualified to operate a commercial motor vehi-

1 cle, the person may operate a commercial motor vehicle entirely in a municipi-
2 pality or commercial zone of a municipality notwithstanding—

3 (A) paragraph (1) of this subsection;

4 (B) a minimum age requirement of the United States Government
5 for operation of the vehicle; and

6 (C) a medical or physical condition that—

7 (i) would prevent an operator from operating a commercial
8 motor vehicle under the commercial motor vehicle safety regula-
9 tions in title 49, Code of Federal Regulations;

10 (ii) existed on July 1, 1988;

11 (iii) has not substantially worsened; and

12 (iv) does not involve alcohol or drug abuse.

13 (3) This subsection does not affect a State commercial motor vehicle safe-
14 ty law applicable to intrastate commerce.

15 **§31137. Monitoring device and brake maintenance regula-**
16 **tions**

17 (a) USE OF MONITORING DEVICES.—If the Secretary of Transportation
18 prescribes a regulation about the use of monitoring devices on commercial
19 motor vehicles to increase compliance by operators of the vehicles with hours
20 of service regulations of the Secretary, the regulation shall ensure that the
21 devices are not used to harass vehicle operators. However, the devices may
22 be used to monitor productivity of the operators.

23 (b) BRAKES AND BRAKE SYSTEMS MAINTENANCE REGULATIONS.—Not
24 later than December 31, 1990, the Secretary shall prescribe regulations on
25 improved standards or methods to ensure that brakes and brake systems
26 of commercial motor vehicles are maintained properly and inspected by ap-
27 propriate employees. At a minimum, the regulations shall establish mini-
28 mum training requirements and qualifications for employees responsible for
29 maintaining and inspecting the brakes and brake systems.

30 **§31138. Minimum financial responsibility for transporting**
31 **passengers**

32 (a) GENERAL REQUIREMENT.—The Secretary of Transportation shall
33 prescribe regulations to require minimum levels of financial responsibility
34 sufficient to satisfy liability amounts established by the Secretary covering
35 public liability and property damage for the transportation of passengers for
36 compensation by motor vehicle in the United States between a place in a
37 State and—

38 (1) a place in another State;

39 (2) another place in the same State through a place outside of that
40 State; or

41 (3) a place outside the United States.

1 (b) MINIMUM AMOUNTS.—The level of financial responsibility established
2 under subsection (a) of this section for a motor vehicle with a seating capac-
3 ity of—

4 (1) at least 16 passengers shall be at least \$5,000,000; and

5 (2) not more than 15 passengers shall be at least \$1,500,000.

6 (c) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) Subject to para-
7 graph (2) of this subsection, financial responsibility may be established by
8 evidence of one or a combination of the following if acceptable to the Sec-
9 retary of Transportation:

10 (A) insurance, including high self-retention.

11 (B) a guarantee.

12 (C) a surety bond issued by a bonding company authorized to do
13 business in the United States.

14 (2) A person domiciled in a country contiguous to the United States and
15 providing transportation to which a minimum level of financial responsibility
16 under this section applies shall have evidence of financial responsibility in
17 the motor vehicle when the person is providing the transportation. If evi-
18 dence of financial responsibility is not in the vehicle, the Secretary of Trans-
19 portation and the Secretary of the Treasury shall deny entry of the vehicle
20 into the United States.

21 (d) CIVIL PENALTY.—(1) If, after notice and an opportunity for a hear-
22 ing, the Secretary of Transportation finds that a person (except an em-
23 ployee acting without knowledge) has knowingly violated this section or a
24 regulation prescribed under this section, the person is liable to the United
25 States Government for a civil penalty of not more than \$10,000 for each
26 violation. A separate violation occurs for each day the violation continues.

27 (2) The Secretary of Transportation shall impose the penalty by written
28 notice. In determining the amount of the penalty, the Secretary shall con-
29 sider—

30 (A) the nature, circumstances, extent, and gravity of the violation;

31 (B) with respect to the violator, the degree of culpability, any history
32 of prior violations, the ability to pay, and any effect on the ability to
33 continue doing business; and

34 (C) other matters that justice requires.

35 (3) The Secretary of Transportation may compromise the penalty before
36 referring the matter to the Attorney General for collection.

37 (4) The Attorney General shall bring a civil action in an appropriate dis-
38 trict court of the United States to collect a penalty referred to the Attorney
39 General for collection under this subsection.

1 (5) The amount of the penalty may be deducted from amounts the Gov-
 2 ernment owes the person. An amount collected under this section shall be
 3 deposited in the Treasury as miscellaneous receipts.

4 (e) NONAPPLICATION.—This section does not apply to a motor vehicle—

5 (1) transporting only school children and teachers to or from school;

6 (2) providing taxicab service, having a seating capacity of not more
 7 than 6 passengers, and not being operated on a regular route or be-
 8 tween specified places; or

9 (3) carrying not more than 15 individuals in a single, daily round
 10 trip to and from work.

11 **§31139. Minimum financial responsibility for transporting**
 12 **property**

13 (a) DEFINITIONS.—In this section—

14 (1) “farm vehicle” means a vehicle—

15 (A) designed or adapted and used only for agriculture;

16 (B) operated by a motor private carrier (as defined in section
 17 10102 of this title); and

18 (C) operated only incidentally on highways.

19 (2) “interstate commerce” includes transportation between a place in
 20 a State and a place outside the United States, to the extent the trans-
 21 portation is in the United States.

22 (3) “State” means a State of the United States, the District of Co-
 23 lumbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and
 24 the Northern Mariana Islands.

25 (b) GENERAL REQUIREMENT AND MINIMUM AMOUNT.—(1) The Sec-
 26 retary of Transportation shall prescribe regulations to require minimum lev-
 27 els of financial responsibility sufficient to satisfy liability amounts estab-
 28 lished by the Secretary covering public liability, property damage, and envi-
 29 ronmental restoration for the transportation of property for compensation
 30 by motor vehicle in the United States between a place in a State and—

31 (A) a place in another State;

32 (B) another place in the same State through a place outside of that
 33 State; or

34 (C) a place outside the United States.

35 (2) The level of financial responsibility established under paragraph (1)
 36 of this subsection shall be at least \$750,000.

37 (c) REQUIREMENTS FOR HAZARDOUS MATTER AND OIL.—(1) The Sec-
 38 retary of Transportation shall prescribe regulations to require minimum lev-
 39 els of financial responsibility sufficient to satisfy liability amounts estab-
 40 lished by the Secretary covering public liability, property damage, and envi-

1 ronmental restoration for the transportation by motor vehicle in interstate
2 or intrastate commerce of—

- 3 (A) hazardous material (as defined by the Secretary);
- 4 (B) oil or hazardous substances (as defined by the Administrator of
5 the Environmental Protection Agency); or
- 6 (C) hazardous wastes (as defined by the Administrator).

7 (2)(A) Except as provided in subparagraph (B) of this paragraph, the
8 level of financial responsibility established under paragraph (1) of this sub-
9 section shall be at least \$5,000,000 for the transportation—

- 10 (i) of hazardous substances (as defined by the Administrator) in
11 cargo tanks, portable tanks, or hopper-type vehicles, with capacities of
12 more than 3,500 water gallons;
- 13 (ii) in bulk of class A explosives, poison gas, liquefied gas, or com-
14 pressed gas; or
- 15 (iii) of large quantities of radioactive material.

16 (B) The Secretary of Transportation by regulation may reduce the mini-
17 mum level in subparagraph (A) of this paragraph (to an amount not less
18 than \$1,000,000) for transportation described in subparagraph (A) in any
19 of the territories of Puerto Rico, the Virgin Islands, American Samoa,
20 Guam, and the Northern Mariana Islands if—

- 21 (i) the chief executive officer of the territory requests the reduction;
- 22 (ii) the reduction will prevent a serious disruption in transportation
23 service and will not adversely affect public safety; and
- 24 (iii) insurance of \$5,000,000 is not readily available.

25 (3) The level of financial responsibility established under paragraph (1)
26 of this subsection for the transportation of a material, oil, substance, or
27 waste not subject to paragraph (2) of this subsection shall be at least
28 \$1,000,000. However, if the Secretary of Transportation finds it will not
29 adversely affect public safety, the Secretary by regulation may reduce the
30 amount for—

- 31 (A) a class of vehicles transporting such a material, oil, substance,
32 or waste in intrastate commerce (except in bulk); and
- 33 (B) a farm vehicle transporting such a material or substance in
34 interstate commerce (except in bulk).

35 (d) FOREIGN MOTOR CARRIERS AND PRIVATE CARRIERS.—Regulations
36 prescribed under this section may allow foreign motor carriers and foreign
37 motor private carriers (as those terms are defined in section 10530 of this
38 title) providing transportation of property under a certificate of registration
39 issued under section 10530 to meet the minimum levels of financial respon-
40 sibility under this section only when those carriers are providing transpor-
41 tation for property in the United States.

1 (e) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) Subject to para-
2 graph (2) of this subsection, financial responsibility may be established by
3 evidence of one or a combination of the following if acceptable to the Sec-
4 retary of Transportation:

5 (A) insurance.

6 (B) a guarantee.

7 (C) a surety bond issued by a bonding company authorized to do
8 business in the United States.

9 (D) qualification as a self-insurer.

10 (2) A person domiciled in a country contiguous to the United States and
11 providing transportation to which a minimum level of financial responsibility
12 under this section applies shall have evidence of financial responsibility in
13 the motor vehicle when the person is providing the transportation. If evi-
14 dence of financial responsibility is not in the vehicle, the Secretary of Trans-
15 portation and the Secretary of the Treasury shall deny entry of the vehicle
16 into the United States.

17 (f) CIVIL PENALTY.—(1) If, after notice and an opportunity for a hear-
18 ing, the Secretary of Transportation finds that a person (except an em-
19 ployee acting without knowledge) has knowingly violated this section or a
20 regulation prescribed under this section, the person is liable to the United
21 States Government for a civil penalty of not more than \$10,000 for each
22 violation. A separate violation occurs for each day the violation continues.

23 (2) The Secretary of Transportation shall impose the penalty by written
24 notice. In determining the amount of the penalty, the Secretary shall con-
25 sider—

26 (A) the nature, circumstances, extent, and gravity of the violation;

27 (B) with respect to the violator, the degree of culpability, any history
28 of prior violations, the ability to pay, and any effect on the ability to
29 continue doing business; and

30 (C) other matters that justice requires.

31 (3) The Secretary of Transportation may compromise the penalty before
32 referring the matter to the Attorney General for collection.

33 (4) The Attorney General shall bring a civil action in an appropriate dis-
34 trict court of the United States to collect a penalty referred to the Attorney
35 General for collection under this subsection.

36 (5) The amount of the penalty may be deducted from amounts the Gov-
37 ernment owes the person. An amount collected under this section shall be
38 deposited in the Treasury as miscellaneous receipts.

39 (g) NONAPPLICATION.—This section does not apply to a motor vehicle
40 having a gross vehicle weight rating of less than 10,000 pounds if the vehi-
41 cle is not used to transport in interstate or foreign commerce—

- 1 (1) class A or B explosives;
- 2 (2) poison gas; or
- 3 (3) a large quantity of radioactive material.

4 **§31140. Submission of State laws and regulations for review**

5 (a) GENERAL.—A State that enacts a State law or issues a regulation
6 on commercial motor vehicle safety shall submit a copy of the law or regula-
7 tion to the Secretary of Transportation and the Commercial Motor Vehicle
8 Safety Regulatory Review Panel immediately after the enactment or issu-
9 ance.

10 (b) ADDITIONAL INFORMATION.—As soon as practicable but not later
11 than a date the Panel may establish, a State that submits a State law or
12 regulation under this section to the Panel shall—

- 13 (1) indicate in writing to the Panel whether the law or regulation—
 - 14 (A) has the same effect as a regulation prescribed by the Sec-
15 retary under section 31136 of this title;
 - 16 (B) is less stringent than that regulation; or
 - 17 (C) is additional to or more stringent than that regulation; and
- 18 (2) submit to the Panel other information the Panel or the Secretary
19 may require to carry out this subchapter.

20 **§31141. Review and preemption of State laws and regula-**
21 **tions**

22 (a) PREEMPTION AFTER DECISION.—A State may not enforce a State
23 law or regulation on commercial motor vehicle safety that the Secretary of
24 Transportation decides under this section may not be enforced.

25 (b) ANALYSIS AND DECISIONS BY THE PANEL.—(1) The Commercial
26 Motor Vehicle Safety Regulatory Review Panel annually shall analyze State
27 laws and regulations and decide which of those laws and regulations are re-
28 lated to commercial motor vehicle safety.

29 (2) Not later than one year after the date the Secretary prescribes a reg-
30 ulation under section 31136 of this title or one year after the date the Panel
31 decides under paragraph (1) of this subsection that a State law or regula-
32 tion is related to commercial motor vehicle safety, whichever is later, the
33 Panel shall—

- 34 (A) decide whether the State law or regulation—
 - 35 (i) has the same effect as the regulation prescribed by the Sec-
36 retary;
 - 37 (ii) is less stringent than that regulation; or
 - 38 (iii) is additional to or more stringent than that regulation;
- 39 (B) decide, for each State law or regulation that the Panel decides
40 is additional to or more stringent than the regulation prescribed by the
41 Secretary, whether—

- 1 (i) the State law or regulation has no safety benefit;
2 (ii) the State law or regulation is incompatible with the regula-
3 tion prescribed by the Secretary; or
4 (iii) enforcement of the State law or regulation would cause an
5 unreasonable burden on interstate commerce; and
6 (C) notify the Secretary of the Panel's decisions under this sub-
7 section.

8 (c) REVIEW AND DECISIONS BY SECRETARY.—(1) The Secretary shall re-
9 view each State law and regulation on commercial motor vehicle safety. Not
10 later than 18 months after the date the Panel notifies the Secretary of a
11 decision under subsection (b) of this section, the Secretary shall—

12 (A) conduct a regulatory proceeding to decide under this subsection
13 whether the State law or regulation may be enforced; and

14 (B) prescribe a final regulation.

15 (2) If the Secretary decides a State law or regulation has the same effect
16 as a regulation prescribed by the Secretary under section 31136 of this title,
17 the State law or regulation may be enforced.

18 (3) If the Secretary decides a State law or regulation is less stringent
19 than a regulation prescribed by the Secretary under section 31136 of this
20 title, the State law or regulation may not be enforced.

21 (4) If the Secretary decides a State law or regulation is additional to or
22 more stringent than a regulation prescribed by the Secretary under section
23 31136 of this title, the State law or regulation may be enforced unless the
24 Secretary also decides that—

25 (A) the State law or regulation has no safety benefit;

26 (B) the State law or regulation is incompatible with the regulation
27 prescribed by the Secretary; or

28 (C) enforcement of the State law or regulation would cause an un-
29 reasonable burden on interstate commerce.

30 (5)(A) In deciding about a State law or regulation under this subsection,
31 the Secretary shall give great weight to the corresponding decision made by
32 the Panel about that law or regulation under subsection (b) of this section.

33 (B) In deciding under paragraph (4) of this subsection whether a State
34 law or regulation will cause an unreasonable burden on interstate commerce,
35 the Secretary may consider the effect on interstate commerce of implemen-
36 tation of that law or regulation with the implementation of all similar laws
37 and regulations of other States.

38 (d) WAIVERS.—(1) A person (including a State) may petition the Sec-
39 retary for a waiver of a decision of the Secretary that a State law or regula-
40 tion may not be enforced under this section. The Secretary shall grant the
41 waiver, as expeditiously as possible, if the person demonstrates to the satis-

1 faction of the Secretary that the waiver is consistent with the public interest
2 and the safe operation of commercial motor vehicles.

3 (2) Before deciding whether to grant or deny a petition for a waiver
4 under this subsection, the Secretary shall give the petitioner an opportunity
5 for a hearing on the record.

6 (e) CONSOLIDATING PROCEEDINGS.—The Secretary may consolidate reg-
7 ulatory proceedings under this section if the Secretary decides that the con-
8 solidation will not adversely affect a party to a proceeding.

9 (f) WRITTEN NOTICE OF DECISIONS.—Not later than 10 days after mak-
10 ing a decision under subsection (c) of this section that a State law or regu-
11 lation may not be enforced, the Secretary shall give written notice to the
12 State of that decision.

13 (g) JUDICIAL REVIEW AND VENUE.—(1) Not later than 60 days after the
14 Secretary makes a decision under subsection (c) of this section, or grants
15 or denies a petition for a waiver under subsection (d) of this section, a per-
16 son (including a State) adversely affected by the decision, grant, or denial
17 may file a petition for judicial review. The petition may be filed in the court
18 of appeals of the United States for the District of Columbia Circuit or in
19 the court of appeals of the United States for the circuit in which the person
20 resides or has its principal place of business.

21 (2) The court has jurisdiction to review the decision, grant, or denial and
22 to grant appropriate relief, including interim relief, as provided in chapter
23 7 of title 5.

24 (3) A judgment of a court under this subsection may be reviewed only
25 by the Supreme Court under section 1254 of title 28.

26 (4) The remedies provided for in this subsection are in addition to other
27 remedies provided by law.

28 (h) INITIATING REVIEW PROCEEDINGS.—To review a State law or regula-
29 tion on commercial motor vehicle safety under this section, the Secretary
30 may initiate a regulatory proceeding on the Secretary's own initiative or on
31 petition of an interested person (including a State).

32 **§ 31142. Inspection of vehicles**

33 (a) INSPECTION OF SAFETY EQUIPMENT.—On the instruction of an au-
34 thorized enforcement official of a State or of the United States Government,
35 a commercial motor vehicle is required to pass an inspection of all safety
36 equipment required under part 393 of title 49, Code of Federal Regulations.

37 (b) INSPECTION OF VEHICLES AND RECORD RETENTION.—The Secretary
38 of Transportation shall prescribe regulations on Government standards for
39 inspection of commercial motor vehicles and retention by employers of
40 records of an inspection. The standards shall provide for annual or more
41 frequent inspections of a commercial motor vehicle unless the Secretary

1 finds that another inspection system is as effective as an annual or more
2 frequent inspection system. Regulations prescribed under this subsection are
3 deemed to be regulations prescribed under section 31136 of this title.

4 (c) PREEMPTION.—(1) Except as provided in paragraph (2) of this sub-
5 section, this subchapter and section 31102 of this title do not—

6 (A) prevent a State or voluntary group of States from imposing more
7 stringent standards for use in their own periodic roadside inspection
8 programs of commercial motor vehicles;

9 (B) prevent a State from enforcing a program for inspection of com-
10 mercial motor vehicles that the Secretary decides is as effective as the
11 Government standards prescribed under subsection (b) of this section;

12 (C) prevent a State from enforcing a program for inspection of com-
13 mercial motor vehicles that meets the requirements for membership in
14 the Commercial Vehicle Safety Alliance, as those requirements were in
15 effect on October 30, 1984; or

16 (D) require a State that is enforcing a program described in clause
17 (B) or (C) of this paragraph to enforce a Government standard pre-
18 scribed under subsection (b) of this section or to adopt a provision on
19 inspection of commercial motor vehicles in addition to that program to
20 comply with the Government standards.

21 (2) The Government standards prescribed under subsection (b) of this
22 section shall preempt a program of a State described in paragraph (1)(C)
23 of this subsection as the program applies to the inspection of commercial
24 motor vehicles in that State. The State may not enforce the program if the
25 Secretary—

26 (A) decides, after notice and an opportunity for a hearing, that the
27 State is not enforcing the program in a way that achieves the objectives
28 of this section; and

29 (B) after making a decision under clause (A) of this paragraph, pro-
30 vides the State with a 6-month period to improve the enforcement of
31 the program to achieve the objectives of this section.

32 (d) INSPECTION TO BE ACCEPTED AS ADEQUATE IN ALL STATES.—A
33 periodic inspection of a commercial motor vehicle under the Government
34 standards prescribed under subsection (b) of this section or a program de-
35 scribed in subsection (c)(1)(B) or (C) of this section that is being enforced
36 shall be recognized as adequate in every State for the period of the inspec-
37 tion. This subsection does not prohibit a State from making random inspec-
38 tions of commercial motor vehicles.

39 (e) EFFECT OF GOVERNMENT STANDARDS.—The Government standards
40 prescribed under subsection (b) of this section may not be enforced as the
41 standards apply to the inspection of commercial motor vehicles in a State

1 enforcing a program described in subsection (c)(1)(B) or (C) of this section
2 if the Secretary decides that it is in the public interest and consistent with
3 public safety for the Government standards not to be enforced as they apply
4 to that inspection.

5 (f) APPLICATION OF STATE REGULATIONS TO GOVERNMENT-LEASED VE-
6 HICLES AND OPERATORS.—A State receiving financial assistance under sec-
7 tion 31102 of this title in a fiscal year may enforce in that fiscal year a
8 regulation on commercial motor vehicle safety adopted by the State as the
9 regulation applies to commercial motor vehicles and operators leased to the
10 Government.

11 **§31143. Investigating complaints and protecting complain-**
12 **ants**

13 (a) INVESTIGATING COMPLAINTS.—The Secretary of Transportation shall
14 conduct a timely investigation of a nonfrivolous written complaint alleging
15 that a substantial violation of a regulation prescribed under this subchapter
16 is occurring or has occurred within the prior 60 days. The Secretary shall
17 give the complainant timely notice of the findings of the investigation. The
18 Secretary is not required to conduct separate investigations of duplicative
19 complaints.

20 (b) PROTECTING COMPLAINANTS.—Notwithstanding section 552 of title
21 5, the Secretary may disclose the identity of a complainant only if disclosure
22 is necessary to prosecute a violation. If disclosure becomes necessary, the
23 Secretary shall take every practical means within the Secretary's authority
24 to ensure that the complainant is not subject to harassment, intimidation,
25 disciplinary action, discrimination, or financial loss because of the disclo-
26 sure.

27 **§31144. Safety fitness of owners and operators**

28 (a) PROCEDURE.—(1) In cooperation with the Interstate Commerce Com-
29 mission, the Secretary of Transportation shall prescribe regulations estab-
30 lishing a procedure to decide on the safety fitness of owners and operators
31 of commercial motor vehicles, including persons seeking new or additional
32 operating authority as motor carriers under sections 10922 and 10923 of
33 this title. The procedure shall include—

34 (A) specific initial and continuing requirements to be met by the
35 owners, operators, and persons to prove safety fitness;

36 (B) a means of deciding whether the owners, operators, and persons
37 meet the safety fitness requirements under clause (A) of this para-
38 graph; and

39 (C) specific time deadlines for action by the Secretary and the Com-
40 mission in making fitness decisions.

1 (2) Regulations prescribed under this subsection supersede all regulations
2 of the United States Government on safety fitness and safety rating of
3 motor carriers in effect on October 30, 1984.

4 (b) FINDINGS AND ACTION ON APPLICATIONS.—The Commission shall—

5 (1) find an applicant for authority to operate as a motor carrier
6 unfit if the applicant does not meet the safety fitness requirements es-
7 tablished under subsection (a) of this section; and

8 (2) deny the application.

9 **§ 31145. Coordination of Governmental activities and paper-**
10 **work**

11 The Secretary of Transportation shall coordinate the activities of depart-
12 ments, agencies, and instrumentalities of the United States Government to
13 ensure adequate protection of the safety and health of operators of commer-
14 cial motor vehicles. The Secretary shall attempt to minimize paperwork bur-
15 dens to ensure maximum coordination and to avoid overlap and the imposi-
16 tion of unreasonable burdens on persons subject to regulations under this
17 subchapter.

18 **§ 31146. Relationship to other laws**

19 Except as provided in section 31136(b) of this title, this subchapter and
20 the regulations prescribed under this subchapter do not affect chapter 51
21 of this title or a regulation prescribed under chapter 51.

22 **§ 31147. Limitations on authority**

23 (a) TRAFFIC REGULATIONS.—This subchapter does not authorize the
24 Secretary of Transportation to prescribe traffic safety regulations or pre-
25 empt State traffic regulations. However, the Secretary may prescribe traffic
26 regulations to the extent their subject matter was regulated under parts
27 390–399 of title 49, Code of Federal Regulations, on October 30, 1984.

28 (b) REGULATING THE MANUFACTURING OF VEHICLES.—This subchapter
29 does not authorize the Secretary to regulate the manufacture of commercial
30 motor vehicles for any purpose, including fuel economy, safety, or emission
31 control.

32 SUBCHAPTER IV—MISCELLANEOUS

33 **§ 31161. Procedures to ensure timely correction of safety**
34 **violations**

35 (a) DEFINITION.—Section 31132(1) of this title applies to this section.

36 (b) GENERAL.—Not later than August 3, 1991, the Secretary of Trans-
37 portation shall prescribe regulations establishing procedures to ensure the
38 proper and timely correction of commercial motor vehicle safety violations
39 noted during an inspection carried out with money authorized under section
40 31104 of this title.

1 (c) VERIFICATION PROGRAM.—The regulations shall establish a verifica-
 2 tion program for United States Government inspectors and States partici-
 3 pating under section 31102 of this title to ensure that commercial motor
 4 vehicles and their operators found in violation of safety requirements have
 5 been brought into compliance with those requirements. The regulations shall
 6 include—

7 (1) a nationwide system for random reinspection of the commercial
 8 motor vehicles and their operators that have been declared out-of-serv-
 9 ice because of those safety violations, with the main purpose of the sys-
 10 tem being to verify that the violations have been corrected on a timely
 11 basis;

12 (2) a program of accountability for correcting all safety violations
 13 that shall provide that—

14 (A) the operator of a commercial motor vehicle for which a safe-
 15 ty violation has been noted shall be issued a form prescribed by
 16 the Secretary;

17 (B) the person making the repairs necessary to correct the vio-
 18 lation shall certify on the form the making of repairs and the date,
 19 location, and time of the repairs;

20 (C) the motor carrier responsible for the commercial motor vehi-
 21 cle or operator shall certify on the form that, based on the car-
 22 rier's knowledge, the repairs necessary to correct the violation
 23 have been made; and

24 (D) appropriate State penalties shall be imposed for a false
 25 statement on the form or a failure to return the form to the ap-
 26 propriate State entity; and

27 (3) a system for ensuring that appropriate State penalties are im-
 28 posed for failure to correct any of those safety violations.

29 **§ 31162. Compliance review priority**

30 If the Secretary of Transportation identifies a pattern of violations of
 31 State or local traffic safety laws or regulations or commercial motor vehicle
 32 safety regulations, standards, or orders among drivers of commercial motor
 33 vehicles employed by a particular motor carrier, the Secretary or a State
 34 representative shall ensure that the motor carrier receives a high priority
 35 for review of that carrier's compliance with applicable United States Gov-
 36 ernment and State commercial motor vehicle safety regulations.

37 **CHAPTER 313—COMMERCIAL MOTOR VEHICLE**
 38 **OPERATORS**

Sec.

31301. Definitions.

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- 31317. Procedure for prescribing regulations.

1 **§ 31301. Definitions**

2 In this chapter—

3 (1) “alcohol” has the same meaning given the term “alcoholic beverage” in section 158(c) of title 23.

4 (2) “commerce” means trade, traffic, and transportation—

5 (A) in the jurisdiction of the United States between a place in
6 a State and a place outside that State (including a place outside
7 the United States); or

8 (B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

9 (3) “commercial driver's license” means a license issued by a State
10 to an individual authorizing the individual to operate a class of commercial motor vehicles.

11 (4) “commercial motor vehicle” means a motor vehicle used in commerce to transport passengers or property that—

12 (A) has a gross vehicle weight rating of at least 26,001 pounds
13 or a lesser gross vehicle weight rating the Secretary of Transportation prescribes by regulation, but not less than a gross vehicle weight rating of 10,001 pounds;

14 (B) is designed to transport at least 16 passengers including the driver; or

15 (C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title, except that a vehicle shall not be included as a commercial motor vehicle under this subclause if—

16 (i) the vehicle does not satisfy the weight requirements of subclause (A) of this clause;

17 (ii) the vehicle transporting material listed as hazardous under section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and not otherwise regulated by the Secretary or transporting a consumer commodity or limited quantity of

1 hazardous material as defined in section 171.8 of title 49,
2 Code of Federal Regulations; and

3 (iii) the Secretary does not deny the application of this ex-
4 ception to the vehicle (individually or as part of a class of
5 motor vehicles) in the interest of safety.

6 (5) except in section 31306, “controlled substance” has the same
7 meaning given that term in section 102 of the Comprehensive Drug
8 Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

9 (6) “driver’s license” means a license issued by a State to an individ-
10 ual authorizing the individual to operate a motor vehicle on highways.

11 (7) “employee” means an operator of a commercial motor vehicle (in-
12 cluding an independent contractor when operating a commercial motor
13 vehicle) who is employed by an employer.

14 (8) “employer” means a person (including the United States Govern-
15 ment, a State, or a political subdivision of a State) that owns or leases
16 a commercial motor vehicle or assigns employees to operate a commer-
17 cial motor vehicle.

18 (9) “felony” means an offense under a law of the United States or
19 a State that is punishable by death or imprisonment for more than one
20 year.

21 (10) “hazardous material” has the same meaning given that term in
22 section 5102 of this title.

23 (11) “motor vehicle” means a vehicle, machine, tractor, trailer, or
24 semitrailer propelled or drawn by mechanical power and used on public
25 streets, roads, or highways, but does not include a vehicle, machine,
26 tractor, trailer, or semitrailer operated only on a rail line or custom
27 harvesting farm machinery.

28 (12) “serious traffic violation” means—

29 (A) excessive speeding, as defined by the Secretary by regula-
30 tion;

31 (B) reckless driving, as defined under State or local law;

32 (C) a violation of a State or local law on motor vehicle traffic
33 control (except a parking violation) and involving a fatality; and

34 (D) any other similar violation of a State or local law on motor
35 vehicle traffic control (except a parking violation) that the Sec-
36 retary designates by regulation as serious.

37 (13) “State” means a State of the United States and the District
38 of Columbia.

39 (14) “United States” means the States of the United States and the
40 District of Columbia.

§ 31302. Limitation on the number of driver's licenses

An individual operating a commercial motor vehicle may have only one driver's license at any time, except during the 10-day period beginning on the date the individual is issued a driver's license.

§ 31303. Notification requirements

(a) VIOLATIONS.—An individual operating a commercial motor vehicle, having a driver's license issued by a State, and violating a State or local law on motor vehicle traffic control (except a parking violation) shall notify the individual's employer of the violation. If the violation occurred in a State other than the issuing State, the individual also shall notify a State official designated by the issuing State. The notifications required by this subsection shall be made not later than 30 days after the date the individual is found to have committed the violation.

(b) REVOCATIONS, SUSPENSIONS, AND CANCELLATIONS.—An employee who has a driver's license revoked, suspended, or canceled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify the employee's employer of the action not later than 30 days after the date of the action.

(c) PREVIOUS EMPLOYMENT.—(1) Subject to paragraph (2) of this subsection, an individual applying for employment as an operator of a commercial motor vehicle shall notify the prospective employer, at the time of the application, of any previous employment as an operator of a commercial motor vehicle.

(2) The Secretary of Transportation shall prescribe by regulation the period for which notice of previous employment must be given under paragraph (1) of this subsection. However, the period may not be less than the 10-year period ending on the date of the application.

§ 31304. Employer responsibilities

An employer may not knowingly allow an employee to operate a commercial motor vehicle in the United States during a period in which the employee—

(1) has a driver's license revoked, suspended, or canceled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or

(2) has more than one driver's license (except as allowed under section 31302 of this title).

§ 31305. General driver fitness and testing

(a) MINIMUM STANDARDS FOR TESTING AND FITNESS.—The Secretary of Transportation shall prescribe regulations on minimum standards for

1 testing and ensuring the fitness of an individual operating a commercial
2 motor vehicle. The regulations—

3 (1) shall prescribe minimum standards for written and driving tests
4 of an individual operating a commercial motor vehicle;

5 (2) shall require an individual who operates or will operate a com-
6 mercial motor vehicle to take a driving test in a vehicle representative
7 of the type of vehicle the individual operates or will operate;

8 (3) shall prescribe minimum testing standards for the operation of
9 a commercial motor vehicle and may prescribe different minimum test-
10 ing standards for different classes of commercial motor vehicles;

11 (4) shall ensure that an individual taking the tests has a working
12 knowledge of—

13 (A) regulations on the safe operation of a commercial motor ve-
14 hicle prescribed by the Secretary and contained in title 49, Code
15 of Federal Regulations; and

16 (B) safety systems of the vehicle;

17 (5) shall ensure that an individual who operates or will operate a
18 commercial motor vehicle carrying a hazardous material—

19 (A) is qualified to operate the vehicle under regulations on
20 motor vehicle transportation of hazardous material prescribed
21 under chapter 51 of this title; and

22 (B) has a working knowledge of—

23 (i) those regulations;

24 (ii) the handling of hazardous material;

25 (iii) the operation of emergency equipment used in response
26 to emergencies arising out of the transportation of hazardous
27 material; and

28 (iv) appropriate response procedures to follow in those
29 emergencies;

30 (6) shall establish minimum scores for passing the tests;

31 (7) shall ensure that an individual taking the tests is qualified to op-
32 erate a commercial motor vehicle under regulations prescribed by the
33 Secretary and contained in title 49, Code of Federal Regulations, to
34 the extent the regulations apply to the individual; and

35 (8) may require—

36 (A) issuance of a certification of fitness to operate a commercial
37 motor vehicle to an individual passing the tests; and

38 (B) the individual to have a copy of the certification in the indi-
39 vidual's possession when the individual is operating a commercial
40 motor vehicle.

1 (b) REQUIREMENTS FOR OPERATING VEHICLES.—(1) Except as provided
2 in paragraph (2) of this subsection, an individual may operate a commercial
3 motor vehicle only if the individual has passed written and driving tests to
4 operate the vehicle that meet the minimum standards prescribed by the Sec-
5 retary under subsection (a) of this section.

6 (2) The Secretary may prescribe regulations providing that an individual
7 may operate a commercial motor vehicle for not more than 90 days if the
8 individual—

9 (A) passes a driving test for operating a commercial motor vehicle
10 that meets the minimum standards prescribed under subsection (a) of
11 this section; and

12 (B) has a driver's license that is not suspended, revoked, or canceled.

13 **§ 31306. Alcohol and controlled substances testing**

14 (a) DEFINITION.—In this section, “controlled substance” means any sub-
15 stance under section 102 of the Comprehensive Drug Abuse Prevention and
16 Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Trans-
17 portation.

18 (b) TESTING PROGRAM FOR OPERATORS OF COMMERCIAL MOTOR VEHI-
19 CLES.—(1)(A) In the interest of commercial motor vehicle safety, the Sec-
20 retary of Transportation shall prescribe regulations not later than October
21 28, 1992, that establish a program requiring motor carriers to conduct
22 preemployment, reasonable suspicion, random, and post-accident testing of
23 operators of commercial motor vehicles for the use of alcohol or a controlled
24 substance in violation of law or a United States Government regulation.

25 (B) When the Secretary of Transportation considers it appropriate in the
26 interest of safety, the Secretary may prescribe regulations for conducting
27 periodic recurring testing of operators of commercial motor vehicles for the
28 use of alcohol or a controlled substance in violation of law or a Government
29 regulation.

30 (2) In prescribing regulations under this subsection, the Secretary of
31 Transportation—

32 (A) shall require that post-accident testing of an operator of a com-
33 mercial motor vehicle be conducted when loss of human life occurs in
34 an accident involving a commercial motor vehicle; and

35 (B) may require that post-accident testing of such an operator be
36 conducted when bodily injury or significant property damage occurs in
37 any other serious accident involving a commercial motor vehicle.

38 (c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out sub-
39 section (b) of this section, the Secretary of Transportation shall develop re-
40 quirements that shall—

1 (1) promote, to the maximum extent practicable, individual privacy
2 in the collection of specimens;

3 (2) for laboratories and testing procedures for controlled substances,
4 incorporate the Department of Health and Human Services scientific
5 and technical guidelines dated April 11, 1988, and any amendments to
6 those guidelines, including mandatory guidelines establishing—

7 (A) comprehensive standards for every aspect of laboratory con-
8 trolled substances testing and laboratory procedures to be applied
9 in carrying out this section, including standards requiring the use
10 of the best available technology to ensure the complete reliability
11 and accuracy of controlled substances tests and strict procedures
12 governing the chain of custody of specimens collected for con-
13 trolled substances testing;

14 (B) the minimum list of controlled substances for which individ-
15 uals may be tested; and

16 (C) appropriate standards and procedures for periodic review of
17 laboratories and criteria for certification and revocation of certifi-
18 cation of laboratories to perform controlled substances testing in
19 carrying out this section;

20 (3) require that a laboratory involved in testing under this section
21 have the capability and facility, at the laboratory, of performing screen-
22 ing and confirmation tests;

23 (4) provide that any test indicating the use of alcohol or a controlled
24 substance in violation of law or a Government regulation be confirmed
25 by a scientifically recognized method of testing capable of providing
26 quantitative information about alcohol or a controlled substance;

27 (5) provide that each specimen be subdivided, secured, and labeled
28 in the presence of the tested individual and that a part of the specimen
29 be retained in a secure manner to prevent the possibility of tampering,
30 so that if the individual's confirmation test results are positive the indi-
31 vidual has an opportunity to have the retained part tested by a 2d con-
32 firmation test done independently at another certified laboratory if the
33 individual requests the 2d confirmation test not later than 3 days after
34 being advised of the results of the first confirmation test;

35 (6) ensure appropriate safeguards for testing to detect and quantify
36 alcohol in breath and body fluid samples, including urine and blood,
37 through the development of regulations that may be necessary and in
38 consultation with the Secretary of Health and Human Services;

39 (7) provide for the confidentiality of test results and medical infor-
40 mation (except information about alcohol or a controlled substance) of
41 employees, except that this clause does not prevent the use of test re-

1 sults for the orderly imposition of appropriate sanctions under this sec-
2 tion; and

3 (8) ensure that employees are selected for tests by nondiscriminatory
4 and impartial methods, so that no employee is harassed by being treat-
5 ed differently from other employees in similar circumstances.

6 (d) TESTING AS PART OF MEDICAL EXAMINATION.—The Secretary of
7 Transportation may provide that testing under subsection (a) of this section
8 for operators subject to subpart E of part 391 of title 49, Code of Federal
9 Regulations, be conducted as part of the medical examination required
10 under that subpart.

11 (e) REHABILITATION.—The Secretary of Transportation shall prescribe
12 regulations establishing requirements for rehabilitation programs that pro-
13 vide for the identification and opportunity for treatment of operators of
14 commercial motor vehicles who are found to have used alcohol or a con-
15 trolled substance in violation of law or a Government regulation. The Sec-
16 retary shall decide on the circumstances under which those operators shall
17 be required to participate in a program. This section does not prevent a
18 motor carrier from establishing a program under this section in cooperation
19 with another motor carrier.

20 (f) SANCTIONS.—The Secretary of Transportation shall decide on appro-
21 priate sanctions for a commercial motor vehicle operator who is found,
22 based on tests conducted and confirmed under this section, to have used al-
23 cohol or a controlled substance in violation of law or a Government regula-
24 tion but who is not under the influence of alcohol or a controlled substance
25 as provided in this chapter.

26 (g) EFFECT ON STATE AND LOCAL GOVERNMENT REGULATIONS.—A
27 State or local government may not prescribe or continue in effect a law, reg-
28 ulation, standard, or order that is inconsistent with regulations prescribed
29 under this section. However, a regulation prescribed under this section may
30 not be construed to preempt a State criminal law that imposes sanctions
31 for reckless conduct leading to loss of life, injury, or damage to property.

32 (h) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—In prescribing
33 regulations under this section, the Secretary of Transportation—

34 (1) shall establish only requirements that are consistent with inter-
35 national obligations of the United States; and

36 (2) shall consider applicable laws and regulations of foreign coun-
37 tries.

38 (i) OTHER REGULATIONS ALLOWED.—This section does not prevent the
39 Secretary of Transportation from continuing in effect, amending, or further
40 supplementing a regulation prescribed before October 28, 1991, governing

1 the use of alcohol or a controlled substance by commercial motor vehicle em-
2 ployees.

3 (j) APPLICATION OF PENALTIES.—This section does not supersede a pen-
4 alty applicable to an operator of a commercial motor vehicle under this
5 chapter or another law.

6 **§ 31307. Minimum training requirements for operators of**
7 **longer combination vehicles**

8 (a) DEFINITION.—In this section, “longer combination vehicle” means a
9 vehicle consisting of a truck tractor and more than one trailer or semitrailer
10 that operates on the Dwight D. Eisenhower System of Interstate and De-
11 fense Highways with a gross vehicle weight of more than 80,000 pounds.

12 (b) REQUIREMENTS.—Not later than December 18, 1994, the Secretary
13 of Transportation shall prescribe regulations establishing minimum training
14 requirements for operators of longer combination vehicles. The training shall
15 include certification of an operator’s proficiency by an instructor who has
16 met the requirements established by the Secretary.

17 **§ 31308. Commercial driver’s license**

18 After consultation with the States, the Secretary of Transportation shall
19 prescribe regulations on minimum uniform standards for the issuance of
20 commercial drivers’ licenses by the States and for information to be con-
21 tained on each of the licenses. The standards shall require at a minimum
22 that—

23 (1) an individual issued a commercial driver’s license pass written
24 and driving tests for the operation of a commercial motor vehicle that
25 comply with the minimum standards prescribed by the Secretary under
26 section 31305(a) of this title;

27 (2) the license be tamperproof to the maximum extent practicable;
28 and

29 (3) the license contain—

30 (A) the name and address of the individual issued the license
31 and a physical description of the individual;

32 (B) the social security account number or other number or in-
33 formation the Secretary decides is appropriate to identify the indi-
34 vidual;

35 (C) the class or type of commercial motor vehicle the individual
36 is authorized to operate under the license;

37 (D) the name of the State that issued the license; and

38 (E) the dates between which the license is valid.

39 **§ 31309. Commercial driver’s license information system**

40 (a) GENERAL REQUIREMENT.—The Secretary of Transportation shall
41 make an agreement under subsection (b) of this section for the operation

1 of, or establish under subsection (c) of this section, an information system
2 that will serve as a clearinghouse and depository of information about the
3 licensing, identification, and disqualification of operators of commercial
4 motor vehicles. The Secretary shall consult with the States in carrying out
5 this section.

6 (b) STATE AGREEMENTS.—If the Secretary decides that an information
7 system used by a State or States about the driving status of operators of
8 motor vehicles or another State-operated information system could be used
9 to carry out this section, and the State or States agree to the use of the
10 system for carrying out this section, the Secretary may make an agreement
11 with the State or States to use the system as provided in this section and
12 section 31311(c) of this title. An agreement made under this subsection
13 shall contain terms the Secretary considers necessary to carry out this chap-
14 ter.

15 (c) ESTABLISHMENT BY SECRETARY.—If the Secretary does not make an
16 agreement under subsection (b) of this section, the Secretary shall establish
17 an information system about the driving status and licensing of operators
18 of commercial motor vehicles as provided in this section.

19 (d) CONTENTS.—(1) At a minimum, the information system under this
20 section shall include for each operator of a commercial motor vehicle—

21 (A) information the Secretary considers appropriate to ensure identi-
22 fication of the operator;

23 (B) the name, address, and physical description of the operator;

24 (C) the social security account number of the operator or other num-
25 ber or information the Secretary considers appropriate to identify the
26 operator;

27 (D) the name of the State that issued the license to the operator;

28 (E) the dates between which the license is valid; and

29 (F) whether the operator had a commercial motor vehicle driver's li-
30 cense revoked, suspended, or canceled by a State, lost the right to oper-
31 ate a commercial motor vehicle in a State for any period, or has been
32 disqualified from operating a commercial motor vehicle.

33 (2) Not later than December 31, 1990, the Secretary shall prescribe regu-
34 lations on minimum uniform standards for a biometric identification system
35 to ensure the identification of operators of commercial motor vehicles.

36 (e) AVAILABILITY OF INFORMATION.—(1) On request of a State, the Sec-
37 retary or the operator of the information system, as the case may be, may
38 make available to the State information in the information system under
39 this section.

1 (2) On request of an employee, the Secretary or the operator of the infor-
2 mation system, as the case may be, may make available to the employee in-
3 formation in the information system about the employee.

4 (3) On request of an employer or prospective employer of an employee
5 and after notification to the employee, the Secretary or the operator of the
6 information system, as the case may be, may make available to the employer
7 or prospective employer information in the information system about the
8 employee.

9 (4) On the request of the Secretary, the operator of the information sys-
10 tem shall make available to the Secretary information about the driving sta-
11 tus and licensing of operators of commercial motor vehicles (including infor-
12 mation required by subsection (d)(1) of this section).

13 (f) FEE SYSTEM.—If the Secretary establishes an information system
14 under this section, the Secretary shall establish a fee system for using the
15 information system. Fees collected under this subsection in a fiscal year
16 shall equal as nearly as possible the costs of operating the information sys-
17 tem in that fiscal year. The Secretary shall deposit fees collected under this
18 subsection in the Highway Trust Fund (except the Mass Transit Account).

19 **§ 31310. Disqualifications**

20 (a) BLOOD ALCOHOL CONCENTRATION LEVEL.—In this section, the
21 blood alcohol concentration level at or above which an individual when oper-
22 ating a commercial motor vehicle is deemed to be driving under the influ-
23 ence of alcohol is .04 percent.

24 (b) FIRST VIOLATION OR COMMITTING FELONY.—(1) Except as provided
25 in paragraph (2) of this subsection and subsection (c) of this section, the
26 Secretary of Transportation shall disqualify from operating a commercial
27 motor vehicle for at least one year an individual—

28 (A) committing a first violation of driving a commercial motor vehi-
29 cle under the influence of alcohol or a controlled substance;

30 (B) committing a first violation of leaving the scene of an accident
31 involving a commercial motor vehicle operated by the individual; or

32 (C) using a commercial motor vehicle in committing a felony (except
33 a felony described in subsection (d) of this section).

34 (2) If the vehicle involved in a violation referred to in paragraph (1) of
35 this subsection is transporting hazardous material required to be placarded
36 under section 5103 of this title, the Secretary shall disqualify the individual
37 for at least 3 years.

38 (c) SECOND AND MULTIPLE VIOLATIONS.—(1) Subject to paragraph (2)
39 of this subsection, the Secretary shall disqualify from operating a commer-
40 cial motor vehicle for life an individual—

1 (A) committing more than one violation of driving a commercial
2 motor vehicle under the influence of alcohol or a controlled substance;

3 (B) committing more than one violation of leaving the scene of an
4 accident involving a commercial motor vehicle operated by the individ-
5 ual;

6 (C) using a commercial motor vehicle in committing more than one
7 felony arising out of different criminal episodes; or

8 (D) committing any combination of single violations or use described
9 in clauses (A)–(C) of this paragraph.

10 (2) The Secretary may prescribe regulations establishing guidelines (in-
11 cluding conditions) under which a disqualification for life under paragraph
12 (1) of this subsection may be reduced to a period of not less than 10 years.

13 (d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary shall dis-
14 qualify from operating a commercial motor vehicle for life an individual who
15 uses a commercial motor vehicle in committing a felony involving manufact-
16 uring, distributing, or dispensing a controlled substance, or possession with
17 intent to manufacture, distribute, or dispense a controlled substance.

18 (e) SERIOUS TRAFFIC VIOLATIONS.—(1) The Secretary shall disqualify
19 from operating a commercial motor vehicle for at least 60 days an individual
20 who, in a 3-year period, commits 2 serious traffic violations involving a com-
21 mercial motor vehicle operated by the individual.

22 (2) The Secretary shall disqualify from operating a commercial motor ve-
23 hicle for at least 120 days an individual who, in a 3-year period, commits
24 3 serious traffic violations involving a commercial motor vehicle operated by
25 the individual.

26 (f) STATE DISQUALIFICATION.—Notwithstanding subsections (b)–(e) of
27 this section, the Secretary does not have to disqualify an individual from
28 operating a commercial motor vehicle if the State that issued the individual
29 a license authorizing the operation has disqualified the individual from oper-
30 ating a commercial motor vehicle under subsections (b)–(e). Revocation, sus-
31 pension, or cancellation of the license is deemed to be disqualification under
32 this subsection.

33 (g) OUT-OF-SERVICE ORDERS.—(1)(A) To enforce section 392.5 of title
34 49, Code of Federal Regulations, the Secretary shall prescribe regulations
35 establishing and enforcing an out-of-service period of 24 hours for an indi-
36 vidual who violates section 392.5. An individual may not violate an out-of-
37 service order issued under those regulations.

38 (B) The Secretary shall prescribe regulations establishing and enforcing
39 requirements for reporting out-of-service orders issued under regulations
40 prescribed under subparagraph (A) of this paragraph. Regulations pre-
41 scribed under this subparagraph shall require at least that an operator of

1 a commercial motor vehicle who is issued an out-of-service order to report
2 the issuance to the individual's employer and to the State that issued the
3 operator a driver's license.

4 (2) Not later than December 18, 1992, the Secretary shall prescribe regu-
5 lations establishing sanctions and penalties related to violations of out-of-
6 service orders by individuals operating commercial motor vehicles. The regu-
7 lations shall require at least that—

8 (A) an operator of a commercial motor vehicle found to have commit-
9 ted a first violation of an out-of-service order shall be disqualified from
10 operating such a vehicle for at least 90 days and liable for a civil pen-
11 alty of at least \$1,000;

12 (B) an operator of a commercial motor vehicle found to have com-
13 mitted a 2d violation of an out-of-service order shall be disqualified
14 from operating such a vehicle for at least one year and not more than
15 5 years and liable for a civil penalty of at least \$1,000; and

16 (C) an employer that knowingly allows or requires an employee to
17 operate a commercial motor vehicle in violation of an out-of-service
18 order shall be liable for a civil penalty of not more than \$10,000.

19 **§ 31311. Requirements for State participation**

20 (a) GENERAL.—To avoid having amounts withheld from apportionment
21 under section 31314 of this title, a State shall comply with the following
22 requirements:

23 (1) The State shall adopt and carry out a program for testing and
24 ensuring the fitness of individuals to operate commercial motor vehicles
25 consistent with the minimum standards prescribed by the Secretary of
26 Transportation under section 31305(a) of this title.

27 (2) The State may issue a commercial driver's license to an individ-
28 ual only if the individual passes written and driving tests for the oper-
29 ation of a commercial motor vehicle that comply with the minimum
30 standards.

31 (3) The State shall have in effect and enforce a law providing that
32 an individual with a blood alcohol concentration level at or above the
33 level established by section 31310(a) of this title when operating a com-
34 mercial motor vehicle is deemed to be driving under the influence of
35 alcohol.

36 (4) The State shall authorize an individual to operate a commercial
37 motor vehicle only by issuing a commercial driver's license containing
38 the information described in section 31308(3) of this title.

39 (5) At least 60 days before issuing a commercial driver's license (or
40 a shorter period the Secretary prescribes by regulation), the State shall
41 notify the Secretary or the operator of the information system under

1 section 31309 of this title, as the case may be, of the proposed issuance
2 of the license and other information the Secretary may require to en-
3 sure identification of the individual applying for the license.

4 (6) Before issuing a commercial driver's license to an individual, the
5 State shall request from any other State that has issued a commercial
6 driver's license to the individual all information about the driving
7 record of the individual.

8 (7) Not later than 30 days after issuing a commercial driver's li-
9 cense, the State shall notify the Secretary or the operator of the infor-
10 mation system under section 31309 of this title, as the case may be,
11 of the issuance.

12 (8) Not later than 10 days after disqualifying the holder of a com-
13 mercial driver's license from operating a commercial motor vehicle (or
14 after revoking, suspending, or canceling the license) for at least 60
15 days, the State shall notify the Secretary or the operator of the infor-
16 mation system under section 31309 of this title, as the case may be,
17 and the State that issued the license, of the disqualification, revocation,
18 suspension, or cancellation.

19 (9) If an individual operating a commercial motor vehicle violates a
20 State or local law on motor vehicle traffic control (except a parking vio-
21 lation) and the individual has a driver's license issued by another State,
22 the State in which the violation occurred shall notify a State official
23 designated by the issuing State of the violation not later than 10 days
24 after the date the individual is found to have committed the violation.

25 (10) The State may not issue a commercial driver's license to an in-
26 dividual during a period in which the individual is disqualified from op-
27 erating a commercial motor vehicle or the individual's driver's license
28 is revoked, suspended, or canceled.

29 (11) The State may issue a commercial driver's license to an individ-
30 ual who has a commercial driver's license issued by another State only
31 if the individual first returns the driver's license issued by the other
32 State.

33 (12) The State may issue a commercial driver's license only to an
34 individual who operates or will operate a commercial motor vehicle and
35 is domiciled in the State, except that, under regulations the Secretary
36 shall prescribe, the State may issue a commercial driver's license to an
37 individual who operates or will operate a commercial motor vehicle and
38 is not domiciled in a State that issues commercial drivers' licenses.

39 (13) The State shall impose penalties the State considers appropriate
40 and the Secretary approves for an individual operating a commercial
41 motor vehicle when the individual—

- 1 (A) does not have a commercial driver's license;
- 2 (B) has a driver's license revoked, suspended, or canceled; or
- 3 (C) is disqualified from operating a commercial motor vehicle.

4 (14) The State shall allow an individual to operate a commercial
5 motor vehicle in the State if—

- 6 (A) the individual has a commercial driver's license issued by
- 7 another State under the minimum standards prescribed by the
- 8 Secretary under section 31305(a) of this title;
- 9 (B) the license is not revoked, suspended, or canceled; and
- 10 (C) the individual is not disqualified from operating a commer-
- 11 cial motor vehicle.

12 (15) The State shall disqualify an individual from operating a com-
13 mercial motor vehicle for the same reasons and time periods for which
14 the Secretary shall disqualify the individual under section 31310(b)–(e)
15 of this title.

16 (16)(A) Before issuing a commercial driver's license to an individual,
17 the State shall request the Secretary for information from the National
18 Driver Register maintained under chapter 303 of this title (after the
19 Secretary decides the Register is operational) on whether the individ-
20 ual—

- 21 (i) has been disqualified from operating a motor vehicle (except
- 22 a commercial motor vehicle);
- 23 (ii) has had a license (except a license authorizing the individual
- 24 to operate a commercial motor vehicle) revoked, suspended, or
- 25 canceled for cause in the 3-year period ending on the date of ap-
- 26 plication for the commercial driver's license; or
- 27 (iii) has been convicted of an offense specified in section
- 28 30304(a)(3) of this title.

29 (B) The State shall give full weight and consideration to that infor-
30 mation in deciding whether to issue the individual a commercial driv-
31 er's license.

32 (17) The State shall adopt and enforce regulations prescribed by the
33 Secretary under section 31310(g)(1)(A) and (2) of this title.

34 (b) STATE SATISFACTION OF REQUIREMENTS.—A State may satisfy the
35 requirements of subsection (a) of this section that the State disqualify an
36 individual from operating a commercial motor vehicle by revoking, suspend-
37 ing, or canceling the driver's license issued to the individual.

38 (c) NOTIFICATION.—Not later than 30 days after being notified by a
39 State of the proposed issuance of a commercial driver's license to an individ-
40 ual, the Secretary or the operator of the information system under section
41 31309 of this title, as the case may be, shall notify the State whether the

1 individual has a commercial driver's license issued by another State or has
2 been disqualified from operating a commercial motor vehicle by another
3 State or the Secretary.

4 **§ 31312. Grants for testing and ensuring the fitness of opera-**
5 **tors of commercial motor vehicles**

6 (a) BASIC GRANTS.—(1) The Secretary of Transportation may make a
7 grant to a State under this subsection if the State—

8 (A) makes an agreement with the Secretary—

9 (i) to adopt and carry out in the fiscal year in which the grant
10 is made a program for testing and ensuring the fitness of individ-
11 uals who operate commercial motor vehicles under the minimum
12 standards prescribed by the Secretary under section 31305(a) of
13 this title; and

14 (ii) to require that operators of commercial motor vehicles have
15 passed written and driving tests that meet the minimum stand-
16 ards; and

17 (B) has in effect and enforces in that fiscal year a law providing that
18 an individual with a blood alcohol concentration of at least .10 percent
19 when operating a commercial motor vehicle is deemed to be driving
20 under the influence of alcohol.

21 (2) A State may—

22 (A) administer driving tests referred to in paragraph (1) of this sub-
23 section and section 31311(a) of this title; or

24 (B) make an agreement, approved by the Secretary, for the tests to
25 be administered by a person (including a department, agency, or in-
26 strumentality of a local government) that meets minimum standards
27 the Secretary prescribes by regulation if—

28 (i) the agreement allows the Secretary and the State each to
29 conduct random examinations, inspections, and audits of the test-
30 ing without prior notification; and

31 (ii) the State annually conducts at least one onsite inspection
32 of the testing.

33 (3) The Secretary shall decide on the amount of a grant in a fiscal year
34 to be made under this subsection to a State eligible to receive the grant in
35 the fiscal year. However—

36 (A) a grant to a State under this subsection shall be at least
37 \$100,000 in a fiscal year; and

38 (B) to the extent each State grant under this subsection is more
39 than \$100,000 in a fiscal year, the Secretary shall ensure that those
40 States are treated equitably.

1 (4) A State receiving a grant under this subsection may use the amounts
2 provided under the grant only to test operators of commercial motor vehi-
3 cles.

4 (5) There is available to the Secretary to carry out this subsection
5 \$_____ from amounts made available under section 31104 of this title
6 for the fiscal year ending September 30, 19__.

7 (b) SUPPLEMENTAL GRANTS.—(1) The Secretary may make a grant
8 under this subsection in a fiscal year to a State eligible to receive a grant
9 under subsection (a) of this section in that fiscal year. A grant made under
10 this subsection shall be used for testing operators of commercial motor vehi-
11 cles.

12 (2) Amounts of grants under this subsection shall be distributed among
13 the States eligible to receive grants under subsection (a) of this section in
14 the fiscal year on the basis of the number of written and driving tests ad-
15 ministered, and the number of drivers' licenses for the operation of commer-
16 cial motor vehicles issued, in the prior fiscal year.

17 (3) There is available to the Secretary to carry out this subsection
18 \$_____ from amounts made available under section 31104 of this title
19 for the fiscal year ending September 30, 19__.

20 (c) MAINTENANCE OF EXPENDITURES.—The Secretary may make a
21 grant to a State under this section only if the State agrees that the total
22 expenditure of amounts of the State and political subdivisions of the State,
23 exclusive of United States Government amounts, for testing operators of
24 commercial motor vehicles will be maintained at a level at least equal to the
25 average level of that expenditure for its last 2 fiscal years before October
26 27, 1986.

27 (d) AVAILABILITY OF AMOUNTS.—(1) Amounts made available to a State
28 under this section remain available for obligation by the State for the fiscal
29 year for which the amounts are made available. Any of those amounts not
30 obligated before the last day of that fiscal year are no longer available for
31 obligation by the State and are available to the Secretary to carry out this
32 chapter.

33 (2) Amounts made available to the Secretary under this section remain
34 available until expended.

35 (e) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary
36 of a grant to a State under this section is a contractual obligation of the
37 Government for payment of the amount of the grant.

38 (f) TESTING AND FITNESS PROGRAM STUDIES.—In this section, develop-
39 ment of a program for testing and ensuring the fitness of individuals who
40 operate commercial motor vehicles includes studies of—

1 (1) the number of vehicles that will need to be tested under the pro-
2 gram in a calendar year;

3 (2) facilities at which testing of those individuals could be conducted;
4 and

5 (3) additional resources (including personnel) that will be necessary
6 to conduct the testing.

7 **§ 31313. Grants for issuing commercial drivers' licenses and**
8 **complying with State participation requirements**

9 (a) GENERAL AUTHORITY.—The Secretary of Transportation may make
10 a grant under this section to a State in a fiscal year if the State makes
11 an agreement with the Secretary to participate in that fiscal year in the
12 commercial driver's license program established by this chapter and the in-
13 formation system required by section 31309 of this title and to comply with
14 the requirements of section 31311(a) of this title.

15 (b) AMOUNTS OF GRANTS.—The Secretary shall decide on the amount of
16 a grant in a fiscal year to be made under this section to a State eligible
17 to receive the grant in the fiscal year. However—

18 (1) a grant to a State under this section shall be at least \$100,000
19 in a fiscal year; and

20 (2) to the extent each State grant under this section is more than
21 \$100,000 in a fiscal year, the Secretary shall ensure that those States
22 are treated equitably.

23 (c) LIMITATION ON USE.—A State receiving a grant under this section
24 may use the amounts provided under the grant only for issuing commercial
25 drivers' licenses and complying with the requirements of section 31311(a)
26 of this title.

27 (d) AVAILABILITY OF AMOUNTS.—(1) Amounts made available to a State
28 under this section remain available for obligation by the State for the fiscal
29 year for which the amounts are made available. Any of those amounts not
30 obligated before the last day of that fiscal year are no longer available for
31 obligation by the State and are available to the Secretary to carry out this
32 chapter.

33 (2) Amounts made available to the Secretary under this section remain
34 available until expended.

35 (e) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary
36 of a grant to a State under this section is a contractual obligation of the
37 United States Government for payment of the amount of the grant.

38 (f) AUTHORIZATION.—There is available to the Secretary to carry out
39 this section \$_____ from amounts made available under section 31104
40 of this title for the fiscal year ending September 30, 19__.

1 **§ 31314. Withholding amounts for State noncompliance**

2 (a) FIRST FISCAL YEAR.—The Secretary of Transportation shall withhold
3 5 percent of the amount required to be apportioned to a State under section
4 104(b)(1), (2), (5), and (6) of title 23 on the first day of the fiscal year
5 after the first fiscal year beginning after September 30, 1992, throughout
6 which the State does not comply substantially with a requirement of section
7 31311(a) of this title.

8 (b) SECOND FISCAL YEAR.—The Secretary shall withhold 10 percent of
9 the amount required to be apportioned to a State under section 104(b)(1),
10 (2), (5), and (6) of title 23 on the first day of each fiscal year after the
11 2d fiscal year beginning after September 30, 1992, throughout which the
12 State does not comply substantially with a requirement of section 31311(a)
13 of this title.

14 (c) AVAILABILITY FOR APPORTIONMENT.—(1) Amounts withheld under
15 this section from apportionment to a State before October 1, 1995, remain
16 available for apportionment to the State as follows:

17 (A) If the amounts would have been apportioned under section
18 104(b)(5)(B) of title 23 but for this section, the amounts remain avail-
19 able until the end of the 2d fiscal year following the fiscal year for
20 which the amounts are authorized to be appropriated.

21 (B) If the amounts would have been apportioned under section
22 104(b)(1), (2), or (6) of title 23 but for this section, the amounts re-
23 main available until the end of the 3d fiscal year following the fiscal
24 year for which the amounts are authorized to be appropriated.

25 (2) Amounts withheld under this section from apportionment to a State
26 after September 30, 1995, are not available for apportionment to the State.

27 (d) APPORTIONMENT AFTER COMPLIANCE.—(1) If, before the last day of
28 the period for which amounts withheld under this section from appor-
29 tionment are to remain available for apportionment to a State under subsection
30 (c)(1) of this section, the State substantially complies with all of the re-
31 quirements of section 31311(a) of this title for a period of 365 days, the
32 Secretary, on the day following the last day of that period, shall apportion
33 to the State the withheld amounts remaining available for apportionment to
34 that State.

35 (2) Amounts apportioned under paragraph (1) of this subsection remain
36 available for expenditure until the end of the 3d fiscal year following the
37 fiscal year in which the amounts are apportioned. Amounts not obligated
38 at the end of that period lapse or, for amounts apportioned under section
39 104(b)(5) of title 23, lapse and are available for projects under section
40 118(b) of title 23.

(e) LAPSE.—If, at the end of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State has not substantially complied with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.

§31315. Waiver authority

After notice and an opportunity for comment, the Secretary of Transportation may waive any part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A waiver under this section shall be published in the Federal Register with reasons for the waiver.

§31316. Limitation on statutory construction

This chapter does not affect the authority of the Secretary of Transportation to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,001 pounds or a lesser gross vehicle weight rating the Secretary decides is appropriate under section 31301(4)(A) of this title.

§31317. Procedure for prescribing regulations

Regulations prescribed by the Secretary of Transportation to carry out this chapter (except section 31307) shall be prescribed under section 553 of title 5 without regard to sections 556 and 557 of title 5.

CHAPTER 315—MOTOR CARRIER SAFETY

Sec.

31501. Definitions.

31502. Requirements for qualifications, hours of service, safety, and equipment standards.

31503. Research, investigation, and testing.

31504. Identification of motor vehicles.

§31501. Definitions

In this chapter—

(1) “migrant worker” means an individual going to or from employment in agriculture as provided under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)) or section 203(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)).

(2) “motor carrier”, “motor common carrier”, “motor private carrier”, “motor vehicle”, and “United States” have the same meanings given those terms in section 10102 of this title.

(3) “motor carrier of migrant workers”—

(A) means a person (except a motor common carrier) providing transportation referred to in section 10521(a) of this title by a

1 motor vehicle (except a passenger automobile or station wagon) for
2 at least 3 migrant workers at a time to or from their employment;
3 but

4 (B) does not include a migrant worker providing transportation
5 for migrant workers and their immediate families.

6 **§ 31502. Requirements for qualifications, hours of service,
7 safety, and equipment standards**

8 (a) APPLICATION.—This section applies to transportation—

9 (1) described in sections 10521 and 10522 of this title; and

10 (2) to the extent the transportation is in the United States and is
11 between places in a foreign country, or between a place in a foreign
12 country and a place in another foreign country.

13 (b) MOTOR CARRIER AND PRIVATE MOTOR CARRIER REQUIREMENTS.—
14 The Secretary of Transportation may prescribe requirements for—

15 (1) qualifications and maximum hours of service of employees of, and
16 safety of operation and equipment of, a motor carrier; and

17 (2) qualifications and maximum hours of service of employees of, and
18 standards of equipment of, a motor private carrier, when needed to
19 promote safety of operation.

20 (c) MIGRANT WORKER MOTOR CARRIER REQUIREMENTS.—The Secretary
21 may prescribe requirements for the comfort of passengers, qualifications and
22 maximum hours of service of operators, and safety of operation and equip-
23 ment of a motor carrier of migrant workers. The requirements only apply
24 to a carrier transporting a migrant worker—

25 (1) at least 75 miles; and

26 (2) across the boundary of a State, territory, or possession of the
27 United States.

28 (d) CONSIDERATIONS.—Before prescribing or revising any requirement
29 under this section, the Secretary shall consider the costs and benefits of the
30 requirement.

31 **§ 31503. Research, investigation, and testing**

32 (a) GENERAL AUTHORITY.—The Secretary of Transportation may inves-
33 tigate and report on the need for regulation by the United States Govern-
34 ment of sizes, weight, and combinations of motor vehicles and qualifications
35 and maximum hours of service of employees of a motor carrier subject to
36 subchapter II of chapter 105 of this title and a motor private carrier. The
37 Secretary shall use the services of each department, agency, or instrumen-
38 tality of the Government and each organization of motor carriers having
39 special knowledge of a matter being investigated.

40 (b) USE OF SERVICES.—In carrying out this chapter, the Secretary may
41 use the services of a department, agency, or instrumentality of the Govern-

1 ment having special knowledge about safety, to conduct scientific and tech-
 2 nical research, investigation, and testing when necessary to promote safety
 3 of operation and equipment of motor vehicles. The Secretary may reimburse
 4 the department, agency, or instrumentality for the services provided.

5 **§31504. Identification of motor vehicles**

6 (a) GENERAL AUTHORITY.—The Secretary of Transportation may—

7 (1) issue and require the display of an identification plate on a motor
 8 vehicle used in transportation provided by a motor private carrier and
 9 a motor carrier of migrant workers subject to section 31502(c) of this
 10 title, except a motor contract carrier; and

11 (2) require each of those motor private carriers and motor carriers
 12 of migrant workers to pay the reasonable cost of the plate.

13 (b) LIMITATION.—A motor private carrier or a motor carrier of migrant
 14 workers may use an identification plate only as authorized by the Secretary.

15 **CHAPTER 317—PARTICIPATION IN INTERNATIONAL**
 16 **REGISTRATION PLAN AND INTERNATIONAL FUEL TAX**
 17 **AGREEMENT**

Sec.

31701. Definitions.

31702. Working group.

31703. Grants.

31704. Vehicle registration.

31705. Fuel use tax.

31706. Enforcement.

31707. Limitations on statutory construction.

31708. Authorization of appropriations.

18 **§31701. Definitions**

19 In this chapter—

20 (1) “commercial motor vehicle”, with respect to—

21 (A) the International Registration Plan, has the same meaning
 22 given the term “apportionable vehicle” under the Plan; and

23 (B) the International Fuel Tax Agreement, has the same mean-
 24 ing given the term “qualified motor vehicle” under the Agreement.

25 (2) “fuel use tax” means a tax imposed on or measured by the con-
 26 sumption of fuel in a motor vehicle.

27 (3) “International Fuel Tax Agreement” means the interstate agree-
 28 ment on collecting and distributing fuel use taxes paid by motor car-
 29 riers, developed under the auspices of the National Governors’ Associa-
 30 tion.

31 (4) “International Registration Plan” means the interstate agree-
 32 ment on apportioning vehicle registration fees paid by motor carriers,
 33 developed by the American Association of Motor Vehicle Administra-
 34 tors.

1 (5) “Regional Fuel Tax Agreement” means the interstate agreement
2 on collecting and distributing fuel use taxes paid by motor carriers in
3 the States of Maine, Vermont, and New Hampshire.

4 (6) “State” means the 48 contiguous States and the District of Co-
5 lumbia.

6 **§ 31702. Working group**

7 (a) ESTABLISHMENT.—The Secretary of Transportation shall establish a
8 working group of State and local government officials, including representa-
9 tives of the National Governors’ Association, the American Association of
10 Motor Vehicle Administrators, the National Conference of State Legisla-
11 tures, the Federation of Tax Administrators, and the Board of Directors for
12 the International Fuel Tax Agreement, and a representative of the Regional
13 Fuel Tax Agreement.

14 (b) PURPOSES.—The purposes of the working group are—

15 (1) to propose procedures to resolve disputes among States partici-
16 pating in the International Registration Plan and among States partici-
17 pating in the International Fuel Tax Agreement, including designating
18 the Secretary or any other person to resolve the disputes; and

19 (2) to provide technical assistance to States participating or seeking
20 to participate in the Plan or Agreement.

21 (c) CONSULTATION REQUIREMENT.—In carrying out subsection (b) of
22 this section, the working group shall consult with members of the motor car-
23 rier industry.

24 (d) REPORT.—(1) Not later than December 18, 1993, the working group
25 shall submit a report to—

26 (A) the Secretary;

27 (B) the Committee on Commerce, Science, and Transportation of the
28 Senate;

29 (C) the Committee on Public Works and Transportation of the
30 House of Representatives;

31 (D) the Committee on the Judiciary of the House of Representatives;

32 (E) the States participating in the International Registration Plan;
33 and

34 (F) the States participating in the International Fuel Tax Agree-
35 ment.

36 (2) The report shall contain a detailed statement of the working group’s
37 findings and conclusions and its joint recommendations about the matters
38 referred to in subsection (b) of this section. After submitting the report, the
39 working group periodically may review and modify the findings and conclu-
40 sions and the joint recommendations as appropriate and submit a report

1 containing the modifications to the Secretary and the committees specified
2 in paragraph (1) of this subsection.

3 (e) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee
4 Act (5 App. U.S.C.) does not apply to the working group.

5 **§31703. Grants**

6 (a) GENERAL AUTHORITY.—The Secretary of Transportation may make
7 grants to States and appropriate persons to facilitate participation in the
8 International Registration Plan and the International Fuel Tax Agreement
9 and to make administrative improvements in any other base State fuel use
10 tax agreement in existence as of January 1, 1991. A grant may include
11 amounts for technical assistance, personnel training, travel costs, and tech-
12 nology and equipment associated with the participation.

13 (b) CONTRACTUAL OBLIGATION.—Approval by the Secretary of a grant
14 with amounts made available under this section is a contractual obligation
15 of the United States Government for payment of the Government's share
16 of the grant.

17 **§31704. Vehicle registration**

18 After September 30, 1996, a State that is not participating in the Inter-
19 national Registration Plan may not establish, maintain, or enforce a com-
20 mercial motor vehicle registration law, regulation, or agreement that limits
21 the operation in that State of a commercial motor vehicle that is not reg-
22 istered under the laws of the State, if the vehicle is registered under the
23 laws of a State participating in the Plan.

24 **§31705. Fuel use tax**

25 (a) REPORTING REQUIREMENTS.—After September 30, 1996, a State
26 may establish, maintain, or enforce a law or regulation that has a fuel use
27 tax reporting requirement (including any tax reporting form) only if the re-
28 quirement conforms with the International Fuel Tax Agreement.

29 (b) PAYMENT.—After September 30, 1996, a State may establish, main-
30 tain, or enforce a law or regulation that provides for the payment of a fuel
31 use tax only if the law or regulation conforms with the International Fuel
32 Tax Agreement as it applies to collection of a fuel use tax by a single base
33 State and proportional sharing of fuel use taxes charged among the States
34 where a commercial motor vehicle is operated.

35 (c) LIMITATION.—If the International Fuel Tax Agreement is amended,
36 a State not participating in the Agreement when the amendment is made
37 is not subject to the conformity requirements of subsections (a) and (b) of
38 this section in regard to the amendment until after a reasonable time, but
39 not earlier than the expiration of—

1 (1) the 365-day period beginning on the first day that States partici-
 2 participating in the Agreement are required to comply with the amendment;
 3 or

4 (2) the 365-day period beginning on the day the relevant office of
 5 the State receives written notice of the amendment from the Secretary
 6 of Transportation.

7 (d) NONAPPLICATION.—This section does not apply to a State that was
 8 participating in the Regional Fuel Tax Agreement on January 1, 1991, and
 9 that continues to participate in that Agreement after that date.

10 **§ 31706. Enforcement**

11 (a) CIVIL ACTIONS.—On request of the Secretary of Transportation, the
 12 Attorney General may bring a civil action in a court of competent jurisdic-
 13 tion to enforce compliance with sections 31704 and 31705 of this title.

14 (b) VENUE.—An action under this section may be brought only in the
 15 State in which an order is required to enforce compliance.

16 (c) RELIEF.—Subject to section 1341 of title 28, the court, on a proper
 17 showing—

18 (1) shall issue a temporary restraining order or a preliminary or per-
 19 manent injunction; and

20 (2) may require by the injunction that the State or any person com-
 21 ply with sections 31704 and 31705 of this title.

22 **§ 31707. Limitations on statutory construction**

23 Sections 31704 and 31705 of this title do not limit the amount of money
 24 a State may charge for registration of a commercial motor vehicle or the
 25 amount of any fuel use tax a State may impose.

26 **§ 31708. Authorization of appropriations**

27 (a) GENERAL.—From amounts made available under section 31104 of
 28 this title, the Secretary of Transportation shall provide the following
 29 amounts for each of the fiscal years ending September 30, 1993-1997:

30 (1) \$1,000,000 for activities of the working group under section
 31 31702 of this title.

32 (2) \$5,000,000 for grants under section 31703 of this title.

33 (b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this sec-
 34 tion remain available until expended.

35 PART C—INFORMATION, STANDARDS, AND 36 REQUIREMENTS

37 **CHAPTER 321—GENERAL**

Sec.

32101. Definitions.

32102. Authorization of appropriations.

38 **§ 32101. Definitions**

39 In this part (except section 32304 and chapter 329)—

1 (1) “bumper standard” means a minimum performance standard
2 that substantially reduces—

3 (A) the damage to the front or rear end of a passenger motor
4 vehicle from a low-speed collision (including a collision with a fixed
5 barrier) or from towing the vehicle; or

6 (B) the cost of repairing the damage.

7 (2) “insurer” means a person in the business of issuing, or reinsur-
8 ing any part of, a passenger motor vehicle insurance policy.

9 (3) “interstate commerce” means commerce between a place in a
10 State and—

11 (A) a place in another State; or

12 (B) another place in the same State through another State.

13 (4) “make”, when describing a passenger motor vehicle, means the
14 trade name of the manufacturer of the vehicle.

15 (5) “manufacturer” means a person—

16 (A) manufacturing or assembling passenger motor vehicles or
17 passenger motor vehicle equipment; or

18 (B) importing motor vehicles or motor vehicle equipment for re-
19 sale.

20 (6) “model”, when describing a passenger motor vehicle, means a
21 category of passenger motor vehicles based on the size, style, and type
22 of a make of vehicle.

23 (7) “motor vehicle” means a vehicle driven or drawn by mechanical
24 power and manufactured primarily for use on public streets, roads, and
25 highways, but does not include a vehicle operated only on a rail line.

26 (8) “motor vehicle accident” means an accident resulting from the
27 maintenance or operation of a passenger motor vehicle or passenger
28 motor vehicle equipment.

29 (9) “multipurpose passenger vehicle” means a passenger motor vehi-
30 cle constructed on a truck chassis or with special features for occa-
31 sional off-road operation.

32 (10) “passenger motor vehicle” means a motor vehicle with motive
33 power designed to carry not more than 12 individuals, but does not in-
34 clude—

35 (A) a motorcycle; or

36 (B) a truck not designed primarily to carry its operator or pas-
37 sengers.

38 (11) “passenger motor vehicle equipment” means—

39 (A) a system, part, or component of a passenger motor vehicle
40 as originally made;

1 (B) a similar part or component made or sold for replacement
2 or improvement of a system, part, or component, or as an acces-
3 sory or addition to a passenger motor vehicle; or

4 (C) a device made or sold for use in towing a passenger motor
5 vehicle.

6 (12) “State” means a State of the United States, the District of Co-
7 lumbia, Puerto Rico, the Northern Mariana Islands, Guam, American
8 Samoa, and the Virgin Islands.

9 (13) “United States district court” means a district court of the
10 United States, a United States court for Guam, the Virgin Islands, and
11 American Samoa, and the district court for the Northern Mariana Is-
12 lands.

13 **§ 32102. Authorization of appropriations**

14 The following amounts may be appropriated to the Secretary of Transpor-
15 tation for the National Highway Traffic Safety Administration to carry out
16 this part:

17 (1) \$6,731,430 for the fiscal year ending September 30, 1993.

18 (2) \$6,987,224 for the fiscal year ending September 30, 1994.

19 (3) \$7,252,739 for the fiscal year ending September 30, 1995.

20 **CHAPTER 323—CONSUMER INFORMATION**

Sec.

32301. Definitions.

32302. Passenger motor vehicle information.

32303. Insurance information.

32304. Passenger motor vehicle country of origin labeling.

32305. Information and assistance from other departments, agencies, and instrumentalities.

32306. Personnel.

32307. Investigative powers.

32308. General prohibitions, civil penalty, and enforcement.

32309. Criminal penalty for labeling violations.

21 **§ 32301. Definitions**

22 In this chapter—

23 (1) “crashworthiness” means the protection a passenger motor vehi-
24 cle gives its passengers against personal injury or death from a motor
25 vehicle accident.

26 (2) “damage susceptibility” means the susceptibility of a passenger
27 motor vehicle to damage in a motor vehicle accident.

28 **§ 32302. Passenger motor vehicle information**

29 (a) INFORMATION PROGRAM.—The Secretary of Transportation shall
30 maintain a program for developing the following information on passenger
31 motor vehicles:

32 (1) damage susceptibility.

33 (2) crashworthiness.

34 (3) the degree of difficulty of diagnosis and repair of damage to, or
35 failure of, mechanical and electrical systems.

1 (4) vehicle operating costs dependent on the characteristics referred
2 to in clauses (1)–(3) of this subsection, including insurance information
3 obtained under section 32303 of this title.

4 (b) MOTOR VEHICLE INFORMATION.—To assist a consumer in buying a
5 passenger motor vehicle, the Secretary shall provide to the public informa-
6 tion developed under subsection (a) of this section. The information shall
7 be in a simple and understandable form that allows comparison of the char-
8 acteristics referred to in subsection (a)(1)–(3) of this section among the
9 makes and models of passenger motor vehicles. The Secretary may require
10 passenger motor vehicle dealers to distribute the information to prospective
11 buyers.

12 (c) INSURANCE COST INFORMATION.—The Secretary shall prescribe regu-
13 lations that require passenger motor vehicle dealers to distribute to prospec-
14 tive buyers information the Secretary develops and provides to the dealers
15 that compares insurance costs for different makes and models of passenger
16 motor vehicles based on damage susceptibility and crashworthiness.

17 **§ 32303. Insurance information**

18 (a) GENERAL REPORTS AND INFORMATION REQUIREMENTS.—(1) In car-
19 rying out this chapter, the Secretary of Transportation may require an in-
20 surer, or a designated agent of the insurer, to make reports and provide
21 the Secretary with information. The reports and information may include
22 accident claim information by make, model, and model year of passenger
23 motor vehicle about the kind and extent of—

24 (A) physical damage and repair costs; and

25 (B) personal injury.

26 (2) In deciding which reports and information are to be provided under
27 this subsection, the Secretary shall—

28 (A) consider the cost of preparing and providing the reports and in-
29 formation;

30 (B) consider the extent to which the reports and information will
31 contribute to carrying out this chapter; and

32 (C) consult with State authorities and public and private agencies
33 the Secretary considers appropriate.

34 (3) To the extent possible, the Secretary shall obtain reports and informa-
35 tion under this subsection on a voluntary basis.

36 (b) REQUESTED INFORMATION ON CRASHWORTHINESS, DAMAGE SUS-
37 CEPTIBILITY, AND REPAIR AND PERSONAL INJURY COST.—When requested
38 by the Secretary, an insurer shall give the Secretary information—

39 (1) about the extent to which the insurance premiums charged by
40 the insurer are affected by damage susceptibility, crashworthiness, and

1 the cost of repair and personal injury, for each make and model of pas-
2 senger motor vehicle; and

3 (2) available to the insurer about the effect of damage susceptibility,
4 crashworthiness, and the cost of repair and personal injury for each
5 make and model of passenger motor vehicle on the risk incurred by the
6 insurer in insuring that make and model.

7 (c) DISCLOSURE.—In distributing information received under this section,
8 the Secretary may disclose identifying information about a person that may
9 be an insured, a claimant, a passenger, an owner, a witness, or an individual
10 involved in a motor vehicle accident, only with the consent of the person.

11 **§ 32304. Passenger motor vehicle country of origin labeling**

12 (a) DEFINITIONS.—In this section—

13 (1) “allied supplier” means a supplier of passenger motor vehicle
14 equipment that is wholly owned by the manufacturer, or if a joint ven-
15 ture vehicle assembly arrangement, a supplier that is wholly owned by
16 one member of the joint venture arrangement.

17 (2)(A) “carline”—

18 (i) means a name given a group of passenger motor vehicles
19 that has a degree of commonality in construction such as body and
20 chassis;

21 (ii) does not consider a level of decor or opulence; and

22 (iii) except for light duty trucks, is not generally distinguished
23 by characteristics such as roof line, number of doors, seats, or
24 windows; and

25 (B) light duty trucks are different carlines than passenger motor ve-
26 hicles.

27 (3) “country of origin”, when referring to the origin of an engine
28 or transmission, means the country from which the largest share of the
29 dollar value added to an engine or transmission has originated—

30 (A) with the United States and Canada treated as separate
31 countries; and

32 (B) the estimate of the percentage of the dollar value shall be
33 based on the purchase price of direct materials, as received at in-
34 dividual engine or transmission plants, of engines of the same dis-
35 placement and transmissions of the same transmission type.

36 (4) “dealer” means a person residing or located in the United
37 States, including the District of Columbia or a territory or possession
38 of the United States, and engaged in selling or distributing new pas-
39 senger motor vehicles to the ultimate purchaser.

40 (5) “final assembly place” means the plant, factory, or other place
41 at which a new passenger motor vehicle is produced or assembled by

1 a manufacturer, and from which the vehicle is delivered to a dealer or
2 importer with all component parts necessary for the mechanical oper-
3 ation of the vehicle included with the vehicle, whether or not the com-
4 ponent parts are permanently installed in or on the vehicle.

5 (6) “foreign content” means passenger motor vehicle equipment that
6 is not of United States/Canadian origin.

7 (7) “manufacturer” means a person—

8 (A) engaged in manufacturing or assembling new passenger
9 motor vehicles;

10 (B) importing new passenger motor vehicles for resale; or

11 (C) acting for and under the control of such a manufacturer,
12 assembler, or importer in connection with the distribution of new
13 passenger motor vehicles.

14 (8) “new passenger motor vehicle” means a passenger motor vehicle
15 for which a manufacturer, distributor, or dealer has never transferred
16 the equitable or legal title to the vehicle to an ultimate purchaser.

17 (9) “of United States/Canadian origin”, when referring to passenger
18 motor vehicle equipment, means—

19 (A) for an outside supplier, passenger motor vehicle equipment
20 whose purchase price contains at least 70 percent value added in
21 the United States and Canada; and

22 (B) for an allied supplier, that part of the individual passenger
23 motor vehicle equipment whose purchase price the manufacturer
24 determines remains after subtracting the total of the purchase
25 prices of all material of foreign content purchased from outside
26 suppliers, with the determination of the United States/Canadian
27 origin or of the foreign content from outside suppliers being con-
28 sistent with subclause (A) of this clause.

29 (10) “outside supplier” means a supplier of passenger motor vehicle
30 equipment to a manufacturer’s allied supplier, or a person other than
31 an allied supplier, who ships directly to the manufacturer’s final assem-
32 bly place.

33 (11) “passenger motor vehicle” means a motor vehicle with motive
34 power, manufactured primarily for use on public streets, roads, and
35 highways, and designed to carry not more than 12 individuals—

36 (A) including a multipurpose vehicle or light duty truck when
37 the vehicle or truck is rated at not more than 8,500 pounds gross
38 vehicle weight; but

39 (B) not including—

40 (i) a motorcycle;

1 (ii) a truck not designed primarily to carry its operator or
2 passengers; or

3 (iii) a vehicle operated only on a rail line.

4 (12) “passenger motor vehicle equipment”—

5 (A) means a system, subassembly, or component received at the
6 final vehicle assembly place for installation on, or attachment to,
7 a passenger motor vehicle at the time of its first shipment by the
8 manufacturer to a dealer for sale to an ultimate purchaser; but

9 (B) does not include minor parts (including nuts, bolts, clips,
10 screws, pins, braces, and other attachment hardware) and other
11 similar items the Secretary of Transportation may prescribe by
12 regulation after consulting with manufacturers and labor.

13 (13) “percentage (by value)”, when referring to passenger motor ve-
14 hicle equipment of United States/Canadian origin, means the percent-
15 age remaining after subtracting the percentage (by value) of passenger
16 motor vehicle equipment that is not of United States/Canadian origin
17 that will be installed or included on those vehicles produced in a car-
18 line, from 100 percent—

19 (A) with value being expressed in terms of the purchase price;
20 and

21 (B) for outside suppliers and allied suppliers, the value used is
22 the purchase price of the equipment paid at the final assembly
23 place.

24 (14) “State” means a State of the United States, the District of Co-
25 lumbia, Puerto Rico, Guam, the Canal Zone, American Samoa, and the
26 Virgin Islands.

27 (15) “value added in the United States and Canada” means a per-
28 centage determined by subtracting the total purchase price of foreign
29 content from the total purchase price, and dividing the remainder by
30 the total purchase price, excluding costs incurred or profits made at
31 the final assembly place and beyond (including advertising, assembly,
32 labor, interest payments, and profits), with the following groupings
33 being used:

34 (A) engines of same displacement produced at the same plant.

35 (B) transmissions of the same type produced at the same plant.

36 (b) MANUFACTURER REQUIREMENT.—(1) Each manufacturer of a new
37 passenger motor vehicle manufactured after September 30, 1994, and dis-
38 tributed in commerce for sale in the United States, shall establish each year
39 for each model year and cause to be attached in a prominent place on each
40 of those vehicles, at least one label. The label shall contain the following
41 information:

1 (A) the percentage (by value) of passenger motor vehicle equipment
2 of United States/Canadian origin installed on vehicles in the carline to
3 which that vehicle belongs, identified by the words “U.S./Canadian con-
4 tent”.

5 (B) the final assembly place for that vehicle by city, State (where
6 appropriate) and country.

7 (C) if at least 15 percent (by value) of equipment installed on pas-
8 senger motor vehicles in a carline originated in any country other than
9 the United States and Canada, the names of at least the 2 countries
10 in which the greatest amount (by value) of that equipment originated
11 and the percentage (by value) of the equipment originating in each
12 country.

13 (D) the country of origin of the engine and the transmission for each
14 vehicle.

15 (2) At the beginning of each model year, each manufacturer shall estab-
16 lish the percentages required for each carline to be indicated on the label
17 under this subsection. Those percentages are applicable to that carline for
18 the entire model year. A manufacturer may round those percentages to the
19 nearest 5 percent.

20 (3) A manufacturer complying with the requirement of paragraph (1)(B)
21 of this subsection satisfies the disclosure requirement of section 3(b) of the
22 Automobile Information Disclosure Act (15 U.S.C. 1232(b)).

23 (c) DEALER REQUIREMENT.—Each dealer engaged in the sale or dis-
24 tribution of a new passenger motor vehicle manufactured after September
25 30, 1994, shall cause to be maintained on that vehicle the label required
26 to be attached to that vehicle under subsection (b) of this section.

27 (d) FORM AND CONTENT OF LABEL.—The Secretary of Transportation
28 shall prescribe by regulation the form and content of the label required
29 under subsection (b) of this section and the manner and location in which
30 the label is attached. The Secretary shall permit a manufacturer to comply
31 with this section by allowing the manufacturer to disclose the information
32 required under subsection (b)(1) on the label required by section 3 of the
33 Automobile Information Disclosure Act (15 U.S.C. 1232), on the label re-
34 quired by section 32908 of this title, or on a separate label that is readily
35 visible.

36 (e) REGULATIONS.—In consultation with the Secretaries of Commerce
37 and the Treasury, the Secretary of Transportation shall prescribe regula-
38 tions necessary to carry out this section, including regulations establishing
39 a procedure to verify the label information required under subsection (b)(1)
40 of this section. Those regulations shall provide the ultimate purchaser of a
41 new passenger motor vehicle with the best and most understandable infor-

1 information possible about the foreign content and United States/Canadian ori-
2 gin of the equipment of the vehicles without imposing costly and unneces-
3 sary burdens on the manufacturers. The Secretary of Transportation shall
4 prescribe the regulations promptly to provide adequate lead time for each
5 manufacturer to comply with this section. The regulations shall include pro-
6 visions applicable to outside suppliers and allied suppliers to require those
7 suppliers to certify whether passenger motor vehicle equipment provided by
8 those suppliers is of United States origin, of United States/Canadian origin,
9 or of foreign content and to provide other information the Secretary of
10 Transportation decides is necessary to allow each manufacturer to comply
11 reasonably with this section and to rely on that certification and informa-
12 tion.

13 (f) PREEMPTION.—(1) When a label content requirement prescribed
14 under this section is in effect, a State or a political subdivision of a State
15 may not adopt or enforce a law or regulation related to the content of vehi-
16 cles covered by a requirement under this section.

17 (2) A State or a political subdivision of a State may prescribe require-
18 ments related to the content of passenger motor vehicles obtained for its
19 own use.

20 **§ 32305. Information and assistance from other depart-**
21 **ments, agencies, and instrumentalities**

22 (a) AUTHORITY TO REQUEST.—The Secretary of Transportation may re-
23 quest information necessary to carry out this chapter from a department,
24 agency, or instrumentality of the United States Government. The head of
25 the department, agency, or instrumentality shall provide the information.

26 (b) DETAILING PERSONNEL.—The head of a department, agency, or in-
27 strumentality may detail, on a reimbursable basis, personnel to assist the
28 Secretary in carrying out this chapter.

29 **§ 32306. Personnel**

30 (a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary
31 of Transportation may—

32 (1) appoint and fix the pay of employees without regard to the provi-
33 sions of title 5 governing appointment in the competitive service and
34 chapter 51 and subchapter III of chapter 53 of title 5; and

35 (2) make contracts with persons for research and preparation of re-
36 ports.

37 (b) STATUS OF ADVISORY COMMITTEE MEMBERS.—A member of an ad-
38 visory committee appointed under section 325 of this title to carry out this
39 chapter is a special United States Government employee under chapter 11
40 of title 18.

1 **§ 32307. Investigative powers**

2 (a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary
3 of Transportation may—

4 (1) inspect and copy records of any person at reasonable times;

5 (2) order a person to file written reports or answers to specific ques-
6 tions, including reports or answers under oath; and

7 (3) conduct hearings, administer oaths, take testimony, and require
8 (by subpoena or otherwise) the appearance and testimony of witnesses
9 and the production of records the Secretary considers advisable.

10 (b) WITNESS FEES AND MILEAGE.—A witness summoned under sub-
11 section (a) of this section is entitled to the same fee and mileage the witness
12 would have been paid in a court of the United States.

13 (c) CIVIL ACTIONS TO ENFORCE.—A civil action to enforce a subpoena or
14 order of the Secretary under subsection (a) of this section may be brought
15 in the United States district court for the judicial district in which the pro-
16 ceeding by the Secretary is conducted. The court may punish a failure to
17 obey an order of the court to comply with the subpoena or order of the Sec-
18 retary as a contempt of court.

19 (d) CONFIDENTIALITY OF INFORMATION.—Information obtained by the
20 Secretary under this section related to a confidential matter referred to in
21 section 1905 of title 18 may be disclosed only to another officer or employee
22 of the United States Government for use in carrying out this chapter. This
23 subsection does not authorize information to be withheld from a committee
24 of Congress authorized to have the information.

25 **§ 32308. General prohibitions, civil penalty, and enforce-**
26 **ment**

27 (a) PROHIBITIONS.—A person may not—

28 (1) fail to provide the Secretary of Transportation with information
29 requested by the Secretary in carrying out this chapter; or

30 (2) fail to comply with applicable regulations prescribed by the Sec-
31 retary in carrying out this chapter.

32 (b) CIVIL PENALTY.—(1) A person that violates subsection (a) of this
33 section is liable to the United States Government for a civil penalty of not
34 more than \$1,000 for each violation. Each failure to provide information or
35 comply with a regulation in violation of subsection (a) is a separate viola-
36 tion. The maximum penalty under this subsection for a related series of vio-
37 lations is \$400,000.

38 (2) The Secretary may compromise the amount of a civil penalty imposed
39 under this section.

1 (3) In determining the amount of a penalty or compromise, the appro-
 2 priateness of the penalty or compromise to the size of the business of the
 3 person charged and the gravity of the violation shall be considered.

4 (4) The Government may deduct the amount of a civil penalty imposed
 5 or compromised under this section from amounts it owes the person liable
 6 for the penalty.

7 (c) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring
 8 a civil action in a United States district court to enjoin a violation of sub-
 9 section (a) of this section.

10 (2) When practicable, the Secretary shall—

11 (A) notify a person against whom an action under this subsection
 12 is planned;

13 (B) give the person an opportunity to present that person's views;
 14 and

15 (C) give the person a reasonable opportunity to comply.

16 (3) The failure of the Secretary to comply with paragraph (2) of this sub-
 17 section does not prevent a court from granting appropriate relief.

18 (d) VENUE AND SERVICE.—A civil action under this section may be
 19 brought in the judicial district in which the violation occurred or the defend-
 20 ant is found, resides, or does business. Process in the action may be served
 21 in any other judicial district in which the defendant resides or is found. A
 22 subpoena for a witness in the action may be served in any judicial district.

23 **§ 32309. Criminal penalty for labeling violations**

24 (a) DEFINITIONS.—The definitions in section 32304 of this title apply to
 25 this section.

26 (b) PENALTIES.—A manufacturer of a passenger motor vehicle distrib-
 27 uted in commerce for sale in the United States that willfully fails to attach
 28 the label required under section 32304 of this title to a new passenger
 29 motor vehicle that the manufacturer manufactures or imports, or a dealer
 30 that fails to maintain that label as required under section 32304, is liable
 31 to the United States Government for a civil penalty of not more than
 32 \$1,000 for each violation. Each failure to attach or maintain that label for
 33 each vehicle is a separate violation.

34 **CHAPTER 325—BUMPER STANDARDS**

Sec.

32501. Purpose.

32502. Bumper standards.

32503. Judicial review of bumper standards.

32504. Certificates of compliance.

32505. Information and compliance requirements.

32506. Prohibited acts.

32507. Penalties and enforcement.

32508. Civil actions by owners of passenger motor vehicles.

32509. Information and assistance from other departments, agencies, and instrumentalities.

32510. Annual report.

32511. Relationship to other motor vehicle standards.

1 **§ 32501. Purpose**

2 The purpose of this chapter is to reduce economic loss resulting from
3 damage to passenger motor vehicles involved in motor vehicle accidents by
4 providing for the maintenance and enforcement of bumper standards.

5 **§ 32502. Bumper standards**

6 (a) GENERAL REQUIREMENTS AND NONAPPLICATION.—The Secretary of
7 Transportation shall prescribe by regulation bumper standards for pas-
8 senger motor vehicles and may prescribe by regulation bumper standards for
9 passenger motor vehicle equipment manufactured in, or imported into, the
10 United States. A standard does not apply to a passenger motor vehicle or
11 passenger motor vehicle equipment—

12 (1) intended only for export;

13 (2) labeled for export on the vehicle or equipment and the outside
14 of any container of the vehicle or equipment; and

15 (3) exported.

16 (b) LIMITATIONS.—A standard under this section—

17 (1) may not conflict with a motor vehicle safety standard prescribed
18 under chapter 301 of this title;

19 (2) may not specify a dollar amount for the cost of repairing damage
20 to a passenger motor vehicle; and

21 (3) to the greatest practicable extent, may not preclude the attach-
22 ment of a detachable hitch.

23 (c) EXEMPTIONS.—For good cause, the Secretary may exempt from any
24 part of a standard—

25 (1) a multipurpose passenger vehicle; or

26 (2) a make, model, or class of a passenger motor vehicle manufac-
27 tured for a special use, if the standard would interfere unreasonably
28 with the special use of the vehicle.

29 (d) COST REDUCTION AND CONSIDERATIONS.—When prescribing a
30 standard under this section, the Secretary shall design the standard to ob-
31 tain the maximum feasible reduction of costs to the public, considering—

32 (1) the costs and benefits of carrying out the standard;

33 (2) the effect of the standard on insurance costs and legal fees and
34 costs;

35 (3) savings in consumer time and inconvenience; and

36 (4) health and safety, including emission standards.

37 (e) PROCEDURES.—Section 553 of title 5 applies to a standard prescribed
38 under this section. However, the Secretary shall give an interested person
39 an opportunity to make oral and written presentations of information, views,
40 and arguments. A transcript of each oral presentation shall be kept. Under

1 conditions prescribed by the Secretary, the Secretary may conduct a hearing
2 to resolve an issue of fact material to a standard.

3 (f) EFFECTIVE DATE.—The Secretary shall prescribe an effective date for
4 a standard under this section. That date may not be earlier than the date
5 the standard is prescribed nor later than 18 months after the date the
6 standard is prescribed. However, the Secretary may prescribe a later date
7 when the Secretary submits to Congress and publishes the reasons for the
8 later date. A standard only applies to a passenger motor vehicle or pas-
9 senger motor vehicle equipment manufactured on or after the effective date.

10 (g) RESEARCH.—The Secretary shall conduct research necessary to carry
11 out this chapter.

12 **§ 32503. Judicial review of bumper standards**

13 (a) FILING AND VENUE.—A person that may be adversely affected by a
14 standard prescribed under section 32502 of this title may apply for review
15 of the standard by filing a petition for review in the United States Court
16 of Appeals for the District of Columbia Circuit or in the court of appeals
17 of the United States for the circuit in which the person resides or has its
18 principal place of business. The petition must be filed not later than 59 days
19 after the standard is prescribed.

20 (b) NOTIFYING SECRETARY.—The clerk of the court shall send imme-
21 diately a copy of the petition to the Secretary of Transportation. The Sec-
22 retary shall file with the court a record of the proceeding in which the
23 standard was prescribed.

24 (c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the
25 court may order the Secretary to receive additional evidence and evidence
26 in rebuttal if the court is satisfied the additional evidence is material and
27 there were reasonable grounds for not presenting the evidence in the pro-
28 ceeding before the Secretary.

29 (2) The Secretary may modify findings of fact or make new findings be-
30 cause of the additional evidence presented. The Secretary shall file a modi-
31 fied or new finding, a recommendation to modify or set aside a standard,
32 and the additional evidence with the court.

33 (d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judg-
34 ment of a court under this section may be reviewed only by the Supreme
35 Court under section 1254 of title 28. A remedy under this section is in addi-
36 tion to any other remedies provided by law.

37 **§ 32504. Certificates of compliance**

38 Under regulations prescribed by the Secretary of Transportation, a manu-
39 facturer or distributor of a passenger motor vehicle or passenger motor vehi-
40 cle equipment subject to a standard prescribed under section 32502 this

1 title shall give the distributor or dealer at the time of delivery a certificate
2 that the vehicle or equipment complies with the standard.

3 **§ 32505. Information and compliance requirements**

4 (a) GENERAL AUTHORITY.—(1) To enable the Secretary of Transpor-
5 tation to decide whether a manufacturer of passenger motor vehicles or pas-
6 senger motor vehicle equipment is complying with this chapter and stand-
7 ards prescribed under this chapter, the Secretary may require the manufac-
8 turer to—

9 (A) keep records;

10 (B) make reports;

11 (C) provide items and information, including vehicles and equipment
12 for testing at a negotiated price not more than the manufacturer's cost;
13 and

14 (D) allow an officer or employee designated by the Secretary to in-
15 spect vehicles and relevant records of the manufacturer.

16 (2) To enforce this chapter, an officer or employee designated by the Sec-
17 retary, on presenting appropriate credentials and a written notice to the
18 owner, operator, or agent in charge, may inspect a facility in which pas-
19 senger motor vehicles or passenger motor vehicle equipment is manufac-
20 tured, held for introduction in interstate commerce, or held for sale after
21 introduction in interstate commerce. An inspection shall be conducted at a
22 reasonable time, in a reasonable way, and with reasonable promptness.

23 (b) POWERS OF SECRETARY AND CIVIL ACTIONS TO ENFORCE.—(1) In
24 carrying out this chapter, the Secretary may—

25 (A) inspect and copy records of any person at reasonable times;

26 (B) order a person to file written reports or answers to specific ques-
27 tions, including reports or answers under oath; and

28 (C) conduct hearings, administer oaths, take testimony, and require
29 (by subpoena or otherwise) the appearance and testimony of witnesses
30 and the production of records the Secretary considers advisable.

31 (2) A witness summoned under this subsection is entitled to the same fee
32 and mileage the witness would have been paid in a court of the United
33 States.

34 (3) A civil action to enforce a subpoena or order of the Secretary under
35 this subsection may be brought in the United States district court for the
36 judicial district in which the proceeding by the Secretary was conducted.
37 The court may punish a failure to obey an order of the court to comply
38 with the subpoena or order of the Secretary as a contempt of court.

39 (c) CONFIDENTIALITY OF INFORMATION.—(1) Information obtained by
40 the Secretary under this chapter related to a confidential matter referred
41 to in section 1905 of title 18 may be disclosed only—

1 (A) to another officer or employee of the United States Government
2 for use in carrying out this chapter; or

3 (B) in a proceeding under this chapter.

4 (2) This subsection does not authorize information to be withheld from
5 a committee of Congress authorized to have the information.

6 (3) Subject to paragraph (1) of this subsection, the Secretary, on request,
7 shall make available to the public at cost information the Secretary submits
8 or receives in carrying out this chapter.

9 **§ 32506. Prohibited acts**

10 (a) GENERAL.—Except as provided in this section, a person may not—

11 (1) manufacture for sale, sell, offer for sale, introduce or deliver for
12 introduction in interstate commerce, or import into the United States,
13 a passenger motor vehicle or passenger motor vehicle equipment manu-
14 factured on or after the date an applicable standard under section
15 32502 of this title takes effect, unless it conforms to the standard;

16 (2) fail to comply with an applicable regulation prescribed by the
17 Secretary of Transportation under this chapter;

18 (3) fail to keep records, refuse access to or copying of records, fail
19 to make reports or provide items or information, or fail or refuse to
20 allow entry or inspection, as required by this chapter or a regulation
21 prescribed under this chapter; or

22 (4) fail to provide the certificate required by section 32504 of this
23 title, or provide a certificate that the person knows, or in the exercise
24 of reasonable care has reason to know, is false or misleading in a mate-
25 rial respect.

26 (b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply
27 to—

28 (1) the sale, offer for sale, or introduction or delivery for introduc-
29 tion in interstate commerce of a passenger motor vehicle or passenger
30 motor vehicle equipment after the first purchase of the vehicle or equip-
31 ment in good faith other than for resale (but this clause does not pro-
32 hibit a standard from requiring that a vehicle or equipment be manu-
33 factured to comply with the standard over a specified period of oper-
34 ation or use); or

35 (2) a person—

36 (A) establishing that the person had no reason to know, by exer-
37 cising reasonable care, that the vehicle or equipment does not com-
38 ply with the standard; or

39 (B) holding, without knowing about a noncompliance and before
40 that first purchase, a certificate issued under section 32504 of this

1 title stating that the vehicle or equipment complies with the stand-
2 ard.

3 (c) IMPORTING NONCOMPLYING VEHICLES AND EQUIPMENT.—(1) The
4 Secretaries of Transportation and the Treasury may prescribe joint regula-
5 tions authorizing a passenger motor vehicle or passenger motor vehicle
6 equipment not complying with a standard prescribed under section 32502
7 of this title to be imported into the United States subject to conditions (in-
8 cluding providing a bond) the Secretaries consider appropriate to ensure
9 that the vehicle or equipment will—

10 (A) comply, after importation, with the standards prescribed under
11 section 32502 of this title;

12 (B) be exported; or

13 (C) be abandoned to the United States Government.

14 (2) The Secretaries may prescribe joint regulations that allow a passenger
15 motor vehicle or passenger motor vehicle equipment to be imported into the
16 United States after the first purchase in good faith other than for resale.

17 (d) LIABILITY UNDER OTHER LAW.—Compliance with a standard under
18 this chapter does not exempt a person from liability provided by law.

19 **§ 32507. Penalties and enforcement**

20 (a) CIVIL PENALTY.—(1) A person that violates section 32506(a) of this
21 title is liable to the United States Government for a civil penalty of not
22 more than \$1,000 for each violation. A separate violation occurs for each
23 passenger motor vehicle or item of passenger motor vehicle equipment in-
24 volved in a violation of section 32506(a)(1) or (4) of this title—

25 (A) that does not comply with a standard prescribed under section
26 32502 of this title; or

27 (B) for which a certificate is not provided, or for which a false or
28 misleading certificate is provided, under section 32504 of this title.

29 (2) The maximum civil penalty under this subsection for a related series
30 of violations is \$800,000.

31 (3) The Secretary of Transportation imposes a civil penalty under this
32 subsection. The Attorney General or the Secretary, with the concurrence of
33 the Attorney General, shall bring a civil action in a United States district
34 court to collect the penalty.

35 (b) CRIMINAL PENALTY.—A person knowingly and willfully violating sec-
36 tion 32506(a)(1) of this title after receiving a notice of noncompliance from
37 the Secretary shall be fined under title 18, imprisoned for not more than
38 one year, or both. If the person is a corporation, the penalties of this sub-
39 section also apply to a director, officer, or individual agent of the corpora-
40 tion who, with knowledge of the Secretary's notice, knowingly and willfully
41 authorizes, orders, or performs an act that is any part of the violation.

1 (c) CIVIL ACTIONS TO ENFORCE.—(1) The Secretary or the Attorney
2 General may bring a civil action in a United States district court to enjoin
3 a violation of this chapter or the sale, offer for sale, introduction or delivery
4 for introduction in interstate commerce, or importation into the United
5 States, of a passenger motor vehicle or passenger motor vehicle equipment
6 that is found, before the first purchase in good faith other than for resale,
7 not to comply with a standard prescribed under section 32502 of this title.

8 (2) When practicable, the Secretary shall—

9 (A) notify a person against whom an action under this subsection
10 is planned;

11 (B) give the person an opportunity to present that person's views;
12 and

13 (C) except for a knowing and willful violation, give the person a rea-
14 sonable opportunity to comply.

15 (3) The failure of the Secretary to comply with paragraph (2) of this sub-
16 section does not prevent a court from granting appropriate relief.

17 (d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating
18 an injunction or restraining order issued under subsection (c) of this sec-
19 tion, the violation of which is also a violation of this chapter, the defendant
20 may demand a jury trial. The defendant shall be tried as provided in rule
21 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

22 (e) VENUE.—A civil action under subsection (a) or (c) of this section may
23 be brought in the judicial district in which the violation occurred or the de-
24 fendant is found, resides, or does business. Process in the action may be
25 served in any other judicial district in which the defendant resides or is
26 found. A subpoena for a witness in the action may be served in any judicial
27 district.

28 **§ 32508. Civil actions by owners of passenger motor vehicles**

29 When an owner of a passenger motor vehicle sustains damages as a result
30 of a motor vehicle accident because the vehicle did not comply with a stand-
31 ard prescribed under section 32502 of this title, the owner may bring a civil
32 action against the manufacturer to recover the damages. The action may
33 be brought in the United States District Court for the District of Columbia
34 or in the United States district court for the judicial district in which the
35 owner resides. The action must be brought not later than 3 years after the
36 date of the accident. The court shall award costs and a reasonable attor-
37 ney's fee to the owner when a judgment is entered for the owner.

38 **§ 32509. Information and assistance from other depart- 39 ments, agencies, and instrumentalities**

40 (a) GENERAL AUTHORITY.—The Secretary of Transportation may re-
41 quest information necessary to carry out this chapter from a department,

1 agency, or instrumentality of the United States Government. The head of
2 the department, agency, or instrumentality shall provide the information.

3 (b) DETAILING PERSONNEL.—The head of a department, agency, or in-
4 strumentality may detail, on a reimbursable basis, personnel to assist the
5 Secretary in carrying out this chapter.

6 **§ 32510. Annual report**

7 Not later than March 31 of each year, the Secretary of Transportation
8 shall submit to Congress and the President a report on the progress in car-
9 rying out section 32501 of this title. The report shall include—

10 (1) a statement of the cost savings resulting from carrying out this
11 chapter; and

12 (2) recommendations for legislative or other action the Secretary de-
13 cides may be appropriate.

14 **§ 32511. Relationship to other motor vehicle standards**

15 (a) PREEMPTION.—Except as provided in this section, a State or a politi-
16 cal subdivision of a State may prescribe or enforce a bumper standard for
17 a passenger motor vehicle or passenger motor vehicle equipment only if the
18 standard is identical to a standard prescribed under section 32502 of this
19 title.

20 (b) ENFORCEMENT.—This chapter and chapter 301 of this title do not
21 affect the authority of a State to enforce a bumper standard about an as-
22 pect of performance of a passenger motor vehicle or passenger motor vehicle
23 equipment not covered by a standard prescribed under section 32502 of this
24 title if the State bumper standard—

25 (1) does not conflict with a standard prescribed under chapter 301
26 of this title; and

27 (2) was in effect or prescribed by the State on October 20, 1972.

28 (c) ADDITIONAL AND HIGHER STANDARDS OF PERFORMANCE.—The
29 United States Government, a State, or a political subdivision of a State may
30 prescribe a bumper standard for a passenger motor vehicle or passenger
31 motor vehicle equipment obtained for its own use that imposes additional
32 or higher standards of performance than a standard prescribed under sec-
33 tion 32502 of this title.

34 **CHAPTER 327—ODOMETERS**

Sec.

32701. Findings and purposes.

32702. Definitions.

32703. Preventing tampering.

32704. Service, repair, and replacement.

32705. Disclosure requirements on transfer of motor vehicles.

32706. Inspections, investigations, and records.

32707. Administrative warrants.

32708. Confidentiality of information.

32709. Penalties and enforcement.

32710. Civil actions by private persons.

32711. Relationship to State law.

1 **§ 32701. Findings and purposes**

2 (a) FINDINGS.—Congress finds that—

3 (1) buyers of motor vehicles rely heavily on the odometer reading as
4 an index of the condition and value of a vehicle;

5 (2) buyers are entitled to rely on the odometer reading as an accu-
6 rate indication of the mileage of the vehicle;

7 (3) an accurate indication of the mileage assists a buyer in deciding
8 on the safety and reliability of the vehicle; and

9 (4) motor vehicles move in, or affect, interstate and foreign com-
10 merce.

11 (b) PURPOSES.—The purposes of this chapter are—

12 (1) to prohibit tampering with motor vehicle odometers; and

13 (2) to provide safeguards to protect purchasers in the sale of motor
14 vehicles with altered or reset odometers.

15 **§ 32702. Definitions**

16 In this chapter—

17 (1) “auction company” means a person taking possession of a motor
18 vehicle owned by another to sell at an auction.

19 (2) “dealer” means a person that sold at least 5 motor vehicles dur-
20 ing the prior 12 months to buyers that in good faith bought the vehi-
21 cles other than for resale.

22 (3) “distributor” means a person that sold at least 5 motor vehicles
23 during the prior 12 months for resale.

24 (4) “leased motor vehicle” means a motor vehicle leased to a person
25 for at least 4 months by a lessor that leased at least 5 vehicles during
26 the prior 12 months.

27 (5) “odometer” means an instrument for measuring and recording
28 the distance a motor vehicle is driven, but does not include an auxiliary
29 instrument designed to be reset by the operator of the vehicle to record
30 mileage of a trip.

31 (6) “repair” and “replace” mean to restore to a sound working con-
32 dition by replacing any part of an odometer or by correcting any inop-
33 erative part of an odometer.

34 (7) “title” means the certificate of title or other document issued by
35 the State indicating ownership.

36 (8) “transfer” means to change ownership by sale, gift, or other
37 means.

38 **§ 32703. Preventing tampering**

39 A person may not—

1 (1) advertise for sale, sell, use, install, or have installed, a device that
2 makes an odometer of a motor vehicle register a mileage different from
3 the mileage the vehicle was driven, as registered by the odometer within
4 the designed tolerance of the manufacturer of the odometer;

5 (2) disconnect, reset, alter, or have disconnected, reset, or altered,
6 an odometer of a motor vehicle intending to change the mileage reg-
7 istered by the odometer;

8 (3) with intent to defraud, operate a motor vehicle on a public street,
9 road, or highway if the person knows that the odometer of the vehicle
10 is disconnected or not operating; or

11 (4) conspire to violate this section or section 32704 or 32705 of this
12 title.

13 **§ 32704. Service, repair, and replacement**

14 (a) ADJUSTING MILEAGE.—A person may service, repair, or replace an
15 odometer of a motor vehicle if the mileage registered by the odometer re-
16 mains the same as before the service, repair, or replacement. If the mileage
17 cannot remain the same—

18 (1) the person shall adjust the odometer to read zero; and

19 (2) the owner of the vehicle or agent of the owner shall attach a
20 written notice to the left door frame of the vehicle specifying the mile-
21 age before the service, repair, or replacement and the date of the serv-
22 ice, repair, or replacement.

23 (b) REMOVING OR ALTERING NOTICE.—A person may not, with intent to
24 defraud, remove or alter a notice attached to a motor vehicle as required
25 by this section.

26 **§ 32705. Disclosure requirements on transfer of motor vehi-**
27 **cles**

28 (a) WRITTEN DISCLOSURE REQUIREMENTS.—(1) Under regulations pre-
29 scribed by the Secretary of Transportation, a person transferring ownership
30 of a motor vehicle shall give the transferee a written disclosure—

31 (A) of the cumulative mileage registered by the odometer; or

32 (B) that the mileage is unknown if the transferor knows that the
33 mileage registered by the odometer is incorrect.

34 (2) A person making a written disclosure required by a regulation pre-
35 scribed under paragraph (1) of this subsection may not make a false state-
36 ment in the disclosure.

37 (3) A person acquiring a motor vehicle for resale may accept a disclosure
38 under this section only if it is complete.

39 (4) The regulations prescribed by the Secretary shall provide the way in
40 which information is disclosed and retained under this section.

1 (b) MILEAGE STATEMENT REQUIREMENT FOR LICENSING.—(1) A motor
2 vehicle the ownership of which is transferred may not be licensed for use
3 in a State unless the transferee, in submitting an application to a State for
4 the title on which the license will be issued, includes with the application
5 the transferor's title and, if that title contains the space referred to in para-
6 graph (3)(A)(iii) of this subsection, a statement, signed and dated by the
7 transferor, of the mileage disclosure required under subsection (a) of this
8 section. This paragraph does not apply to a transfer of ownership of a
9 motor vehicle that has not been licensed before the transfer.

10 (2)(A) Under regulations prescribed by the Secretary, if the title to a
11 motor vehicle issued to a transferor by a State is in the possession of a
12 lienholder when the transferor transfers ownership of the vehicle, the trans-
13 feror may use a written power of attorney (if allowed by State law) in mak-
14 ing the mileage disclosure required under subsection (a) of this section. Reg-
15 ulations prescribed under this paragraph—

16 (i) shall prescribe the form of the power of attorney;

17 (ii) shall provide that the form be printed by means of a secure
18 printing process (or other secure process);

19 (iii) shall provide that the State issue the form to the transferee;

20 (iv) shall provide that the person exercising the power of attorney
21 retain a copy and submit the original to the State with a copy of the
22 title showing the restatement of the mileage;

23 (v) may require that the State retain the power of attorney and the
24 copy of the title for an appropriate period or that the State adopt alter-
25 native measures consistent with section 32701(b) of this title, after
26 considering the costs to the State;

27 (vi) shall ensure that the mileage at the time of transfer be disclosed
28 on the power of attorney document;

29 (vii) shall ensure that the mileage be restated exactly by the person
30 exercising the power of attorney in the space referred to in paragraph
31 (3)(A)(iii) of this subsection;

32 (viii) may not require that a motor vehicle be titled in the State in
33 which the power of attorney was issued;

34 (ix) shall consider the need to facilitate normal commercial trans-
35 actions in the sale or exchange of motor vehicles; and

36 (x) shall provide other conditions the Secretary considers appro-
37 priate.

38 (B) Section 32709(a) and (b) applies to a person granting or granted a
39 power of attorney under this paragraph.

1 (3)(A) A motor vehicle the ownership of which is transferred may be li-
2 censed for use in a State only if the title issued by the State to the trans-
3 feree—

4 (i) is produced by means of a secure printing process (or other se-
5 cure process);

6 (ii) indicates the mileage disclosure required to be made under sub-
7 section (a) of this section; and

8 (iii) contains a space for the transferee to disclose the mileage at the
9 time of a future transfer and to sign and date the disclosure.

10 (B) Subparagraph (A) of this paragraph does not require a State to ver-
11 ify, or preclude a State from verifying, the mileage information contained
12 in the title.

13 (c) LEASED MOTOR VEHICLES.—(1) For a leased motor vehicle, the reg-
14 ulations prescribed under subsection (a) of this section shall require written
15 disclosure about mileage to be made by the lessee to the lessor when the
16 lessor transfers ownership of that vehicle.

17 (2) Under those regulations, the lessor shall provide written notice to the
18 lessee of—

19 (A) the mileage disclosure requirements of subsection (a) of this sec-
20 tion; and

21 (B) the penalties for failure to comply with those requirements.

22 (3) The lessor shall retain the disclosures made by a lessee under para-
23 graph (1) of this subsection for at least 4 years following the date the lessor
24 transfers the leased motor vehicle.

25 (4) If the lessor transfers ownership of a leased motor vehicle without ob-
26 taining possession of the vehicle, the lessor, in making the disclosure re-
27 quired by subsection (a) of this section, may indicate on the title the mile-
28 age disclosed by the lessee under paragraph (1) of this subsection unless
29 the lessor has reason to believe that the disclosure by the lessee does not
30 reflect the actual mileage of the vehicle.

31 (d) STATE ALTERNATE VEHICLE MILEAGE DISCLOSURE REQUIRE-
32 MENTS.—The requirements of subsections (b) and (c)(1) of this section on
33 the disclosure of motor vehicle mileage when motor vehicles are transferred
34 or leased apply in a State unless the State has in effect alternate motor
35 vehicle mileage disclosure requirements approved by the Secretary. The Sec-
36 retary shall approve alternate motor vehicle mileage disclosure requirements
37 submitted by a State unless the Secretary decides that the requirements are
38 not consistent with the purpose of the disclosure required by subsection (b)
39 or (c), as the case may be.

1 (e) AUCTION SALES.—If a motor vehicle is sold at an auction, the auction
2 company conducting the auction shall maintain the following records for at
3 least 4 years after the date of the sale:

4 (1) the name of the most recent owner of the motor vehicle (except
5 the auction company) and the name of the buyer of the motor vehicle.

6 (2) the vehicle identification number required under chapter 301 or
7 331 of this title.

8 (3) the odometer reading on the date the auction company took pos-
9 session of the motor vehicle.

10 (f) APPLICATION AND REVISION OF STATE LAW.—(1) Except as provided
11 in paragraph (2) of this subsection, subsections (b)–(e) of this section apply
12 to the transfer of a motor vehicle after April 28, 1989.

13 (2) If a State requests, the Secretary shall assist the State in revising
14 its laws to comply with subsection (b) of this section. If a State requires
15 time beyond April 28, 1989, to revise its laws to achieve compliance, the
16 Secretary, on request of the State, may grant additional time that the Sec-
17 retary considers reasonable by publishing a notice in the Federal Register.
18 The notice shall include the reasons for granting the additional time. In
19 granting additional time, the Secretary shall ensure that the State is mak-
20 ing reasonable efforts to achieve compliance.

21 **§ 32706. Inspections, investigations, and records**

22 (a) AUTHORITY TO INSPECT AND INVESTIGATE.—Subject to section
23 32707 of this title, the Secretary of Transportation may conduct an inspec-
24 tion or investigation necessary to carry out this chapter or a regulation pre-
25 scribed or order issued under this chapter. The Secretary shall cooperate
26 with State and local officials to the greatest extent possible in conducting
27 an inspection or investigation. The Secretary may give the Attorney General
28 information about a violation of this chapter or a regulation prescribed or
29 order issued under this chapter.

30 (b) ENTRY, INSPECTION, AND IMPOUNDMENT.—(1) In carrying out sub-
31 section (a) of this section, an officer or employee designated by the Sec-
32 retary, on display of proper credentials and written notice to the owner, op-
33 erator, or agent in charge, may—

34 (A) enter and inspect commercial premises in which a motor vehicle
35 or motor vehicle equipment is manufactured, held for shipment or sale,
36 maintained, or repaired;

37 (B) enter and inspect noncommercial premises in which the Sec-
38 retary reasonably believes there is a motor vehicle or motor vehicle
39 equipment that is an object of a violation of this chapter;

40 (C) inspect that motor vehicle or motor vehicle equipment; and

1 (D) impound for not more than 72 hours for inspection a motor ve-
2 hicle or motor vehicle equipment that the Secretary reasonably believes
3 is an object of a violation of this chapter.

4 (2) An inspection or impoundment under this subsection shall be con-
5 ducted at a reasonable time, in a reasonable way, and with reasonable
6 promptness. The written notice may consist of a warrant issued under sec-
7 tion 32707 of this title.

8 (c) REASONABLE COMPENSATION.—When the Secretary impounds for in-
9 spection a motor vehicle (except a vehicle subject to subchapter II of chapter
10 105 of this title) or motor vehicle equipment under subsection (b)(1)(D) of
11 this section, the Secretary shall pay reasonable compensation to the owner
12 of the vehicle or equipment if the inspection or impoundment results in de-
13 nial of use, or reduction in value, of the vehicle or equipment.

14 (d) RECORDS AND INFORMATION REQUIREMENTS.—(1) To enable the
15 Secretary to decide whether a dealer or distributor is complying with this
16 chapter and regulations prescribed and orders issued under this chapter, the
17 Secretary may require the dealer or distributor—

18 (A) to keep records;

19 (B) to provide information from those records if the Secretary states
20 the purpose for requiring the information and identifies the information
21 to the fullest extent practicable; and

22 (C) to allow an officer or employee designated by the Secretary to
23 inspect relevant records of the dealer or distributor.

24 (2) This subsection and subsection (e)(1)(B) of this section do not au-
25 thorize the Secretary to require a dealer or distributor to provide informa-
26 tion on a regular periodic basis.

27 (e) ADMINISTRATIVE AUTHORITY AND CIVIL ACTIONS TO ENFORCE.—

28 (1) In carrying out this chapter, the Secretary may—

29 (A) inspect and copy records of any person at reasonable times;

30 (B) order a person to file written reports or answers to specific ques-
31 tions, including reports or answers under oath; and

32 (C) conduct hearings, administer oaths, take testimony, and require
33 (by subpoena or otherwise) the appearance and testimony of witnesses
34 and the production of records the Secretary considers advisable.

35 (2) A witness summoned under this subsection is entitled to the same fee
36 and mileage the witness would have been paid in a court of the United
37 States.

38 (3) A civil action to enforce a subpoena or order of the Secretary under
39 this subsection may be brought in the United States district court for the
40 judicial district in which the proceeding by the Secretary was conducted.

1 The court may punish a failure to obey an order of the court to comply
2 with the subpoena or order of the Secretary as a contempt of court.

3 (f) PROHIBITIONS.—A person may not fail to keep records, refuse access
4 to or copying of records, fail to make reports or provide information, fail
5 to allow entry or inspection, or fail to permit impoundment, as required
6 under this section.

7 **§ 32707. Administrative warrants**

8 (a) DEFINITION.—In this section, “probable cause” means a valid public
9 interest in the effective enforcement of this chapter or a regulation pre-
10 scribed under this chapter sufficient to justify the inspection or impound-
11 ment in the circumstances stated in an application for a warrant under this
12 section.

13 (b) WARRANT REQUIREMENT AND ISSUANCE.—(1) Except as provided in
14 paragraph (4) of this subsection, an inspection or impoundment under sec-
15 tion 32706 of this title may be carried out only after a warrant is obtained.

16 (2) A judge of a court of the United States or a State court of record
17 or a United States magistrate may issue a warrant for an inspection or im-
18 poundment under section 32706 of this title within the territorial jurisdic-
19 tion of the court or magistrate. The warrant must be based on an affidavit
20 that—

21 (A) establishes probable cause to issue the warrant; and

22 (B) is sworn to before the judge or magistrate by an officer or em-
23 ployee who knows the facts alleged in the affidavit.

24 (3) The judge or magistrate shall issue the warrant when the judge or
25 magistrate decides there is a reasonable basis for believing that probable
26 cause exists to issue the warrant. The warrant must—

27 (A) identify the premises, property, or motor vehicle to be inspected
28 and the items or type of property to be impounded;

29 (B) state the purpose of the inspection, the basis for issuing the war-
30 rant, and the name of the affiant;

31 (C) direct an individual authorized under section 32706 of this title
32 to inspect the premises, property, or vehicle for the purpose stated in
33 the warrant and, when appropriate, to impound the property specified
34 in the warrant;

35 (D) direct that the warrant be served during the hours specified in
36 the warrant; and

37 (E) name the judge or magistrate with whom proof of service is to
38 be filed.

39 (4) A warrant under this section is not required when—

40 (A) the owner, operator, or agent in charge of the premises consents;

1 (B) it is reasonable to believe that the mobility of the motor vehicle
2 to be inspected makes it impractical to obtain a warrant;

3 (C) an application for a warrant cannot be made because of an emer-
4 gency;

5 (D) records are to be inspected and copied under section
6 32706(e)(1)(A) of this title; or

7 (E) a warrant is not constitutionally required.

8 (c) SERVICE AND IMPOUNDMENT OF PROPERTY.—(1) A warrant issued
9 under this section must be served and proof of service filed not later than
10 10 days after its issuance date. The judge or magistrate may allow addi-
11 tional time in the warrant if the Secretary of Transportation demonstrates
12 a need for additional time. Proof of service must be filed promptly with a
13 written inventory of the property impounded under the warrant. The inven-
14 tory shall be made in the presence of the individual serving the warrant and
15 the individual from whose possession or premises the property was im-
16 pounded, or if that individual is not present, a credible individual except the
17 individual making the inventory. The individual serving the warrant shall
18 verify the inventory. On request, the judge or magistrate shall send a copy
19 of the inventory to the individual from whose possession or premises the
20 property was impounded and to the applicant for the warrant.

21 (2) When property is impounded under a warrant, the individual serving
22 the warrant shall—

23 (A) give the person from whose possession or premises the property
24 was impounded a copy of the warrant and a receipt for the property;
25 or

26 (B) leave the copy and receipt at the place from which the property
27 was impounded.

28 (3) The judge or magistrate shall file the warrant, proof of service, and
29 all documents filed about the warrant with the clerk of the United States
30 district court for the judicial district in which the inspection is made.

31 **§ 32708. Confidentiality of information**

32 (a) GENERAL.—Information obtained by the Secretary of Transportation
33 under this chapter related to a confidential matter referred to in section
34 1905 of title 18 may be disclosed only—

35 (1) to another officer or employee of the United States Government
36 for use in carrying out this chapter; or

37 (2) in a proceeding under this chapter.

38 (b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does
39 not authorize information to be withheld from a committee of Congress au-
40 thorized to have the information.

§ 32709. Penalties and enforcement

(a) CIVIL PENALTY.—(1) A person that violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than \$2,000 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum penalty under this subsection for a related series of violations is \$100,000.

(2) The Secretary of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary shall give the person charged with a violation an opportunity to establish that the violation did not occur.

(3) In determining the amount of a civil penalty under this subsection, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(b) CRIMINAL PENALTY.—A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter without regard to penalties imposed on the corporation.

(c) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

(d) CIVIL ACTIONS BY STATES.—(1) When a person violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the State in which the violation occurs may bring a civil action—

(A) to enjoin the violation; or

1 (B) to recover amounts for which the person is liable under section
2 32710 of this title for each person on whose behalf the action is
3 brought.

4 (2) An action under this subsection may be brought in an appropriate
5 United States district court or in a State court of competent jurisdiction.
6 The action must be brought not later than 2 years after the claim accrues.

7 **§ 32710. Civil actions by private persons**

8 (a) VIOLATION AND AMOUNT OF DAMAGES.—A person that violates this
9 chapter or a regulation prescribed or order issued under this chapter, with
10 intent to defraud, is liable for 3 times the actual damages or \$1,500, which-
11 ever is greater.

12 (b) CIVIL ACTIONS.—A person may bring a civil action to enforce a claim
13 under this section in an appropriate United States district court or in an-
14 other court of competent jurisdiction. The action must be brought not later
15 than 2 years after the claim accrues. The court shall award costs and a rea-
16 sonable attorney’s fee to the person when a judgment is entered for that
17 person.

18 **§ 32711. Relationship to State law**

19 Except to the extent that State law is inconsistent with this chapter, this
20 chapter does not—

21 (1) affect a State law on disconnecting, altering, or tampering with
22 an odometer with intent to defraud; or

23 (2) exempt a person from complying with that law.

24 **CHAPTER 329—AUTOMOBILE FUEL ECONOMY**

Sec.

- 32901. Definitions.
- 32902. Average fuel economy standards.
- 32903. Credits for exceeding average fuel economy standards.
- 32904. Calculation of average fuel economy.
- 32905. Manufacturing incentives for alternative fuel automobiles.
- 32906. Maximum fuel economy increase for alternative fuel automobiles.
- 32907. Reports and tests of manufacturers.
- 32908. Fuel economy information.
- 32909. Judicial review of regulations.
- 32910. Administrative.
- 32911. Compliance.
- 32912. Civil penalties.
- 32913. Compromising and remitting civil penalties.
- 32914. Collecting civil penalties.
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- 32916. Reports to Congress.
- 32917. Standards for executive agency automobiles.
- 32918. Preemption.

25 **§ 32901. Definitions**

26 (a) GENERAL.—In this chapter—

27 (1) “alternative fuel” means—

28 (A) methanol;

29 (B) denatured ethanol;

- 1 (C) other alcohols;
- 2 (D) except as provided in subsection (b) of this section, a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;
- 3
- 4
- 5 (E) natural gas;
- 6 (F) liquefied petroleum gas;
- 7 (G) hydrogen;
- 8 (H) coal derived liquid fuels;
- 9 (I) fuels (except alcohol) derived from biological materials;
- 10 (J) electricity (including electricity from solar energy); and
- 11 (K) any other fuel the Secretary of Transportation prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits.
- 12
- 13
- 14 (2) “alternative fueled automobile” means an automobile that is a—
- 15 (A) dedicated automobile; or
- 16 (B) dual fueled automobile.
- 17 (3) except as provided in section 32908 of this title, “automobile” means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at—
- 18
- 19
- 20
- 21 (A) not more than 6,000 pounds gross vehicle weight; or
- 22 (B) more than 6,000, but less than 10,000, pounds gross vehicle weight, if the Secretary decides by regulation that—
- 23 (i) an average fuel economy standard under this chapter for the vehicle is feasible; and
- 24
- 25 (ii) an average fuel economy standard under this chapter for the vehicle will result in significant energy conservation or the vehicle is substantially used for the same purposes as a vehicle rated at not more than 6,000 pounds gross vehicle weight.
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- 31 (4) “automobile manufactured by a manufacturer” includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person that is exported not later than 30 days after the end of the model year in which the automobile is manufactured.
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- 37 (5) “average fuel economy” means average fuel economy determined under section 32904 of this title.
- 38
- 39 (6) “average fuel economy standard” means a performance standard specifying a minimum level of average fuel economy applicable to a manufacturer in a model year.
- 40
- 41

1 (7) “dedicated automobile” means an automobile that operates only
2 on alternative fuel.

3 (8) “dual fueled automobile” means an automobile that—

4 (A) is capable of operating on alternative fuel and on gasoline
5 or diesel fuel;

6 (B) provides equal or superior energy efficiency, as calculated
7 for the applicable model year during fuel economy testing for the
8 United States Government, when operating on alternative fuel as
9 when operating on gasoline or diesel fuel;

10 (C) for model years 1993–1995 for an automobile capable of op-
11 erating on a mixture of an alternative fuel and gasoline or diesel
12 fuel and if the Administrator of the Environmental Protection
13 Agency decides to extend the application of this subclause, for an
14 additional period ending not later than the end of the last model
15 year to which section 32905(b) and (d) of this title applies, pro-
16 vides equal or superior energy efficiency, as calculated for the ap-
17 plicable model year during fuel economy testing for the Govern-
18 ment, when operating on a mixture of alternative fuel and gasoline
19 or diesel fuel containing exactly 50 percent gasoline or diesel fuel
20 as when operating on gasoline or diesel fuel; and

21 (D) for a passenger automobile, meets or exceeds the minimum
22 driving range prescribed under subsection (c) of this section.

23 (9) “fuel” means—

24 (A) gasoline;

25 (B) diesel oil; or

26 (C) other liquid or gaseous fuel that the Secretary decides by
27 regulation to include in this definition as consistent with the need
28 of the United States to conserve energy.

29 (10) “fuel economy” means the average number of miles traveled by
30 an automobile for each gallon of gasoline (or equivalent amount of
31 other fuel) used, as determined by the Administrator under section
32 32904(c) of this title.

33 (11) “import” means to import into the customs territory of the
34 United States.

35 (12) “manufacture” (except under section 32902(d) of this title)
36 means to produce or assemble in the customs territory of the United
37 States or to import.

38 (13) “manufacturer” means—

39 (A) a person engaged in the business of manufacturing auto-
40 mobiles, including a predecessor or successor of the person to the
41 extent provided under regulations prescribed by the Secretary; and

1 (B) if more than one person is the manufacturer of an auto-
2 mobile, the person specified under regulations prescribed by the
3 Secretary.

4 (14) “model” means a class of automobiles as decided by regulation
5 by the Administrator after consulting and coordinating with the Sec-
6 retary.

7 (15) “model year”, when referring to a specific calendar year,
8 means—

9 (A) the annual production period of a manufacturer, as decided
10 by the Administrator, that includes January 1 of that calendar
11 year; or

12 (B) that calendar year if the manufacturer does not have an an-
13 nual production period.

14 (16) “passenger automobile” means an automobile that the Sec-
15 retary decides by regulation is manufactured primarily for transporting
16 not more than 10 individuals, but does not include an automobile capa-
17 ble of off-highway operation that the Secretary decides by regulation—

18 (A) has a significant feature (except 4-wheel drive) designed for
19 off-highway operation; and

20 (B) is a 4-wheel drive automobile or is rated at more than 6,000
21 pounds gross vehicle weight.

22 (b) AUTHORITY TO CHANGE PERCENTAGE.—The Secretary may pre-
23 scribe regulations changing the percentage referred to in subsection
24 (a)(1)(D) of this section to not less than 70 percent because of requirements
25 relating to cold start, safety, or vehicle functions.

26 (c) MINIMUM DRIVING RANGES FOR DUAL FUELED PASSENGER AUTO-
27 MOBILES.—(1) The Secretary shall prescribe by regulation the minimum
28 driving range that dual fueled automobiles that are passenger automobiles
29 must meet when operating on alternative fuel to be dual fueled automobiles
30 under sections 32905 and 32906 of this title. A determination whether a
31 dual fueled automobile meets the minimum driving range requirement under
32 this paragraph shall be based on the combined Agency city/highway fuel
33 economy as determined for average fuel economy purposes for those auto-
34 mobiles.

35 (2)(A) The Secretary may prescribe a lower range for a specific model
36 than that prescribed under paragraph (1) of this subsection. A manufac-
37 turer may petition for a lower range than that prescribed under paragraph
38 (1) for a specific model.

1 (B) The minimum driving range prescribed for dual fueled automobiles
2 (except electric automobiles) under subparagraph (A) of this paragraph or
3 paragraph (1) of this subsection must be at least 200 miles.

4 (C) If the Secretary prescribes a minimum driving range of 200 miles for
5 dual fueled automobiles (except electric automobiles) under paragraph (1)
6 of this subsection, subparagraph (A) of this paragraph does not apply to
7 dual fueled automobiles (except electric automobiles).

8 (3) In prescribing a minimum driving range under paragraph (1) of this
9 subsection and in taking an action under paragraph (2) of this subsection,
10 the Secretary shall consider the purpose set forth in section 3 of the Alter-
11 native Motor Fuels Act of 1988 (Public Law 100-494, 102 Stat. 2442),
12 consumer acceptability, economic practicability, technology, environmental
13 impact, safety, drivability, performance, and other factors the Secretary con-
14 sidered relevant.

15 **§ 32902. Average fuel economy standards**

16 (a) NON-PASSENGER AUTOMOBILES.—At least 18 months before the be-
17 ginning of each model year, the Secretary of Transportation shall prescribe
18 by regulation average fuel economy standards for automobiles (except pas-
19 senger automobiles) manufactured by a manufacturer in that model year.
20 Each standard shall be the maximum feasible average fuel economy level
21 that the Secretary decides the manufacturers can achieve in that model
22 year. The Secretary may prescribe separate standards for different classes
23 of automobiles.

24 (b) PASSENGER AUTOMOBILES.—Except as provided in this section, the
25 average fuel economy standard for passenger automobiles manufactured by
26 a manufacturer in a model year after model year 1984 shall be 27.5 miles
27 a gallon.

28 (c) AMENDING PASSENGER AUTOMOBILE STANDARDS.—(1) Subject to
29 paragraph (2) of this subsection, the Secretary of Transportation may pre-
30 scribe regulations amending the standard under subsection (b) of this sec-
31 tion for a model year to a level that the Secretary decides is the maximum
32 feasible average fuel economy level for that model year. Section 553 of title
33 5 applies to a proceeding to amend the standard. However, any interested
34 person may make an oral presentation and a transcript shall be taken of
35 that presentation.

36 (2) If an amendment increases the standard above 27.5 miles a gallon
37 or decreases the standard below 26.0 miles a gallon, the Secretary of Trans-
38 portation shall submit the amendment to Congress. The procedures of sec-
39 tion 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) apply
40 to an amendment, except that the 15 calendar days referred to in section
41 551(c) and (d) of the Act (42 U.S.C. 6421(c), (d)) are deemed to be 60

1 calendar days, and the 5 calendar days referred to in section 551(f)(4)(A)
2 of the Act (42 U.S.C. 6421(f)(4)(A)) are deemed to be 20 calendar days.
3 If either House of Congress disapproves the amendment under those proce-
4 dures, the amendment does not take effect.

5 (d) EXEMPTIONS.—(1) Except as provided in paragraph (3) of this sub-
6 section, on application of a manufacturer that manufactured (whether in the
7 United States or not) fewer than 10,000 passenger automobiles in the model
8 year 2 years before the model year for which the application is made, the
9 Secretary of Transportation may exempt by regulation the manufacturer
10 from a standard under subsection (b) or (c) of this section. An exemption
11 for a model year applies only if the manufacturer manufactures (whether
12 in the United States or not) fewer than 10,000 passenger automobiles in
13 the model year. The Secretary may exempt a manufacturer only if the Sec-
14 retary—

15 (A) finds that the applicable standard under those subsections is
16 more stringent than the maximum feasible average fuel economy level
17 that the manufacturer can achieve; and

18 (B) prescribes by regulation an alternative average fuel economy
19 standard for the passenger automobiles manufactured by the exempted
20 manufacturer that the Secretary decides is the maximum feasible aver-
21 age fuel economy level for the manufacturers to which the alternative
22 standard applies.

23 (2) An alternative average fuel economy standard the Secretary of Trans-
24 portation prescribes under paragraph (1)(B) of this subsection may apply
25 to an individually exempted manufacturer, to all automobiles to which this
26 subsection applies, or to classes of passenger automobiles, as defined under
27 regulations of the Secretary, manufactured by exempted manufacturers.

28 (3) Notwithstanding paragraph (1) of this subsection, an importer reg-
29 istered under section 30141(c) of this title may not be exempted as a manu-
30 facturer under paragraph (1) for a motor vehicle that the importer—

31 (A) imports; or

32 (B) brings into compliance with applicable motor vehicle safety
33 standards prescribed under chapter 301 of this title for an individual
34 under section 30142 of this title.

35 (4) The Secretary of Transportation may prescribe the contents of an ap-
36 plication for an exemption.

37 (e) EMERGENCY VEHICLES.—(1) In this subsection, “emergency vehicle”
38 means an automobile manufactured primarily for use—

39 (A) as an ambulance or combination ambulance-hearse;

40 (B) by the United States Government or a State or local government
41 for law enforcement; or

1 (C) for other emergency uses prescribed by regulation by the Sec-
2 retary of Transportation.

3 (2) A manufacturer may elect to have the fuel economy of an emergency
4 vehicle excluded in applying a fuel economy standard under subsection (a),
5 (b), (c), or (d) of this section. The election is made by providing written
6 notice to the Secretary of Transportation and to the Administrator of the
7 Environmental Protection Agency.

8 (f) CONSIDERATIONS ON DECISIONS ON MAXIMUM FEASIBLE AVERAGE
9 FUEL ECONOMY.—When deciding maximum feasible average fuel economy
10 under this section, the Secretary of Transportation shall consider techno-
11 logical feasibility, economic practicability, the effect of other motor vehicle
12 standards of the Government on fuel economy, and the need of the United
13 States to conserve energy.

14 (g) REQUIREMENTS FOR OTHER AMENDMENTS.—(1) The Secretary of
15 Transportation may prescribe regulations amending an average fuel econ-
16 omy standard prescribed under subsection (a) or (d) of this section if the
17 amended standard meets the requirements of subsection (a) or (d), as ap-
18 propriate.

19 (2) When the Secretary of Transportation prescribes an amendment
20 under this section that makes an average fuel economy standard more strin-
21 gent, the Secretary shall prescribe the amendment (and submit the amend-
22 ment to Congress when required under subsection (c)(2) of this section) at
23 least 18 months before the beginning of the model year to which the amend-
24 ment applies.

25 (h) LIMITATIONS.—In carrying out subsections (c), (f), and (g) of this
26 section, the Secretary of Transportation—

- 27 (1) may not consider the fuel economy of dedicated automobiles; and
28 (2) shall consider dual fueled automobiles to be operated only on gas-
29 oline or diesel fuel.

30 (i) CONSULTATION.—The Secretary of Transportation shall consult with
31 the Secretary of Energy in carrying out this section and section 32903 of
32 this title.

33 (j) SECRETARY OF ENERGY COMMENTS.—(1) Before issuing a notice pro-
34 posing to prescribe or amend an average fuel economy standard under sub-
35 section (a), (c), or (g) of this section, the Secretary of Transportation shall
36 give the Secretary of Energy at least 10 days from the receipt of the notice
37 during which the Secretary of Energy may, if the Secretary of Energy con-
38 cludes that the proposed standard would adversely affect the conservation
39 goals of the Secretary of Energy, provide written comments to the Secretary
40 of Transportation about the impact of the standard on those goals. To the
41 extent the Secretary of Transportation does not revise a proposed standard

1 to take into account comments of the Secretary of Energy on any adverse
2 impact of the standard, the Secretary of Transportation shall include those
3 comments in the notice.

4 (2) Before taking final action on a standard or an exemption from a
5 standard under this section, the Secretary of Transportation shall notify the
6 Secretary of Energy and provide the Secretary of Energy a reasonable time
7 to comment.

8 **§32903. Credits for exceeding average fuel economy stand-**
9 **ards**

10 (a) EARNING AND PERIOD FOR APPLYING CREDITS.—When the average
11 fuel economy of passenger automobiles manufactured by a manufacturer in
12 a particular model year exceeds an applicable average fuel economy stand-
13 ard under section 32902(b)–(d) of this title (determined by the Secretary
14 of Transportation without regard to credits under this section), the manu-
15 facturer earns credits. The credits may be applied to—

16 (1) any of the 3 consecutive model years immediately before the
17 model year for which the credits are earned; and

18 (2) to the extent not used under clause (1) of this subsection, any
19 of the 3 consecutive model years immediately after the model year for
20 which the credits are earned.

21 (b) PERIOD OF AVAILABILITY AND PLAN FOR FUTURE CREDITS.—(1)
22 Except as provided in paragraph (2) of this subsection, credits under this
23 section are available to a manufacturer at the end of the model year in
24 which earned.

25 (2)(A) Before the end of a model year, if a manufacturer has reason to
26 believe that its average fuel economy for passenger automobiles will be less
27 than the applicable standard for that model year, the manufacturer may
28 submit a plan to the Secretary of Transportation demonstrating that the
29 manufacturer will earn sufficient credits under this section within the next
30 3 model years to allow the manufacturer to meet that standard for the
31 model year involved. Unless the Secretary finds that the manufacturer is
32 unlikely to earn sufficient credits under the plan, the Secretary shall ap-
33 prove the plan. Those credits are available for the model year involved if—

34 (i) the Secretary approves the plan; and

35 (ii) the manufacturer earns those credits as provided by the plan.

36 (B) If the average fuel economy of a manufacturer is less than the appli-
37 cable standard under section 32902(b)–(d) of this title after applying credits
38 under subsection (a)(1) of this section, the Secretary of Transportation shall
39 notify the manufacturer and give the manufacturer a reasonable time (of
40 at least 60 days) to submit a plan.

1 (c) DETERMINING NUMBER OF CREDITS.—The number of credits a man-
2 ufacturer earns under this section equals the product of—

3 (1) the number of tenths of a mile a gallon by which the average
4 fuel economy of the passenger automobiles manufactured by the manu-
5 facturer in the model year in which the credits are earned exceeds the
6 applicable average fuel economy standard under section 32902(b)–(d)
7 of this title; times

8 (2) the number of passenger automobiles manufactured by the man-
9 ufacturer during that model year.

10 (d) APPLYING CREDITS FOR PASSENGER AUTOMOBILES.—The Secretary
11 of Transportation shall apply credits to a model year on the basis of the
12 number of tenths of a mile a gallon by which the manufacturer involved was
13 below the applicable average fuel economy standard for that model year and
14 the number of passenger automobiles manufactured that model year by the
15 manufacturer. Credits applied to a model year are no longer available for
16 another model year. Before applying credits, the Secretary shall give the
17 manufacturer written notice and reasonable opportunity to comment.

18 (e) APPLYING CREDITS FOR NON-PASSENGER AUTOMOBILES.—Credits
19 for a manufacturer of automobiles that are not passenger automobiles are
20 earned and applied to a model year in which the average fuel economy of
21 that class of automobiles is below the applicable average fuel economy
22 standard under section 32902(a) of this title, to the same extent and in the
23 same way as provided in this section for passenger automobiles.

24 (f) REFUND OF COLLECTED PENALTY.—When a civil penalty has been
25 collected under this chapter from a manufacturer that has earned credits
26 under this section, the Secretary of the Treasury shall refund to the manu-
27 facturer the amount of the penalty to the extent the penalty is attributable
28 to credits available under this section.

29 **§ 32904. Calculation of average fuel economy**

30 (a) METHOD OF CALCULATION.—(1) The Administrator of the Environ-
31 mental Protection Agency shall calculate the average fuel economy of a
32 manufacturer subject to—

33 (A) section 32902(a) of this title in a way prescribed by the Admin-
34 istrator; and

35 (B) section 32902(b)–(d) of this title by dividing—

36 (i) the number of passenger automobiles manufactured by the
37 manufacturer in a model year; by

38 (ii) the sum of the fractions obtained by dividing the number
39 of passenger automobiles of each model manufactured by the man-
40 ufacturer in that model year by the fuel economy measured for
41 that model.

1 (2)(A) In this paragraph, “electric vehicle” means a vehicle powered pri-
2 marily by an electric motor drawing electrical current from a portable
3 source.

4 (B) If a manufacturer manufactures an electric vehicle, the Administrator
5 shall include in the calculation of average fuel economy under paragraph (1)
6 of this subsection equivalent petroleum based fuel economy values deter-
7 mined by the Secretary of Energy for various classes of electric vehicles.
8 The Secretary shall review those values each year and determine and pro-
9 pose necessary revisions based on the following factors:

10 (i) the approximate electrical energy efficiency of the vehicle, consid-
11 ering the kind of vehicle and the mission and weight of the vehicle.

12 (ii) the national average electrical generation and transmission effi-
13 ciencies.

14 (iii) the need of the United States to conserve all forms of energy
15 and the relative scarcity and value to the United States of all fuel used
16 to generate electricity.

17 (iv) the specific patterns of use of electric vehicles compared to pe-
18 troleum-fueled vehicles.

19 (b) SEPARATE CALCULATIONS FOR PASSENGER AUTOMOBILES MANU-
20 FACTURED DOMESTICALLY AND NOT DOMESTICALLY.—(1) In this sub-
21 section—

22 (A) a passenger automobile is deemed to be manufactured domesti-
23 cally in a model year if at least 75 percent of the cost to the manufac-
24 turer is attributable to value added in the United States or Canada,
25 unless the assembly of the automobile is completed in Canada and the
26 automobile is imported into the United States more than 30 days after
27 the end of the model year; and

28 (B) the fuel economy of a passenger automobile that is not manufac-
29 tured domestically is deemed to be equal to the average fuel economy
30 of all passenger automobiles manufactured by the same manufacturer
31 that are not manufactured domestically.

32 (2)(A) Except as provided in paragraphs (4) and (5) of this subsection,
33 the Administrator shall make separate calculations under subsection
34 (a)(1)(B) of this section for—

35 (i) passenger automobiles manufactured domestically by a manufac-
36 turer (or included in this category under paragraph (3) of this sub-
37 section); and

38 (ii) passenger automobiles not manufactured domestically by that
39 manufacturer (or excluded from this category under paragraph (3) of
40 this subsection).

1 (B) Passenger automobiles described in subparagraph (A)(i) and (ii) of
2 this paragraph are deemed to be manufactured by separate manufacturers
3 under this chapter.

4 (3)(A) A manufacturer may submit to the Secretary of Transportation for
5 approval a plan, including supporting material, stating the actions and the
6 deadlines for taking the actions, that will ensure that the model or models
7 referred to in subparagraph (B) of this paragraph will be manufactured do-
8 mesticly before the end of the 4th model year covered by the plan. The
9 Secretary promptly shall consider and act on the plan. The Secretary shall
10 approve the plan unless—

11 (i) the Secretary finds that the plan is inadequate to meet the re-
12 quirements of this paragraph; or

13 (ii) the manufacturer previously has submitted a plan approved by
14 the Secretary under this paragraph.

15 (B) If the plan is approved, the Administrator shall include under para-
16 graph (2)(A)(i) and exclude under paragraph (2)(A)(ii) of this subsection,
17 for each of the 4 model years covered by the plan, not more than 150,000
18 passenger automobiles manufactured by that manufacturer but not qualify-
19 ing as domestically manufactured if—

20 (i) the model or models involved previously have not been manufac-
21 tured domestically;

22 (ii) at least 50 percent of the cost to the manufacturer of each of
23 the automobiles is attributable to value added in the United States or
24 Canada;

25 (iii) the automobiles, if their assembly was completed in Canada, are
26 imported into the United States not later than 30 days after the end
27 of the model year; and

28 (iv) the model or models are manufactured domestically before the
29 end of the 4th model year covered by the plan.

30 (4)(A) A manufacturer may file with the Secretary of Transportation a
31 petition for an exemption from the requirement of separate calculations
32 under paragraph (2)(A) of this subsection if the manufacturer began auto-
33 mobile production or assembly in the United States—

34 (i) after December 22, 1975, and before May 1, 1980; or

35 (ii) after April 30, 1980, if the manufacturer has engaged in the pro-
36 duction or assembly in the United States for at least one model year
37 ending before January 1, 1986.

38 (B) The Secretary of Transportation shall grant the exemption unless the
39 Secretary finds that the exemption would result in reduced employment in
40 the United States related to motor vehicle manufacturing during the period
41 of the exemption. An exemption under this paragraph is effective for 5

1 model years or, if requested by the manufacturer, a longer period provided
2 by the Secretary in the order granting the exemption. The exemption applies
3 to passenger automobiles manufactured by that manufacturer during the pe-
4 riod of the exemption.

5 (C) Before granting an exemption, the Secretary of Transportation shall
6 provide notice of, and reasonable opportunity for, written or oral comment
7 about the petition. The period for comment shall end not later than 60 days
8 after the petition is filed, except that the Secretary may extend the period
9 for not more than another 30 days. The Secretary shall decide whether to
10 grant or deny the exemption, and publish notice of the decision in the Fed-
11 eral Register, not later than 90 days after the petition is filed, except that
12 the Secretary may extend the time for decision to a later date (not later
13 than 150 days after the petition is filed) if the Secretary publishes notice
14 of, and reasons for, the extension in the Federal Register. If the Secretary
15 does not make a decision within the time provided in this subparagraph, the
16 petition is deemed to have been granted. Not later than 30 days after the
17 end of the decision period, the Secretary shall submit a written statement
18 of the reasons for not making a decision to the Committee on Commerce,
19 Science, and Transportation of the Senate and the Committee on Energy
20 and Commerce of the House of Representatives.

21 (5)(A) A person adversely affected by a decision of the Secretary of
22 Transportation granting or denying an exemption may file, not later than
23 30 days after publication of the notice of the decision, a petition for review
24 in the United States Court of Appeals for the District of Columbia Circuit.
25 That court has exclusive jurisdiction to review the decision and to affirm,
26 remand, or set aside the decision under section 706(2)(A)–(D) of title 5.

27 (B) A judgment of the court under this subparagraph may be reviewed
28 by the Supreme Court under section 1254 of title 28. Application for review
29 by the Supreme Court must be made not later than 30 days after entry
30 of the court's judgment.

31 (C) A decision of the Secretary of Transportation on a petition for an
32 exemption under this paragraph may be reviewed administratively or judi-
33 cially only as provided in this paragraph.

34 (6) Notwithstanding section 32903 of this title, during a model year when
35 an exemption under this paragraph is effective for a manufacturer—

36 (A) credit may not be earned under section 32903(a) of this title by
37 the manufacturer; and

38 (B) credit may not be made available under section 32903(b)(2) of
39 this title for the manufacturer.

40 (c) TESTING AND CALCULATION PROCEDURES.—The Administrator shall
41 measure fuel economy for each model and calculate average fuel economy

1 for a manufacturer under testing and calculation procedures prescribed by
2 the Administrator. However, except under section 32908 of this title, the
3 Administrator shall use the same procedures for passenger automobiles the
4 Administrator used for model year 1975 (weighted 55 percent urban cycle
5 and 45 percent highway cycle), or procedures that give comparable results.
6 A measurement of fuel economy or a calculation of average fuel economy
7 (except under section 32908) shall be rounded off to the nearest .1 of a
8 mile a gallon. The Administrator shall decide on the quantity of other fuel
9 that is equivalent to one gallon of gasoline. To the extent practicable, fuel
10 economy tests shall be carried out with emissions tests under section 206
11 of the Clean Air Act (42 U.S.C. 7525).

12 (d) EFFECTIVE DATE OF PROCEDURE OR AMENDMENT.—The Adminis-
13 trator shall prescribe a procedure under this section, or an amendment (ex-
14 cept a technical or clerical amendment) in a procedure, at least 12 months
15 before the beginning of the model year to which the procedure or amend-
16 ment applies.

17 (e) REPORTS AND CONSULTATION.—The Administrator shall report
18 measurements and calculations under this section to the Secretary of Trans-
19 portation and shall consult and coordinate with the Secretary in carrying
20 out this section.

21 **§ 32905. Manufacturing incentives for alternative fuel auto-**
22 **mobiles**

23 (a) DEDICATED AUTOMOBILES.—Except as provided in subsection (c) of
24 this section or section 32904(a)(2) of this title, for any model of dedicated
25 automobile manufactured by a manufacturer after model year 1992, the fuel
26 economy measured for that model shall be based on the fuel content of the
27 alternative fuel used to operate the automobile. A gallon of a liquid alter-
28 native fuel used to operate a dedicated automobile is deemed to contain .15
29 gallon of fuel.

30 (b) DUAL FUELED AUTOMOBILES.—Except as provided in subsection (d)
31 of this section or section 32904(a)(2) of this title, for any model of dual
32 fueled automobile manufactured by a manufacturer in model years 1993–
33 2004, the Administrator of the Environmental Protection Agency shall
34 measure the fuel economy for that model by dividing 1.0 by the sum of—

35 (1) .5 divided by the fuel economy measured under section 32904(c)
36 of this title when operating the model on gasoline or diesel fuel; and

37 (2) .5 divided by the fuel economy measured under subsection (a)
38 of this section when operating the model on alternative fuel.

39 (c) GASEOUS FUEL DEDICATED AUTOMOBILES.—For any model of gase-
40 ous fuel dedicated automobile manufactured by a manufacturer after model
41 year 1992, the Administrator shall measure the fuel economy for that model

1 based on the fuel content of the gaseous fuel used to operate the auto-
2 mobile. One hundred cubic feet of natural gas is deemed to contain .823
3 gallon equivalent of natural gas. The Secretary of Transportation shall de-
4 termine the appropriate gallon equivalent of other gaseous fuels. A gallon
5 equivalent of gaseous fuel is deemed to have a fuel content of .15 gallon
6 of fuel.

7 (d) GASEOUS FUEL DUAL FUELED AUTOMOBILES.—For any model of
8 gaseous fuel dual fueled automobile manufactured by a manufacturer in
9 model years 1993–2004, the Administrator shall measure the fuel economy
10 for that model by dividing 1.0 by the sum of—

11 (1) .5 divided by the fuel economy measured under section 32904(c)
12 of this title when operating the model on gasoline or diesel fuel; and

13 (2) .5 divided by the fuel economy measured under subsection (c) of
14 this section when operating the model on gaseous fuel.

15 (e) FUEL ECONOMY CALCULATIONS.—The Administrator shall calculate
16 the manufacturer's average fuel economy under section 32904(a)(1) of this
17 title for each model described under subsections (a)–(d) of this section by
18 using as the denominator the fuel economy measured for each model under
19 subsections (a)–(d).

20 (f) EXTENDING APPLICATION OF SUBSECTIONS (b) AND (d).—Not later
21 than December 31, 2001, the Secretary of Transportation shall—

22 (1) extend by regulation the application of subsections (b) and (d)
23 of this section for not more than 4 consecutive model years immediately
24 after model year 2004 and explain the basis on which the extension is
25 granted; or

26 (2) publish a notice explaining the reasons for not extending the ap-
27 plication of subsections (b) and (d) of this section.

28 (g) STUDY AND REPORT.—Not later than September 30, 2000, the Sec-
29 retary of Transportation, in consultation with the Secretary of Energy and
30 the Administrator, shall complete a study of the success of the policy of sub-
31 sections (b) and (d) of this title, and submit to the Committees on Com-
32 merce, Science, and Transportation and Governmental Affairs of the Senate
33 and the Committee on Energy and Commerce of the House of Representa-
34 tives a report on the results of the study, including preliminary conclusions
35 on whether the application of subsections (b) and (d) should be extended
36 for up to 4 more model years. The study and conclusions shall consider—

37 (1) the availability to the public of alternative fueled automobiles and
38 alternative fuel;

39 (2) energy conservation and security;

40 (3) environmental considerations; and

41 (4) other relevant factors.

1 **§ 32906. Maximum fuel economy increase for alternative fuel**
2 **automobiles**

3 (a) MAXIMUM INCREASES.—(1)(A) For each of the model years 1993–
4 2004 for each category of automobile (except an electric automobile), the
5 maximum increase in average fuel economy for a manufacturer attributable
6 to dual fueled automobiles is 1.2 miles a gallon.

7 (B) If the application of section 32905(b) and (d) of this title is extended
8 under section 32905(f) of this title, for each category of automobile (except
9 an electric automobile) the maximum increase in average fuel economy for
10 a manufacturer for each of the model years 2005–2008 attributable to dual
11 fueled automobiles is .9 mile a gallon.

12 (2) In applying paragraph (1) of this subsection, the Administrator of the
13 Environmental Protection Agency shall determine the increase in a manu-
14 facturer’s average fuel economy attributable to dual fueled automobiles by
15 subtracting from the manufacturer’s average fuel economy calculated under
16 section 32905(e) of this title the number equal to what the manufacturer’s
17 average fuel economy would be if it were calculated by the formula in sec-
18 tion 32904(a)(1) of this title by including as the denominator for each
19 model of dual fueled automobile the fuel economy when the automobiles are
20 operated on gasoline or diesel fuel. If the increase attributable to dual fueled
21 automobiles for any model year described—

22 (A) in paragraph (1)(A) of this subsection is more than 1.2 miles
23 a gallon, the limitation in paragraph (1)(A) applies; and

24 (B) in paragraph (1)(B) of this subsection is more than .9 mile a
25 gallon, the limitation in paragraph (1)(B) applies.

26 (b) OFFSETS.—Notwithstanding this section and sections 32901(c) and
27 32905 of this title, if the Secretary of Transportation reduces the average
28 fuel economy standard for passenger automobiles for any model year below
29 27.5 miles a gallon, an increase in average fuel economy for passenger auto-
30 mobiles of more than .7 mile a gallon to which a manufacturer of dual
31 fueled automobiles would otherwise be entitled is reduced by an amount
32 equal to the amount of the reduction in the standard. However, the increase
33 may not be reduced to less than .7 mile a gallon.

34 **§ 32907. Reports and tests of manufacturers**

35 (a) MANUFACTURER REPORTS.—(1) A manufacturer shall report to the
36 Secretary of Transportation on—

37 (A) whether the manufacturer will comply with an applicable average
38 fuel economy standard under section 32902 of this title for the model
39 year for which the report is made;

40 (B) the actions the manufacturer has taken or intends to take to
41 comply with the standard; and

1 (C) other information the Secretary requires by regulation.

2 (2) A manufacturer shall submit a report under paragraph (1) of this
3 subsection during the 30 days—

4 (A) before the beginning of each model year; and

5 (B) beginning on the 180th day of the model year.

6 (3) When a manufacturer decides that actions reported under paragraph
7 (1)(B) of this subsection are not sufficient to ensure compliance with that
8 standard, the manufacturer shall report to the Secretary additional actions
9 the manufacturer intends to take to comply with the standard and include
10 a statement about whether those actions are sufficient to ensure compliance.

11 (4) This subsection does not apply to a manufacturer for a model year
12 for which the manufacturer is subject to an alternative average fuel econ-
13 omy standard under section 32902(d) of this title.

14 (b) RECORDS, REPORTS, TESTS, INFORMATION, AND INSPECTION.—(1)
15 Under regulations prescribed by the Secretary or the Administrator of the
16 Environmental Protection Agency to carry out this chapter, a manufacturer
17 shall keep records, make reports, conduct tests, and provide items and infor-
18 mation. On request and display of proper credentials, an officer or employee
19 designated by the Secretary or Administrator may inspect automobiles and
20 records of the manufacturer. An inspection shall be made at a reasonable
21 time and in a reasonable way.

22 (2) The district courts of the United States may—

23 (A) issue an order enforcing a requirement or request under para-
24 graph (1) of this subsection; and

25 (B) punish a failure to obey the order as a contempt of court.

26 **§ 32908. Fuel economy information**

27 (a) DEFINITIONS.—In this section—

28 (1) “automobile” includes an automobile rated at not more than
29 8,500 pounds gross vehicle weight regardless of whether the Secretary
30 of Transportation has applied this chapter to the automobile under sec-
31 tion 32901(a)(3)(B) of this title.

32 (2) “dealer” means a person residing or located in a State, the Dis-
33 trict of Columbia, or a territory or possession of the United States, and
34 engaged in the sale or distribution of new automobiles to the first per-
35 son (except a dealer buying as a dealer) that buys the automobile in
36 good faith other than for resale.

37 (b) LABELING REQUIREMENTS AND CONTENTS.—(1) Under regulations
38 of the Administrator of the Environmental Protection Agency, a manufac-
39 turer of automobiles shall attach a label to a prominent place on each au-
40 tomobile manufactured in a model year. The dealer shall maintain the label.
41 The label shall contain the following information:

- 1 (A) the fuel economy of the automobile.
- 2 (B) the estimated annual fuel cost of operating the automobile.
- 3 (C) the range of fuel economy of comparable automobiles of all man-
4 ufacturers.
- 5 (D) a statement that a booklet is available from the dealer to assist
6 in making a comparison of fuel economy of other automobiles manufac-
7 tured by all manufacturers in that model year.
- 8 (E) the amount of the automobile fuel efficiency tax imposed on the
9 sale of the automobile under section 4064 of the Internal Revenue Code
10 of 1986 (26 U.S.C. 4064).
- 11 (F) other information required or authorized by the Administrator
12 that is related to the information required by clauses (A)–(D) of this
13 paragraph.
- 14 (2) The Administrator may allow a manufacturer to comply with this sub-
15 section by—
- 16 (A) disclosing the information on the label required under section 3
17 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and
- 18 (B) including the statement required by paragraph (1)(E) of this
19 subsection at a time and in a way that takes into account special cir-
20 cumstances or characteristics.
- 21 (3) For dedicated automobiles manufactured after model year 1992, the
22 fuel economy of those automobiles under paragraph (1)(A) of this sub-
23 section is the fuel economy for those automobiles when operated on alter-
24 native fuel, measured under section 32905(a) or (c) of this title, multiplied
25 by .15. Each label required under paragraph (1) of this subsection for dual
26 fueled automobiles shall—
- 27 (A) indicate the fuel economy of the automobile when operated on
28 gasoline or diesel fuel;
- 29 (B) clearly identify the automobile as a dual fueled automobile;
- 30 (C) clearly identify the fuels on which the automobile may be oper-
31 ated; and
- 32 (D) contain a statement informing the consumer that the additional
33 information required by subsection (c)(2) of this section is published
34 and distributed by the Secretary of Energy.
- 35 (c) FUEL ECONOMY INFORMATION BOOKLET.—(1) The Administrator
36 shall prepare the booklet referred to in subsection (b)(1)(D) of this section.
37 The booklet—
- 38 (A) shall be simple and readily understandable;
- 39 (B) shall contain information on fuel economy and estimated annual
40 fuel costs of operating automobiles manufactured in each model year;
41 and

1 (C) may contain information on geographical or other differences in
2 estimated annual fuel costs.

3 (2)(A) For dual fueled automobiles manufactured after model year 1992,
4 the booklet published under paragraph (1) shall contain additional informa-
5 tion on—

6 (i) the energy efficiency and cost of operation of those automobiles
7 when operated on gasoline or diesel fuel as compared to those auto-
8 mobiles when operated on alternative fuel; and

9 (ii) the driving range of those automobiles when operated on gasoline
10 or diesel fuel as compared to those automobiles when operated on alter-
11 native fuel.

12 (B) For dual fueled automobiles, the booklet published under paragraph
13 (1) also shall contain—

14 (i) information on the miles a gallon achieved by the automobiles
15 when operated on alternative fuel; and

16 (ii) a statement explaining how the information made available under
17 this paragraph can be expected to change when the automobile is oper-
18 ated on mixtures of alternative fuel and gasoline or diesel fuel.

19 (3) The Secretary of Energy shall publish and distribute the booklet. The
20 Administrator shall prescribe regulations requiring dealers to make the
21 booklet available to prospective buyers.

22 (d) DISCLOSURE.—A disclosure about fuel economy or estimated annual
23 fuel costs under this section does not establish a warranty under a law of
24 the United States or a State.

25 (e) VIOLATIONS.—A violation of subsection (b) of this section is—

26 (1) a violation of section 3 of the Automobile Information Disclosure
27 Act (15 U.S.C. 1232); and

28 (2) an unfair or deceptive act or practice in or affecting commerce
29 under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), ex-
30 cept sections 5(m) and 18 (15 U.S.C. 45(m), 57a).

31 (f) CONSULTATION.—The Administrator shall consult with the Federal
32 Trade Commission and the Secretaries of Transportation and Energy in
33 carrying out this section.

34 **§ 32909. Judicial review of regulations**

35 (a) FILING AND VENUE.—(1) A person that may be adversely affected
36 by a regulation prescribed in carrying out section 32901–32904 or 32908
37 of this title may apply for review of the regulation by filing a petition for
38 review in the United States Court of Appeals for the District of Columbia
39 Circuit or in the court of appeals of the United States for the circuit in
40 which the person resides or has its principal place of business.

1 (2) A person adversely affected by a regulation prescribed under section
2 32912(c)(1) of this title may apply for review of the regulation by filing a
3 petition for review in the court of appeals of the United States for the cir-
4 cuit in which the person resides or has its principal place of business.

5 (b) TIME FOR FILING AND JUDICIAL PROCEDURES.—The petition must
6 be filed not later than 59 days after the regulation is prescribed, except that
7 a petition for review of a regulation prescribing an amendment of a stand-
8 ard submitted to Congress under section 32902(c)(2) of this title must be
9 filed not later than 59 days after the end of the 60-day period referred to
10 in section 32902(c)(2). The clerk of the court shall send immediately a copy
11 of the petition to the Secretary of Transportation or the Administrator of
12 the Environmental Protection Agency, whoever prescribed the regulation.
13 The Secretary or the Administrator shall file with the court a record of the
14 proceeding in which the regulation was prescribed.

15 (c) ADDITIONAL PROCEEDINGS.—(1) When reviewing a regulation under
16 subsection (a)(1) of this section, the court, on request of the petitioner, may
17 order the Secretary or the Administrator to receive additional submissions
18 if the court is satisfied the additional submissions are material and there
19 were reasonable grounds for not presenting the submissions in the proceed-
20 ing before the Secretary or Administrator.

21 (2) The Secretary or the Administrator may amend or set aside the regu-
22 lation, or prescribe a new regulation because of the additional submissions
23 presented. The Secretary or Administrator shall file an amended or new regu-
24 lation and the additional submissions with the court. The court shall re-
25 view a changed or new regulation.

26 (d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judg-
27 ment of a court under this section may be reviewed only by the Supreme
28 Court under section 1254 of title 28. A remedy under subsections (a)(1)
29 and (c) of this section is in addition to any other remedies provided by law.

30 **§ 32910. Administrative**

31 (a) GENERAL POWERS.—(1) In carrying out this chapter, the Secretary
32 of Transportation or the Administrator of the Environmental Protection
33 Agency may—

34 (A) inspect and copy records of any person at reasonable times;

35 (B) order a person to file written reports or answers to specific ques-
36 tions, including reports or answers under oath; and

37 (C) conduct hearings, administer oaths, take testimony, and subpoena
38 witnesses and records the Secretary or Administrator considers advis-
39 able.

1 (2) A witness summoned under paragraph (1)(C) of this subsection is en-
2 titled to the same fee and mileage the witness would have been paid in a
3 court of the United States.

4 (b) CIVIL ACTIONS TO ENFORCE.—A civil action to enforce a subpoena
5 or order of the Secretary or Administrator under subsection (a) of this sec-
6 tion may be brought in the district court of the United States for the judi-
7 cial district in which the proceeding by the Secretary or Administrator was
8 conducted. The court may punish a failure to obey an order of the court
9 to comply with the subpoena or order of the Secretary or Administrator as
10 a contempt of court.

11 (c) DISCLOSURE OF INFORMATION.—The Secretary and the Adminis-
12 trator each shall disclose information obtained under this chapter (except
13 information obtained under section 32904(c) of this title) under section 552
14 of title 5. However, the Secretary or Administrator may withhold informa-
15 tion under section 552(b)(4) of title 5 only if the Secretary or Administrator
16 decides that disclosure of the information would cause significant competi-
17 tive damage. A matter referred to in section 552(b)(4) and relevant to an
18 administrative or judicial proceeding under this chapter may be disclosed in
19 that proceeding. A measurement or calculation under section 32904(c) of
20 this title shall be disclosed under section 552 of title 5 without regard to
21 section 552(b).

22 (d) REGULATIONS.—The Administrator may prescribe regulations to
23 carry out duties of the Administrator under this chapter.

24 **§ 32911. Compliance**

25 (a) GENERAL.—A person commits a violation if the person fails to comply
26 with this chapter and regulations and standards prescribed and orders is-
27 sued under this chapter (except sections 32902, 32903, 32908(b), and
28 32917(b) and regulations and standards prescribed and orders issued under
29 those sections). The Secretary of Transportation shall conduct a proceeding,
30 with an opportunity for a hearing on the record, to decide whether a person
31 has committed a violation. Any interested person may participate in a pro-
32 ceeding under this subsection.

33 (b) AUTOMOBILE MANUFACTURERS.—A manufacturer of automobiles
34 commits a violation if the manufacturer fails to comply with an applicable
35 average fuel economy standard under section 32902 of this title. Compliance
36 is determined after considering credits available to the manufacturer under
37 section 32903 of this title. If average fuel economy calculations under sec-
38 tion 32904(c) of this title indicate that a manufacturer has violated this
39 subsection, the Secretary shall conduct a proceeding, with an opportunity
40 for a hearing on the record, to decide whether a violation has been commit-
41 ted. The Secretary may not conduct the proceeding if further measurements

1 of fuel economy, further calculations of average fuel economy, or other in-
2 formation indicates a violation has not been committed. The results of the
3 measurements and calculations and the information shall be published in
4 the Federal Register. Any interested person may participate in a proceeding
5 under this subsection.

6 **§ 32912. Civil penalties**

7 (a) GENERAL PENALTY.—A person that violates section 32911(a) of this
8 title is liable to the United States Government for a civil penalty of not
9 more than \$10,000 for each violation. A separate violation occurs for each
10 day the violation continues.

11 (b) PENALTY FOR MANUFACTURER VIOLATIONS OF FUEL ECONOMY
12 STANDARDS.—Except as provided in subsection (c) of this section, a manu-
13 facturer that violates a standard prescribed for a model year under section
14 32902 of this title is liable to the Government for a civil penalty of \$5 mul-
15 tiplied by each .1 of a mile a gallon by which the applicable average fuel
16 economy standard under that section exceeds the average fuel economy—

17 (1) calculated under section 32904(a)(1)(A) or (B) of this title for
18 automobiles to which the standard applies manufactured by the manu-
19 facturer during the model year;

20 (2) multiplied by the number of those automobiles; and

21 (3) reduced by the credits available to the manufacturer under sec-
22 tion 32903 of this title for the model year.

23 (c) HIGHER PENALTY AMOUNTS.—(1)(A) The Secretary of Transpor-
24 tation shall prescribe by regulation a higher amount for each .1 of a mile
25 a gallon to be used in calculating a civil penalty under subsection (b) of this
26 section, if the Secretary decides that the increase in the penalty—

27 (i) will result in, or substantially further, substantial energy con-
28 servation for automobiles in model years in which the increased penalty
29 may be imposed; and

30 (ii) will not have a substantial deleterious impact on the economy of
31 the United States, a State, or a region of a State.

32 (B) The amount prescribed under subparagraph (A) of this paragraph
33 may not be more than \$10 for each .1 of a mile a gallon.

34 (C) The Secretary may make a decision under subparagraph (A)(ii) of
35 this paragraph only when the Secretary decides that it is likely that the in-
36 crease in the penalty will not—

37 (i) cause a significant increase in unemployment in a State or a re-
38 gion of a State;

39 (ii) adversely affect competition; or

40 (iii) cause a significant increase in automobile imports.

1 (D) A higher amount prescribed under subparagraph (A) of this para-
2 graph is effective for the model year beginning at least 18 months after the
3 regulation stating the higher amount becomes final.

4 (2) The Secretary shall publish in the Federal Register a proposed regu-
5 lation under this subsection and a statement of the basis for the regulation
6 and provide each manufacturer of automobiles a copy of the proposed regu-
7 lation and the statement. The Secretary shall provide a period of at least
8 45 days for written public comments on the proposed regulation. The Sec-
9 retary shall submit a copy of the proposed regulation to the Federal Trade
10 Commission and request the Commission to comment on the proposed regu-
11 lation within that period. After that period, the Secretary shall give inter-
12 ested persons and the Commission an opportunity at a public hearing to
13 present oral information, views, and arguments and to direct questions
14 about disputed issues of material fact to—

15 (A) other interested persons making oral presentations;

16 (B) employees and contractors of the Government that made written
17 comments or an oral presentation or participated in the development
18 or consideration of the proposed regulation; and

19 (C) experts and consultants that provided information to a person
20 that the person includes, or refers to, in an oral presentation.

21 (3) The Secretary may restrict the questions of an interested person and
22 the Commission when the Secretary decides that the questions are duplica-
23 tive or not likely to result in a timely and effective resolution of the issues.
24 A transcript shall be kept of a public hearing under this subsection. A copy
25 of the transcript and written comments shall be available to the public at
26 the cost of reproduction.

27 (4) The Secretary shall publish a regulation prescribed under this sub-
28 section in the Federal Register with the decisions required under paragraph
29 (1) of this subsection.

30 (5) An officer or employee of a department, agency, or instrumentality
31 of the Government violates section 1905 of title 18 by disclosing, except in
32 an in camera proceeding by the Secretary or a court, information—

33 (A) provided to the Secretary or the court during consideration or
34 review of a regulation prescribed under this subsection; and

35 (B) decided by the Secretary to be confidential under section 11(d)
36 of the Energy Supply and Environmental Coordination Act of 1974 (15
37 U.S.C. 796(d)).

38 (d) WRITTEN NOTICE REQUIREMENT.—The Secretary shall impose a
39 penalty under this section by written notice.

§ 32913. Compromising and remitting civil penalties

(a) GENERAL AUTHORITY AND LIMITATIONS.—The Secretary of Transportation may compromise or remit the amount of a civil penalty imposed under section 32912(a) or (b) of this title. However, the amount of a penalty imposed under section 32912(b) may be compromised or remitted only to the extent—

(1) necessary to prevent the insolvency or bankruptcy of the manufacturer of automobiles;

(2) the manufacturer shows that the violation was caused by an act of God, a strike, or a fire; or

(3) the Federal Trade Commission certifies under subsection (b)(1) of this section that a reduction in the penalty is necessary to prevent a substantial lessening of competition.

(b) PENALTY REDUCTION BY COMMISSION.—(1) A manufacturer liable for a civil penalty under section 32912(b) of this title may apply to the Commission for a certification that the penalty should be reduced to prevent a substantial lessening of competition in the segment of the motor vehicle industry subject to the standard that was violated. The Commission shall make the certification when it finds that reduction is necessary to prevent the lessening. The Commission shall state in the certification the maximum amount by which the penalty may be reduced.

(2) An application under this subsection must be made not later than 30 days after the Secretary decides that the manufacturer has violated section 32911(b) of this title. To the maximum extent practicable, the Commission shall make a decision on an application by the 90th day after the application is filed. A proceeding under this subsection may not delay the manufacturer's liability for the penalty for more than 90 days after the application is filed.

(3) When a civil penalty is collected in a civil action under this chapter before a decision of the Commission under this subsection is final, the payment shall be paid to the court in which the action was brought. The court shall deposit the payment in the general fund of the Treasury on the 90th day after the decision of the Commission becomes final. When the court is holding payment of a penalty reduced under subsection (a)(3) of this section, the Secretary shall direct the court to remit the appropriate amount of the penalty to the manufacturer.

§ 32914. Collecting civil penalties

(a) CIVIL ACTIONS.—If a person does not pay a civil penalty after it becomes a final order of the Secretary of Transportation or a judgment of a court of appeals of the United States for a circuit, the Attorney General shall bring a civil action in an appropriate district court of the United

1 States to collect the penalty. The validity and appropriateness of the final
2 order imposing the penalty is not reviewable in the action.

3 (b) PRIORITY OF CLAIMS.—A claim of a creditor against a bankrupt or
4 insolvent manufacturer of automobiles has priority over a claim of the Unit-
5 ed States Government against the manufacturer for a civil penalty under
6 section 32912(b) of this title when the creditor's claim is for credit extended
7 before a final judgment (without regard to section 32913(b)(1) and (2) of
8 this title) in an action to collect under subsection (a) of this section.

9 **§ 32915. Appealing civil penalties**

10 Any interested person may appeal a decision of the Secretary of Trans-
11 portation to impose a civil penalty under section 32912(a) or (b) of this
12 title, or of the Federal Trade Commission under section 32913(b)(1) of this
13 title, in the United States Court of Appeals for the District of Columbia
14 Circuit or in the court of appeals of the United States for the circuit in
15 which the person resides or has its principal place of business. A person ap-
16 pealing a decision must file a notice of appeal with the court not later than
17 30 days after the decision and, at the same time, send a copy of the notice
18 by certified mail to the Secretary or the Commission. The Secretary or the
19 Commission promptly shall file with the court a certified copy of the record
20 of the proceeding in which the decision was made.

21 **§ 32916. Reports to Congress**

22 (a) ANNUAL REPORT.—Not later than January 15 of each year, the Sec-
23 retary of Transportation shall submit to each House of Congress, and pub-
24 lish in the Federal Register, a report on the review by the Secretary of aver-
25 age fuel economy standards prescribed under this chapter.

26 (b) JOINT EXAMINATIONS AFTER GRANTING EXEMPTIONS.—(1) After an
27 exemption has been granted under section 32904(b)(4) of this title, the Sec-
28 retaries of Transportation and Labor shall conduct annually a joint exam-
29 ination of the extent to which section 32904(b)(4)—

30 (A) achieves the purposes of this chapter;

31 (B) improves fuel efficiency (thereby facilitating conservation of pe-
32 troleum and reducing petroleum imports);

33 (C) has promoted employment in the United States related to auto-
34 mobile manufacturing;

35 (D) has not caused unreasonable harm to the automobile manufac-
36 turing sector in the United States; and

37 (E) has permitted manufacturers that have assembled passenger
38 automobiles deemed to be manufactured domestically under section
39 32904(b)(1)(A) of this title thereafter to assemble in the United States
40 passenger automobiles of the same model that have less than 75 per-

1 cent of their value added in the United States or Canada, together with
2 the reasons.

3 (2) The Secretary of Transportation shall include the results of the exam-
4 ination under paragraph (1) of this subsection in each report submitted
5 under subsection (a) of this section more than 180 days after an exemption
6 has been granted under section 32904(b)(4) of this title, or submit the re-
7 sults of the examination directly to Congress before the report is submitted
8 when circumstances warrant.

9 **§ 32917. Standards for executive agency automobiles**

10 (a) DEFINITION.—In this section, “executive agency” has the same mean-
11 ing given that term in section 105 of title 5.

12 (b) FLEET AVERAGE FUEL ECONOMY.—(1) The President shall prescribe
13 regulations that require passenger automobiles leased for at least 60 con-
14 secutive days or bought by executive agencies in a fiscal year to achieve a
15 fleet average fuel economy (determined under paragraph (2) of this sub-
16 section) for that year of at least the greater of—

17 (A) 18 miles a gallon; or

18 (B) the applicable average fuel economy standard under section
19 32902(b) or (c) of this title for the model year that includes January
20 1 of that fiscal year.

21 (2) Fleet average fuel economy is—

22 (A) the total number of passenger automobiles leased for at least 60
23 consecutive days or bought by executive agencies in a fiscal year (ex-
24 cept automobiles designed for combat-related missions, law enforcement
25 work, or emergency rescue work); divided by

26 (B) the sum of the fractions obtained by dividing the number of
27 automobiles of each model leased or bought by the fuel economy of that
28 model.

29 **§ 32918. Preemption**

30 (a) GENERAL.—When an average fuel economy standard prescribed under
31 this chapter is in effect, a State or a political subdivision of a State may
32 not adopt or enforce a law or regulation related to fuel economy standards
33 or average fuel economy standards for automobiles covered by an average
34 fuel economy standard under this chapter.

35 (b) REQUIREMENTS MUST BE IDENTICAL.—When a requirement under
36 section 32908 of this title is in effect, a State or a political subdivision of
37 a State may adopt or enforce a law or regulation on disclosure of fuel econ-
38 omy or fuel operating costs for an automobile covered by section 32908 only
39 if the law or regulation is identical to that requirement.

1 (c) STATE AND POLITICAL SUBDIVISION AUTOMOBILES.—A State or a
 2 political subdivision of a State may prescribe requirements for fuel economy
 3 for automobiles obtained for its own use.

4 **CHAPTER 331—THEFT PREVENTION**

Sec.

- 33101. Definitions.
- 33102. Theft prevention standard for high theft lines.
- 33103. Theft prevention standard for other lines.
- 33104. Designation of high theft vehicle lines and parts.
- 33105. Cost limitations.
- 33106. Exemption for passenger motor vehicles equipped with anti-theft devices.
- 33107. Voluntary vehicle identification standards.
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- 33109. National Stolen Passenger Motor Vehicle Information System.
- 33110. Verifications involving junk and salvage motor vehicles.
- 33111. Verifications involving motor vehicle major parts.
- 33112. Insurance reports and information.
- 33113. Theft reports.
- 33114. Prohibited acts.
- 33115. Civil penalties and enforcement.
- 33116. Confidentiality of information.
- 33117. Judicial review.
- 33118. Preemption of State and local law.

5 **§ 33101. Definitions**

6 In this chapter—

7 (1) “chop shop” means a building, lot, facility, or other structure or
 8 premise at which at least one person engages in receiving, concealing,
 9 destroying, disassembling, dismantling, reassembling, or storing a pas-
 10 senger motor vehicle or passenger motor vehicle part that has been un-
 11 lawfully obtained—

12 (A) to alter, counterfeit, deface, destroy, disguise, falsify, forge,
 13 obliterate, or remove the identity of the vehicle or part, including
 14 the vehicle identification number or a derivative of that number;
 15 and

16 (B) to distribute, sell, or dispose of the vehicle or part in inter-
 17 state or foreign commerce.

18 (2) “covered major part” means a major part selected under sections
 19 33102(c)(1) and 33104 of this title for coverage by the vehicle theft
 20 prevention standard prescribed under section 33102 or 33103.

21 (3) “existing line” means a line introduced into commerce before
 22 January 1, 1990.

23 (4) “first purchaser” means the person making the first purchase
 24 other than for resale.

25 (5) “line” means a name that a manufacturer of motor vehicles ap-
 26 plies to a group of motor vehicle models of the same make that have
 27 the same body or chassis, or otherwise are similar in construction or
 28 design.

29 (6) “major part” means—

- 1 (A) the engine;
 2 (B) the transmission;
 3 (C) each door to the passenger compartment;
 4 (D) the hood;
 5 (E) the grille;
 6 (F) each bumper;
 7 (G) each front fender;
 8 (H) the deck lid, tailgate, or hatchback;
 9 (I) each rear quarter panel;
 10 (J) the trunk floor pan;
 11 (K) the frame or, for a unitized body, the supporting structure
 12 serving as the frame; and
 13 (L) any other part of a passenger motor vehicle that the Sec-
 14 retary of Transportation by regulation specifies as comparable in
 15 design or function to any of the parts listed in subclauses (A)-
 16 (K) of this clause.
- 17 (7) “major replacement part” means a major part that is—
 18 (A) an original major part in or on a completed motor vehicle
 19 and customized or modified after manufacture of the vehicle but
 20 before the time of its delivery to the first purchaser; or
 21 (B) not installed in or on a motor vehicle at the time of its de-
 22 livery to the first purchaser and the equitable or legal title to the
 23 vehicle has not been transferred to a first purchaser.
- 24 (8) “model year” has the same meaning given that term in section
 25 32901(a) of this title.
- 26 (9) “new line” means a line introduced into commerce after Decem-
 27 ber 31, 1989.
- 28 (10) “passenger motor vehicle” includes a multipurpose passenger
 29 vehicle or light duty truck when that vehicle or truck is rated at not
 30 more than 6,000 pounds gross vehicle weight.
- 31 (11) “vehicle theft prevention standard” means a minimum perform-
 32 ance standard for identifying major parts of new motor vehicles and
 33 major replacement parts by inscribing or affixing numbers or symbols
 34 on those parts.

35 **§ 33102. Theft prevention standard for high theft lines**

36 (a) GENERAL.—(1) The Secretary of Transportation by regulation shall
 37 prescribe a vehicle theft prevention standard that conforms to the require-
 38 ments of this chapter. The standard shall apply to—

- 39 (A) covered major parts that manufacturers install in passenger
 40 motor vehicles in lines designated under section 33104 of this title as
 41 high theft lines; and

1 (B) major replacement parts for the major parts described in clause
2 (A) of this paragraph.

3 (2) The standard may apply only to—

4 (A) major parts that manufacturers install in passenger motor vehi-
5 cles having a model year designation later than the calendar year in
6 which the standard takes effect; and

7 (B) major replacement parts manufactured after the standard takes
8 effect.

9 (b) STANDARD REQUIREMENTS.—The standard shall be practicable and
10 provide relevant objective criteria.

11 (c) LIMITATIONS ON MAJOR PART AND REPLACEMENT PART STAND-
12 ARDS.—(1) For a major part installed by the manufacturer of the motor
13 vehicle, the standard may not require a part to have more than one identi-
14 fication.

15 (2) For a major replacement part, the standard may not require—

16 (A) identification of a part not designed as a replacement for a
17 major part required to be identified under the standard; or

18 (B) the inscribing or affixing of identification except a symbol identi-
19 fying the manufacturer and a common symbol identifying the part as
20 a major replacement part.

21 (d) RECORDS AND REPORTS.—This chapter does not authorize the Sec-
22 retary to require a person to keep records or make reports, except as pro-
23 vided in sections 33104(c), 33106(c), 33108(a), and 33112 of this title.

24 **§ 33103. Theft prevention standard for other lines**

25 (a) GENERAL.—Not later than October 25, 1994, the Secretary of Trans-
26 portation shall prescribe a vehicle theft standard that conforms to the re-
27 quirements of this chapter for covered major parts that manufacturers in-
28 stall in passenger motor vehicles (except light duty trucks) in not more than
29 50 percent of the lines not designated under section 33104 of this title as
30 high theft lines.

31 (b) EXTENSION OF APPLICATION.—(1) Not later than 3 years after the
32 standard is prescribed under subsection (a) of this section and based on the
33 finding of the Attorney General under subsection (c) of this section to apply
34 the standard, the Secretary shall apply that standard to covered major parts
35 and major replacement parts for covered parts that manufacturers install
36 in the lines of passenger motor vehicles (except light duty trucks)—

37 (A) not designated under section 33104 of this title as high theft
38 lines; and

39 (B) not covered by the standard prescribed under subsection (a) of
40 this section.

1 (2) The Secretary shall include as part of the regulatory proceeding under
2 this subsection the finding of, and the record developed by, the Attorney
3 General under subsection (c) of this section.

4 (c) INITIAL REVIEW OF EFFECTIVENESS.—Before the Secretary begins a
5 regulatory proceeding under subsection (b) of this section, the Attorney
6 General shall make a finding that the Secretary shall apply the standard
7 prescribed under subsection (a) of this section unless the Attorney General
8 finds, based on information collected and analyzed under section 33112 of
9 this title and other information the Attorney General develops after provid-
10 ing notice and an opportunity for a public hearing, that applying the stand-
11 ard prescribed in subsection (a) to the remaining lines of passenger motor
12 vehicles (except light duty trucks) not covered by that standard would not
13 substantially inhibit chop shop operations and motor vehicle thefts. The At-
14 torney General also shall consider and include in the record additional costs,
15 effectiveness, competition, and available alternative factors. The Attorney
16 General shall submit to the Secretary the finding and record on which the
17 finding is based.

18 (d) LONG RANGE REVIEW OF EFFECTIVENESS.—(1) Not later than De-
19 cember 31, 1999, the Attorney General shall make separate findings, after
20 notice and an opportunity for a public hearing, on the following:

21 (A) whether the application of the standard under subsection (a) or
22 (b) of this subsection, or both, have been effective in substantially in-
23 hibiting the operation of chop shops and motor vehicle theft.

24 (B) whether the anti-theft devices for which the Secretary has grant-
25 ed exemptions under section 33106 of this title are an effective sub-
26 stitute for parts marking in substantially inhibiting motor vehicle theft.

27 (2)(A) In making the finding under paragraph (1)(A) of this subsection,
28 the Attorney General shall—

29 (i) consider the additional cost, competition, and available alter-
30 natives;

31 (ii) base that finding on information collected and analyzed under
32 section 33112 of this title;

33 (iii) consider the effectiveness, the extent of use, and the extent to
34 which civil and criminal penalties under section 33115(b) of this title
35 and section 2322 of title 18 on chop shops have been effective in sub-
36 stantially inhibiting operation of chop shops and motor vehicle theft;

37 (iv) base that finding on the 3-year and 5-year reports issued by the
38 Secretary under section 33113 of this title; and

39 (v) base that finding on other information the Attorney General de-
40 velops and includes in the public record.

1 (B) The Attorney General shall submit a finding under paragraph (1)(A)
2 of this subsection promptly to the Secretary. If the Attorney General finds
3 that the application of the standard under subsection (a) or (b) of this sec-
4 tion, or both, has not been effective, the Secretary shall issue, not later than
5 180 days after receiving that finding, an order terminating the standard the
6 Attorney General found was ineffective. The termination is effective for the
7 model year beginning after the order is issued.

8 (3) In making a finding under paragraph (1)(B) of this subsection, the
9 Secretary shall consider the additional cost, competition, and available alter-
10 natives. If the Attorney General finds that the anti-theft devices are an ef-
11 fective substitute, the Secretary shall continue to grant exemptions under
12 section 33106 of this title for the model years after model year 2000 at one
13 of the following levels that the Attorney General decides: at the level author-
14 ized before October 25, 1992, or at the level provided in section
15 33106(b)(2)(C) of this title for model year 2000.

16 (e) EFFECTIVE DATE OF STANDARD.—A standard prescribed under this
17 section takes effect at least 6 months after the date the standard is pre-
18 scribed, except that the Secretary may prescribe an earlier effective date if
19 the Secretary—

20 (1) decides with good cause that the earlier date is in the public in-
21 terest; and

22 (2) publishes the reasons for the decision.

23 (f) NOTIFICATION OF CONGRESS.—The Secretary and the Attorney Gen-
24 eral shall inform the appropriate legislative committees of Congress with ju-
25 risdiction over this part and section 2322 of title 18 of actions taken or
26 planned under this section.

27 **§ 33104. Designation of high theft vehicle lines and parts**

28 (a) DESIGNATION, NONAPPLICATION, SELECTION, AND PROCEDURES.—

29 (1) For purposes of the standard under section 33102 of this title, the fol-
30 lowing are high theft lines:

31 (A) a passenger motor vehicle line determined under subsection (b)
32 of this section to have had a new passenger motor vehicle theft rate
33 in the 2-year period covering calendar years 1990 and 1991 greater
34 than the median theft rate for all new passenger motor vehicle thefts
35 in that 2-year period.

36 (B) a passenger motor vehicle line initially introduced into commerce
37 in the United States after December 31, 1989, that is selected under
38 paragraph (3) of this subsection as likely to have a theft rate greater
39 than the median theft rate referred to in clause (A) of this paragraph.

40 (C) subject to paragraph (2) of this subsection, a passenger motor
41 vehicle line having (for existing lines) or likely to have (for new lines)

1 a theft rate below the median theft rate referred to in clause (A) of
2 this paragraph, if the major parts in the vehicles are selected under
3 paragraph (3) of this subsection as interchangeable with the majority
4 of the major parts that are subject to the standard and are contained
5 in the motor vehicles of a line described in clause (A) or (B) of this
6 paragraph.

7 (2) The standard may not apply to any major part of a line described
8 in paragraph (1)(C) of this subsection if all the passenger motor vehicles
9 of lines that are, or are likely to be, below the median theft rate, and that
10 contain parts interchangeable with the major parts of the line involved, ac-
11 count (for existing lines), or the Secretary of Transportation determines
12 they are likely to account (for new lines), for more than 90 percent of the
13 total annual production of all lines of that manufacturer containing those
14 interchangeable parts.

15 (3) The lines, and the major parts of the passenger motor vehicles in
16 those lines, that are to be subject to the standard may be selected by agree-
17 ment between the manufacturer and the Secretary. If the manufacturer and
18 the Secretary disagree on the selection, the Secretary shall select the lines
19 and parts, after notice to the manufacturer and opportunity for written
20 comment, and subject to the confidentiality requirements of this chapter.

21 (4) To the maximum extent practicable, the Secretary shall prescribe rea-
22 sonable procedures designed to ensure that a selection under paragraph (3)
23 of this subsection is made at least 6 months before the first applicable
24 model year beginning after the selection.

25 (5) A manufacturer may not be required to comply with the standard
26 under a selection under paragraph (3) of this subsection for a model year
27 beginning earlier than 6 months after the date of the selection.

28 (6) A passenger motor vehicle line subject on October 25, 1992, to parts
29 marking requirements under sections 602 and 603 of the Motor Vehicle In-
30 formation and Cost Savings Act (Public Law 92-513, 86 Stat. 947), as
31 added by section 101(a) of the Motor Vehicle Theft Law Enforcement Act
32 of 1984 (Public Law 98-547, 98 Stat. 2756), continues to be subject to
33 the requirements of this section and section 33102 of this title unless the
34 line is exempted under section 33106 of this title.

35 (b) DETERMINING THEFT RATE FOR PASSENGER VEHICLES.—(1) In this
36 subsection, “new passenger motor vehicle thefts”, when used in reference to
37 a calendar year, means thefts in the United States in that year of passenger
38 motor vehicles with the same model-year designation as that calendar year.

39 (2) Under subsection (a) of this section, the theft rate for passenger
40 motor vehicles of a line shall be determined by a fraction—

1 (A) the numerator of which is the number of new passenger motor
2 vehicle thefts for that line during the 2-year period referred to in sub-
3 section (a)(1)(A) of this section; and

4 (B) the denominator of which is the sum of the respective production
5 volumes of all passenger motor vehicles of that line (as reported to the
6 Administrator of the Environmental Protection Agency under chapter
7 329 of this title) that are of model years 1990 and 1991 and are dis-
8 tributed for sale in commerce in the United States.

9 (3) Under subsection (a) of this section, the median theft rate for all new
10 passenger motor vehicle thefts during that 2-year period is the theft rate
11 midway between the highest and the lowest theft rates determined under
12 paragraph (2) of this subsection. If there is an even number of theft rates
13 determined under paragraph (2), the median theft rate is the arithmetic av-
14 erage of the 2 adjoining theft rates midway between the highest and the
15 lowest of those theft rates.

16 (4) In consultation with the Director of the Federal Bureau of Investiga-
17 tion, the Secretary periodically shall obtain from the most reliable source
18 accurate and timely theft and recovery information and publish the informa-
19 tion for review and comment. To the greatest extent possible, the Secretary
20 shall use theft information reported by United States Government, State,
21 and local police. After publication and opportunity for comment, the Sec-
22 retary shall use the theft information to determine the median theft rate
23 under this subsection. The Secretary and the Director shall take any nec-
24 essary actions to improve the accuracy, reliability, and timeliness of the in-
25 formation, including ensuring that vehicles represented as stolen are really
26 stolen.

27 (5) The Secretary periodically (but not more often than once every 2
28 years) may redetermine and prescribe by regulation the median theft rate
29 under this subsection.

30 (c) PROVIDING INFORMATION.—The Secretary by regulation shall require
31 each manufacturer to provide information necessary to select under sub-
32 section (a)(3) of this section the high theft lines and the major parts to be
33 subject to the standard.

34 (d) APPLICATION.—Except as provided in section 33106 of this title, the
35 Secretary may not make the standard inapplicable to a line that has been
36 subject to the standard.

37 **§ 33105. Cost limitations**

38 (a) MAXIMUM MANUFACTURER COSTS.—A standard under section 33102
39 or 33103 of this title may not impose—

40 (1) on a manufacturer of motor vehicles, compliance costs of more
41 than \$15 a motor vehicle; or

1 (2) on a manufacturer of major replacement parts, compliance costs
 2 for each part of more than the reasonable amount (but less than \$15)
 3 that the Secretary of Transportation specifies in the standard.

4 (b) COSTS INVOLVED IN ENGINES AND TRANSMISSIONS.—For a manu-
 5 facturer engaged in identifying engines or transmissions on October 25,
 6 1984, in a way that substantially complies with the standard—

7 (1) the costs of identifying engines and transmissions may not be
 8 considered in calculating the manufacturer’s costs under subsection (a)
 9 of this section; and

10 (2) the manufacturer may not be required under the standard to
 11 conform to any identification system for engines and transmissions that
 12 imposes greater costs on the manufacturer than are incurred under the
 13 identification system used by the manufacturer on October 25, 1984.

14 (c) COST ADJUSTMENTS.—(1) In this subsection—

15 (A) “base period” means calendar year 1984.

16 (B) “price index” means the average over a calendar year of the
 17 Consumer Price Index (all items—United States city average) pub-
 18 lished monthly by the Secretary of Labor.

19 (2) At the beginning of each calendar year, as necessary data become
 20 available from the Bureau of Labor Statistics, the Secretary of Labor shall
 21 certify to the Secretary of Transportation and publish in the Federal Reg-
 22 ister the percentage difference between the price index for the 12 months
 23 before the beginning of the calendar year and the price index for the base
 24 period. For model years beginning in that calendar year, the amounts speci-
 25 fied in subsection (a) of this section shall be adjusted by the percentage dif-
 26 ference.

27 **§ 33106. Exemption for passenger motor vehicles equipped**
 28 **with anti-theft devices**

29 (a) DEFINITIONS.—In this section—

30 (1) “anti-theft device” means a device to reduce or deter theft that—

31 (A) is in addition to the theft-deterrent devices required by
 32 motor vehicle safety standard numbered 114 in section 571.114 of
 33 title 49, Code of Federal Regulations;

34 (B) the manufacturer believes will be effective in reducing or de-
 35 terring theft of motor vehicles; and

36 (C) does not use a signaling device reserved by State law for
 37 use on police, emergency, or official vehicles, or on schoolbuses.

38 (2) “standard equipment” means equipment already installed in a
 39 motor vehicle when it is delivered from the manufacturer and not an
 40 accessory or other item that the first purchaser customarily has the op-
 41 tion to have installed.

1 (b) GRANTING EXEMPTIONS AND LIMITATIONS.—(1) A manufacturer
2 may petition the Secretary of Transportation for an exemption from a re-
3 quirement of a standard prescribed under section 33102 or 33103 of this
4 title for a line of passenger motor vehicles equipped as standard equipment
5 with an anti-theft device that the Secretary decides is likely to be as effective
6 in reducing and deterring motor vehicle theft as compliance with the
7 standard.

8 (2) The Secretary may grant an exemption—

9 (A) for model year 1987, for not more than 2 lines of a manufac-
10 turer;

11 (B) for each of the model years 1988–1996, for not more than 2 ad-
12 ditional lines of a manufacturer;

13 (C) for each of the model years 1997–2000, for not more than one
14 additional line of a manufacturer; and

15 (D) for each of the model years after model year 2000, for the num-
16 ber of lines that the Attorney General decides under section
17 33103(d)(3) of this title.

18 (3) An additional exemption granted under subparagraph (2)(B) or (C)
19 of this paragraph does not affect an exemption previously granted.

20 (c) PETITIONING PROCEDURE.—A petition must be filed not later than
21 8 months before the start of production for the first model year covered by
22 the petition. The petition must include—

23 (1) a detailed description of the device;

24 (2) the reasons for the manufacturer’s conclusion that the device will
25 be effective in reducing and deterring theft of motor vehicles; and

26 (3) additional information the Secretary reasonably may require to
27 make the decision described in subsection (b)(1) of this section.

28 (d) DECISIONS AND APPROVALS.—The Secretary shall make a decision
29 about a petition filed under this section not later than 120 days after the
30 date the petition is filed. A decision approving a petition must be based on
31 substantial evidence. The Secretary may approve a petition in whole or in
32 part. If the Secretary does not make a decision within the 120-day period,
33 the petition shall be deemed to be approved and the manufacturer shall be
34 exempt from the standard for the line covered by the petition for the subse-
35 quent model year.

36 (e) RESCISSIONS.—The Secretary may rescind an exemption if the Sec-
37 retary decides that the anti-theft device has not been as effective in reducing
38 and deterring motor vehicle theft as compliance with the standard. A rescis-
39 sion may be effective only—

40 (1) for a model year after the model year in which the rescission oc-
41 curs; and

1 (2) at least 6 months after the manufacturer receives written notice
2 of the rescission from the Secretary.

3 **§ 33107. Voluntary vehicle identification standards**

4 (a) ELECTION TO INSCRIBE OR AFFIX IDENTIFYING MARKS.—The Sec-
5 retary of Transportation by regulation may prescribe a vehicle theft preven-
6 tion standard under which a person may elect to inscribe or affix an identi-
7 fying number or symbol on major parts of a motor vehicle manufactured
8 or owned by the person for purposes of section 511 of title 18 and related
9 provisions. The standard may include provisions for registration of the iden-
10 tification with the Secretary or a person designated by the Secretary.

11 (b) STANDARD REQUIREMENTS.—The standard under this section shall
12 be practicable and provide relevant objective criteria.

13 (c) VOLUNTARY COMPLIANCE.—Compliance with the standard under this
14 section is voluntary. Failure to comply does not subject a person to a pen-
15 alty or enforcement under this chapter.

16 (d) COMPLIANCE WITH OTHER STANDARDS.—Compliance with the
17 standard under this section does not relieve a manufacturer from a require-
18 ment of a standard prescribed under section 33102 or 33103 of this title.

19 **§ 33108. Monitoring compliance of manufacturers**

20 (a) RECORDS, REPORTS, INFORMATION, AND INSPECTION.—To enable
21 the Secretary of Transportation to decide whether a manufacturer of motor
22 vehicles containing a part subject to a standard prescribed under section
23 33102 or 33103 of this title, or a manufacturer of major replacement parts
24 subject to the standard, is complying with this chapter and the standard,
25 the Secretary may require the manufacturer to—

26 (1) keep records;

27 (2) make reports;

28 (3) provide items and information; and

29 (4) allow an officer or employee designated by the Secretary to in-
30 spect the vehicles and parts and relevant records of the manufacturer.

31 (b) ENTRY AND INSPECTION.—To enforce this chapter, an officer or em-
32 ployee designated by the Secretary, on presenting appropriate credentials
33 and a written notice to the owner, operator, or agent in charge, may inspect
34 a facility in which motor vehicles containing major parts subject to the
35 standard, or major replacement parts subject to the standard, are manufac-
36 tured, held for introduction into interstate commerce, or held for sale after
37 introduction into interstate commerce. An inspection shall be conducted at
38 a reasonable time, in a reasonable way, and with reasonable promptness.

39 (c) CERTIFICATION OF COMPLIANCE.—(1) A manufacturer of a motor ve-
40 hicle subject to the standard, and a manufacturer of a major replacement
41 part subject to the standard, shall provide at the time of delivery of the ve-

1 hicle or part a certification that the vehicle or part conforms to the applica-
2 ble motor vehicle theft prevention standard. The certification shall accom-
3 pany the vehicle or part until its delivery to the first purchaser. The Sec-
4 retary by regulation may prescribe the type and form of the certification.

5 (2) This subsection does not apply to a motor vehicle or major replace-
6 ment part that is—

7 (A) intended only for export;

8 (B) labeled only for export on the vehicle or replacement part and
9 the outside of any container until exported; and

10 (C) exported.

11 (d) NOTIFICATION OF ERROR.—A manufacturer shall notify the Sec-
12 retary if the manufacturer discovers that—

13 (1) there is an error in the identification (required by the standard)
14 applied to a major part installed by the manufacturer in a motor vehi-
15 cle during its assembly, or to a major replacement part manufactured
16 by the manufacturer; and

17 (2) the motor vehicle or major replacement part has entered inter-
18 state commerce.

19 **§ 33109. National Stolen Passenger Motor Vehicle Informa-**
20 **tion System**

21 (a) GENERAL REQUIREMENTS.—(1) Not later than July 25, 1993, the
22 Attorney General shall establish, and thereafter maintain, a National Stolen
23 Passenger Motor Vehicle Information System containing the vehicle identi-
24 fication numbers of stolen passenger motor vehicles and stolen passenger
25 motor vehicle parts. The System shall be located in the National Crime In-
26 formation Center and shall include at least the following information on
27 each passenger motor vehicle reported to a law enforcement authority as
28 stolen and not recovered:

29 (A) the vehicle identification number.

30 (B) the make and model year.

31 (C) the date on which the vehicle was reported as stolen.

32 (D) the location of the law enforcement authority that received the
33 report of the theft of the vehicle.

34 (E) the identification numbers of the vehicle parts (or derivatives of
35 those numbers), at the time of the theft, if those numbers are different
36 from the vehicle identification number of the vehicle.

37 (2) In establishing the System, the Attorney General shall consult with—

38 (A) State and local law enforcement authorities; and

39 (B) the National Crime Information Center Policy Advisory Board
40 to ensure the security of the information in the System and that the

1 System will not compromise the security of stolen passenger motor ve-
2 hicle and passenger motor vehicle parts information in the System.

3 (3) If the Attorney General decides that the Center is not able to perform
4 the functions of the System, the Attorney General shall make an agreement
5 for the operation of the System separate from the Center.

6 (4) The Attorney General shall prescribe by regulation the effective date
7 of the System.

8 (b) REQUESTS FOR INFORMATION.—(1) The Attorney General shall pre-
9 scribe by regulation procedures under which an individual or entity intend-
10 ing to transfer a passenger motor vehicle or passenger motor vehicle part
11 may obtain information on whether the vehicle or part is listed in the Sys-
12 tem as stolen.

13 (2) On request of an insurance carrier, a person lawfully selling or dis-
14 tributing passenger motor vehicle parts in interstate commerce, or an indi-
15 vidual or enterprise engaged in the business of repairing passenger motor
16 vehicles, the Attorney General (or the entity the Attorney General des-
17 ignates) immediately shall inform the insurance carrier, person, individual,
18 or enterprise whether the System has a record of a vehicle or vehicle part
19 with a particular vehicle identification number (or derivative of that num-
20 ber) being reported as stolen. The Attorney General may require appro-
21 priate verification to ensure that the request is legitimate and will not com-
22 promise the security of the System.

23 (c) ADVISORY COMMITTEE.—(1) Not later than December 24, 1992, the
24 Attorney General shall establish in the Department of Justice an advisory
25 committee. The Attorney General shall develop the System with the advice
26 and recommendations of the committee.

27 (2)(A) The committee is composed of the following 10 members:

28 (i) the Attorney General.

29 (ii) the Secretary of Transportation.

30 (iii) one individual who is qualified to represent the interests of the
31 law enforcement community at the State level.

32 (iv) one individual who is qualified to represent the interests of the
33 law enforcement community at the local level.

34 (v) one individual who is qualified to represent the interests of the
35 automotive recycling industry.

36 (vi) one individual who is qualified to represent the interests of the
37 automotive repair industry.

38 (vii) one individual who is qualified to represent the interests of the
39 automotive rebuilders industry.

40 (viii) one individual who is qualified to represent the interests of the
41 automotive parts suppliers industry.

1 (ix) one individual who is qualified to represent the interests of the
2 insurance industry.

3 (x) one individual who is qualified to represent the interests of con-
4 sumers.

5 (B) The Attorney General shall appoint the individuals described in sub-
6 paragraph (A)(iii)–(x) of this paragraph and shall serve as chairman of the
7 committee.

8 (3) The committee shall make recommendations on developing and carry-
9 ing out—

10 (A) the National Stolen Passenger Motor Vehicle Information Sys-
11 tem; and

12 (B) the verification system under section 33110 of this title.

13 (4) Not later than April 25, 1993, the committee shall submit to the At-
14 torney General, the Secretary, and Congress a report including the rec-
15 ommendations of the committee.

16 **§ 33110. Verifications involving junk and salvage motor vehi-**
17 **cles**

18 (a) DEFINITION.—In this section, “vehicle identification number” means
19 a unique identification number (or derivative of that number) assigned to
20 a passenger motor vehicle by a manufacturer in compliance with applicable
21 regulations.

22 (b) GENERAL REQUIREMENTS.—(1) If an insurance carrier selling com-
23 prehensive motor vehicle insurance coverage obtains possession of and trans-
24 fers a junk motor vehicle or a salvage motor vehicle, the carrier shall—

25 (A) under procedures the Attorney General prescribes by regulation
26 under section 33109 of this title in consultation with the Secretary of
27 Transportation, verify whether the vehicle is reported as stolen; and

28 (B) provide the purchaser or transferee of the vehicle from the insur-
29 ance carrier verification identifying the vehicle identification number
30 and verifying that the vehicle has not been reported as stolen or, if re-
31 ported as stolen, that the carrier has recovered the vehicle and has
32 proper legal title to the vehicle.

33 (2)(A) This subsection does not prohibit an insurance carrier from trans-
34 ferring a motor vehicle if, within a reasonable period of time during normal
35 business operations (as decided by the Attorney General under section
36 33109 of this title) using reasonable efforts, the carrier—

37 (i) has not been informed under the procedures prescribed in section
38 33109 of this title that the vehicle has not been reported as stolen; or

39 (ii) has not otherwise established whether the vehicle has been re-
40 ported as stolen.

1 (B) When a carrier transfers a motor vehicle for which the carrier has
2 not established whether the vehicle has been reported as stolen, the carrier
3 shall provide written certification to the transferee that the carrier has not
4 established whether the vehicle has been reported as stolen.

5 (c) REGULATIONS.—In consultation with the Secretary, the Attorney
6 General shall prescribe regulations necessary to ensure that verification per-
7 formed and provided by an insurance carrier under subsection (b)(1)(B) of
8 this section is uniform, effective, and resistant to fraudulent use.

9 **§ 33111. Verifications involving motor vehicle major parts**

10 (a) GENERAL REQUIREMENTS.—A person engaged in the business of sal-
11 vaging, dismantling, recycling, or repairing passenger motor vehicles may
12 not knowingly sell in commerce or transfer or install a major part marked
13 with an identification number without—

14 (1) first establishing, through a procedure the Attorney General by
15 regulation prescribes in consultation with the Secretary of Transpor-
16 tation under section 33109 of this title, that the major part has not
17 been reported as stolen; and

18 (2) providing the purchaser or transferee with a verification—

19 (A) identifying the vehicle identification number (or derivative
20 of that number) of that major part; and

21 (B) verifying that the major part has not been reported as sto-
22 len.

23 (b) NONAPPLICATION.—(1) Subsection (a) of this section does not apply
24 to a person that—

25 (A) is the manufacturer of the major part;

26 (B) has purchased the major part directly from the manufacturer;

27 or

28 (C) has received a verification from an insurance carrier under sec-
29 tion 33110 of this title that the motor vehicle from which the major
30 part is derived has not been reported as stolen, or that the carrier has
31 not established whether that vehicle has been stolen.

32 (2) A person described under paragraph (1)(C) of this subsection that
33 subsequently transfers or sells in commerce the motor vehicle or a major
34 part of the vehicle shall provide the verification received from the carrier
35 to the person to whom the vehicle or part is transferred or sold.

36 (c) REGULATIONS.—The Attorney General shall prescribe regulations to
37 carry out this section. The regulations shall include regulations prescribed
38 in consultation with the Secretary that are necessary to ensure that a ver-
39 ification a person provides under subsection (a)(2) of this section is uni-
40 form, effective, and resistant to fraudulent use.

1 **§ 33112. Insurance reports and information**

2 (a) PURPOSES.—The purposes of this section are—

3 (1) to prevent or discourage the theft of motor vehicles, particularly
4 those stolen for the removal of certain parts;

5 (2) to prevent or discourage the sale and distribution in interstate
6 commerce of used parts that are removed from those vehicles; and

7 (3) to help reduce the cost to consumers of comprehensive insurance
8 coverage for motor vehicles.

9 (b) DEFINITIONS.—In this section—

10 (1) “insurer” includes a person (except a governmental authority)
11 having a fleet of at least 20 motor vehicles that are used primarily for
12 rental or lease and are not covered by a theft insurance policy issued
13 by an insurer of passenger motor vehicles.

14 (2) “motor vehicle” includes a truck, a multipurpose passenger vehi-
15 cle, and a motorcycle.

16 (c) ANNUAL INFORMATION REQUIREMENT.—(1) An insurer providing
17 comprehensive coverage for motor vehicles shall provide annually to the Sec-
18 retary of Transportation information on—

19 (A) the thefts and recoveries (in any part) of motor vehicles;

20 (B) the number of vehicles that have been recovered intact;

21 (C) the rating rules and plans, such as loss information and rating
22 characteristics, used by the insurer to establish premiums for com-
23 prehensive coverage, including the basis for the premiums, and pre-
24 mium penalties for motor vehicles considered by the insurer as more
25 likely to be stolen;

26 (D) the actions taken by the insurer to reduce the premiums, includ-
27 ing changing rate levels for comprehensive coverage because of a reduc-
28 tion in thefts of motor vehicles;

29 (E) the actions taken by the insurer to assist in deterring or reduc-
30 ing thefts of motor vehicles; and

31 (F) other information the Secretary requires to carry out this chap-
32 ter and to make the report and findings required by this chapter.

33 (2) The information on thefts and recoveries shall include an explanation
34 on how the information is obtained, the accuracy and timeliness of the infor-
35 mation, and the use made of the information, including the extent and fre-
36 quency of reporting the information to national, public, and private entities
37 such as the Federal Bureau of Investigation and State and local police.

38 (d) REPORTS ON REDUCED CLAIMS PAYMENTS.—An insurer shall report
39 promptly in writing to the Secretary if the insurer, in paying a claim under
40 an adjustment or negotiation between the insurer and the insured for a sto-
41 len motor vehicle—

1 (1) reduces the payment to the insured by the amount of the value,
2 salvage or otherwise, of a recovered part subject to a standard pre-
3 scribed under section 33102 or 33103 of this title; and

4 (2) the reduction is not made at the express election of the insured.

5 (e) GENERAL EXEMPTIONS.—The Secretary shall exempt from this sec-
6 tion, for one or more years, an insurer that the Secretary decides should
7 be exempted because—

8 (1) the cost of preparing and providing the information is excessive
9 in relation to the size of the insurer’s business; and

10 (2) the information from that insurer will not contribute significantly
11 to carrying out this chapter.

12 (f) SMALL INSURER EXEMPTIONS.—(1) In this subsection, “small in-
13 surer” means an insurer whose premiums for motor vehicle insurance issued
14 directly or through an affiliate, including a pooling arrangement established
15 under State law or regulation for the issuance of motor vehicle insurance,
16 account for—

17 (A) less than one percent of the total premiums for all forms of
18 motor vehicle insurance issued by insurers in the United States; and

19 (B) less than 10 percent of the total premiums for all forms of motor
20 vehicle insurance issued by insurers in any State.

21 (2) The Secretary shall exempt by regulation a small insurer from this
22 section if the Secretary finds that the exemption will not significantly affect
23 the validity or usefulness of the information collected and compiled under
24 this section, nationally or State-by-State. However, the Secretary may not
25 exempt an insurer under this paragraph that is considered an insurer only
26 because of subsection (b)(1) of this section.

27 (3) Regulations under this subsection shall provide that eligibility as a
28 small insurer shall be based on the most recent calendar year for which ade-
29 quate information is available, and that, once attained, the eligibility shall
30 continue without further demonstration of eligibility for one or more years,
31 as the Secretary considers appropriate.

32 (g) PRESCRIBED FORM.—Information required by this section shall be
33 provided in the form the Secretary prescribes.

34 (h) PERIODIC COMPILATIONS.—Subject to section 552 of title 5, the Sec-
35 retary periodically shall compile and publish information obtained by the
36 Secretary under this section, in a form that will be helpful to the public,
37 the police, and Congress.

38 (i) CONSULTATION.—In carrying out this section, the Secretary shall con-
39 sult with public and private agencies and associations the Secretary consid-
40 ers appropriate.

1 **§ 33113. Theft reports**

2 (a) TRUCK, MULTIPURPOSE PASSENGER VEHICLE, AND MOTORCYCLE
3 REPORT.—Not later than October 25, 1995, the Secretary of Transpor-
4 tation shall submit a report to Congress that includes—

5 (1) information on the number of trucks, multipurpose passenger ve-
6 hicles, and motorcycles distributed for sale in interstate commerce that
7 are stolen and recovered annually, compiled by model, make, and line;

8 (2) information on the extent to which trucks, multipurpose pas-
9 senger vehicles, and motorcycles stolen annually are dismantled to re-
10 cover parts or are exported;

11 (3) a description of the market for the stolen parts;

12 (4) information on the premiums charged by insurers of compre-
13 hensive coverage of trucks, multipurpose passenger vehicles, or motor-
14 cycles, including any increase in the premiums charged because any of
15 those motor vehicles is a likely candidate for theft;

16 (5) an assessment of whether the identification of parts of trucks,
17 multipurpose passenger vehicles, and motorcycles is likely—

18 (A) to decrease the theft rate of those motor vehicles;

19 (B) to increase the recovery rate of those motor vehicles;

20 (C) to decrease the trafficking in stolen parts of those motor ve-
21 hicles;

22 (D) to stem the export and import of those stolen motor vehicles
23 or parts; or

24 (E) to have benefits greater than the costs of the identification;

25 and

26 (6) recommendations on whether, and to what extent, the identifica-
27 tion of trucks, multipurpose passenger vehicles, and motorcycles should
28 be required by law.

29 (b) MOTOR VEHICLE REPORT.—Not later than October 25, 1997, the
30 Secretary shall submit a report to Congress that includes—

31 (1) information on—

32 (A) the methods and procedures used by public and private enti-
33 ties to collect, compile, and disseminate information on the theft
34 and recovery of motor vehicles, including classes of motor vehicles;
35 and

36 (B) the reliability and timeliness of the information and how the
37 information can be improved;

38 (2) information on the number of motor vehicles distributed for sale
39 in interstate commerce that are stolen and recovered annually, com-
40 piled by class, model, make, and line;

- 1 (3) information on the extent to which motor vehicles stolen annually
2 are dismantled to recover parts or are exported;
- 3 (4) a description of the market for the stolen parts;
- 4 (5) information on—
 - 5 (A) the costs to manufacturers and purchasers of passenger
6 motor vehicles of compliance with the standards prescribed under
7 this chapter;
 - 8 (B) the beneficial impacts of the standards and the monetary
9 value of the impacts; and
 - 10 (C) the extent to which the monetary value is greater than the
11 costs;
- 12 (6) information on the experience of officials of the United States
13 Government, States, and localities in—
 - 14 (A) making arrests and successfully prosecuting persons for vio-
15 lating a law set forth in title II or III of the Motor Vehicle Theft
16 Law Enforcement Act of 1984;
 - 17 (B) preventing or reducing the number and rate of thefts of
18 motor vehicles that are dismantled for parts subject to this chap-
19 ter; and
 - 20 (C) preventing or reducing the availability of used parts that
21 are stolen from motor vehicles subject to this chapter;
- 22 (7) information on the premiums charged by insurers of comprehen-
23 sive coverage of motor vehicles subject to this chapter, including any
24 increase in the premiums charged because a motor vehicle is a likely
25 candidate for theft, and the extent to which the insurers have reduced
26 for the benefit of consumers the premiums, or foregone premium in-
27 creases, because of this chapter;
- 28 (8) information on the adequacy and effectiveness of laws of the
29 United States and the States aimed at preventing the distribution and
30 sale of used parts that have been removed from stolen motor vehicles
31 and the adequacy of systems available to enforcement personnel for
32 tracing parts to determine if they have been stolen from a motor vehi-
33 cle;
- 34 (9) an assessment of whether the identification of parts of other
35 classes of motor vehicles is likely—
 - 36 (A) to decrease the theft rate of those vehicles;
 - 37 (B) to increase the recovery rate of those vehicles;
 - 38 (C) to decrease the trafficking in stolen parts of those vehicles;
 - 39 (D) to stem the export and import of those stolen vehicles,
40 parts, or components; or

1 (E) to have benefits greater than the costs of the identification;
2 and

3 (10) other relevant and reliable information available to the Sec-
4 retary about the impact, including the beneficial impact, of the laws set
5 forth in titles II and III of the Motor Vehicle Theft Law Enforcement
6 Act of 1984 on law enforcement, consumers, and manufacturers; and

7 (11) recommendations (including, as appropriate, legislative and ad-
8 ministrative recommendations) for—

9 (A) continuing without change the standards prescribed under
10 this chapter;

11 (B) amending this chapter to cover more or fewer lines of pas-
12 senger motor vehicles;

13 (C) amending this chapter to cover other classes of motor vehi-
14 cles; or

15 (D) ending the standards for all future motor vehicles.

16 (c) BASES OF REPORTS.—(1) The reports under subsections (a) and (b)
17 of this section each shall be based on—

18 (A) information reported under this chapter by insurers of motor ve-
19 hicles and manufacturers of motor vehicles and major replacement
20 parts;

21 (B) information provided by the Federal Bureau of Investigation;

22 (C) experience obtained in carrying out this chapter;

23 (D) experience of the Government under the laws set forth in titles
24 II and III of the Motor Vehicle Theft Law Enforcement Act of 1984;
25 and

26 (E) other relevant and reliable information available to the Sec-
27 retary.

28 (2) In preparing each report, the Secretary shall consult with the Attor-
29 ney General and State and local law enforcement officials, as appropriate.

30 (3) The report under subsection (b) of this section shall—

31 (A) cover a period of at least 4 years after the standards required
32 by this chapter are prescribed; and

33 (B) reflect any information, as appropriate, from the report under
34 subsection (a) of this section, updated from the date of the report.

35 (4) At least 90 days before submitting each report to Congress, the Sec-
36 retary shall publish a proposed report for public review and an opportunity
37 of at least 45 days for written comment. The Secretary shall consider those
38 comments in preparing the report to be submitted and include a summary
39 of the comments with the submitted report.

40 **§ 33114. Prohibited acts**

41 (a) GENERAL.—A person may not—

1 (1) manufacture for sale, sell, offer for sale, introduce or deliver for
2 introduction in interstate commerce, or import into the United States,
3 a motor vehicle or major replacement part subject to a standard pre-
4 scribed under section 33102 or 33103 of this title, unless it conforms
5 to the standard;

6 (2) fail to comply with a regulation prescribed by the Secretary of
7 Transportation or Attorney General under this chapter;

8 (3) fail to keep specified records, refuse access to or copying of
9 records, fail to make reports or provide items or information, or fail
10 or refuse to allow entry or inspection, as required by this chapter;

11 (4) fail to provide the certification required by section 33108(c) of
12 this title, or provide a certification that the person knows, or in the
13 exercise of reasonable care has reason to know, is false or misleading
14 in a material respect; or

15 (5) knowingly—

16 (A) own, operate, maintain, or control a chop shop;

17 (B) conduct operations in a chop shop; or

18 (C) transport a passenger motor vehicle or passenger motor ve-
19 hicle part to or from a chop shop.

20 (b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply
21 to a person establishing that in the exercise of reasonable care the person
22 did not have reason to know that the motor vehicle or major replacement
23 part was not in conformity with the standard.

24 **§ 33115. Civil penalties and enforcement**

25 (a) GENERAL PENALTY AND CIVIL ACTIONS TO COLLECT.—(1) A person
26 that violates section 33114(a)(1)–(4) of this title is liable to the United
27 States Government for a civil penalty of not more than \$1,000 for each vio-
28 lation. The failure of more than one part of a single motor vehicle to con-
29 form to an applicable standard under section 33102 or 33103 of this title
30 is only a single violation. The maximum penalty under this subsection for
31 a related series of violations is \$250,000.

32 (2) The Secretary of Transportation imposes a civil penalty under this
33 subsection. The Secretary may compromise the amount of a penalty.

34 (3) In determining the amount of a civil penalty or compromise under
35 this subsection, the Secretary shall consider the size of the person's business
36 and the gravity of the violation.

37 (4) The Attorney General shall bring a civil action in a United States dis-
38 trict court to collect a civil penalty imposed under this subsection.

39 (5) The Government may deduct the amount of a civil penalty imposed
40 or compromised under this subsection from amounts it owes the person lia-
41 ble for the penalty.

1 (b) CHOP SHOP PENALTY AND ENFORCEMENT.—(1) A person that vio-
2 lates section 33114(a)(5) of this title is liable to the Government for a civil
3 penalty of not more than \$100,000 a day for each violation.

4 (2) As appropriate and in consultation with the Attorney General, the
5 Secretary shall—

6 (A) bring a civil action for a temporary or permanent injunction to
7 restrain a person violating section 33114(a)(5) of this section;

8 (B) impose and recover the penalty described in paragraph (1) of
9 this subsection; or

10 (C) take both the actions described in clauses (A) and (B) of this
11 paragraph.

12 (c) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring
13 a civil action in a United States district court to enjoin a violation of this
14 chapter or the sale, offer for sale, introduction or delivery for introduction
15 in interstate commerce, or importation into the United States, of a pas-
16 senger motor vehicle containing a major part, or of a major replacement
17 part, that is subject to the standard and is determined before the sale of
18 the vehicle or part to a first purchaser not to conform to the standard.

19 (2)(A) When practicable, the Secretary—

20 (i) shall notify a person against whom an action under this sub-
21 section is planned;

22 (ii) shall give the person an opportunity to present that person's
23 views; and

24 (iii) except for a knowing and willful violation, shall give the person
25 a reasonable opportunity to comply.

26 (B) The failure of the Secretary to comply with subparagraph (A) of this
27 paragraph does not prevent a court from granting appropriate relief.

28 (d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating
29 an injunction or restraining order issued under subsection (c) of this sec-
30 tion, the violation of which is also a violation of this chapter, the defendant
31 may demand a jury trial. The defendant shall be tried as provided in rule
32 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

33 (e) VENUE.—A civil action under subsection (a) or (c) of this section may
34 be brought in the judicial district in which the violation occurred or the de-
35 fendant resides, is found, or transacts business. Process in the action may
36 be served in any other judicial district in which the defendant resides or is
37 found. A subpoena for a witness in the action may be served in any judicial
38 district.

§ 33116. Confidentiality of information

(a) GENERAL.—Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

(1) to another officer or employee of the United States Government for use in carrying out this chapter; or

(2) in a proceeding under this chapter (except a proceeding under section 33104(a)(3)).

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§ 33117. Judicial review

A person that may be adversely affected by a regulation prescribed under this chapter may obtain judicial review of the regulation under section 32909 of this title. A remedy under this section is in addition to any other remedies provided by law.

§ 33118. Preemption of State and local law

When a motor vehicle theft prevention standard prescribed under section 33102 or 33103 of this title is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part.

SUBTITLE VII—AVIATION PROGRAMS

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1 PART A—AIR COMMERCE AND SAFETY

2 SUBPART I—GENERAL

3 **CHAPTER 401—GENERAL PROVISIONS**

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4 **§ 40101. Policy**

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

10 (1) assigning and maintaining safety as the highest priority in air
11 commerce.

12 (2) before authorizing new air transportation services, evaluating the
13 safety implications of those services.

14 (3) preventing deterioration in established safety procedures, rec-
15 ognizing the clear intent, encouragement, and dedication of Congress
16 to further the highest degree of safety in air transportation and air
17 commerce, and to maintain the safety vigilance that has evolved in air
18 transportation and air commerce and has come to be expected by the
19 traveling and shipping public.

20 (4) the availability of a variety of adequate, economic, efficient, and
21 low-priced services without unreasonable discrimination or unfair or de-
22 ceptive practices.

23 (5) coordinating transportation by, and improving relations among,
24 air carriers, and encouraging fair wages and working conditions.

1 (6) placing maximum reliance on competitive market forces and on
2 actual and potential competition—

3 (A) to provide the needed air transportation system; and

4 (B) to encourage efficient and well-managed air carriers to earn
5 adequate profits and attract capital, considering any material dif-
6 ferences between interstate air transportation and foreign air
7 transportation.

8 (7) developing and maintaining a sound regulatory system that is re-
9 sponsive to the needs of the public and in which decisions are reached
10 promptly to make it easier to adapt the air transportation system to
11 the present and future needs of—

12 (A) the commerce of the United States;

13 (B) the United States Postal Service; and

14 (C) the national defense.

15 (8) encouraging air transportation at major urban areas through sec-
16 ondary or satellite airports if consistent with regional airport plans of
17 regional and local authorities, and if endorsed by appropriate State au-
18 thorities—

19 (A) encouraging the transportation by air carriers that provide,
20 in a specific market, transportation exclusively at those airports;
21 and

22 (B) fostering an environment that allows those carriers to estab-
23 lish themselves and develop secondary or satellite airport services.

24 (9) preventing unfair, deceptive, predatory, or anticompetitive prac-
25 tices in air transportation.

26 (10) avoiding unreasonable industry concentration, excessive market
27 domination, monopoly powers, and other conditions that would tend to
28 allow at least one air carrier or foreign air carrier unreasonably to in-
29 crease prices, reduce services, or exclude competition in air transpor-
30 tation.

31 (11) maintaining a complete and convenient system of continuous
32 scheduled interstate air transportation for small communities and iso-
33 lated areas with direct financial assistance from the United States Gov-
34 ernment when appropriate.

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

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

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

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

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

6 (15) strengthening the competitive position of air carriers to at least
7 ensure equality with foreign air carriers, including the attainment of
8 the opportunity for air carriers to maintain and increase their profit-
9 ability in foreign air transportation.

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

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

18 (A) the present and future needs of shippers;

19 (B) the commerce of the United States; and

20 (C) the national defense.

21 (2) encouraging and developing an integrated transportation system
22 relying on competitive market forces to decide the extent, variety, qual-
23 ity, and price of services provided.

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

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

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

32 (2) the public right of freedom of transit through the navigable air-
33 space.

34 (d) SAFETY CONSIDERATIONS IN PUBLIC INTEREST.—In carrying out
35 subpart III of this part and those provisions of subpart IV applicable in car-
36 rying out subpart III, the Administrator shall consider the following mat-
37 ters, among others, as being in the public interest:

38 (1) regulating air commerce in a way that best promotes its develop-
39 ment and safety and fulfills national defense requirements.

40 (2) promoting, encouraging, and developing civil aeronautics.

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

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

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

8 (6) providing assistance to law enforcement agencies in the enforce-
9 ment of laws related to regulation of controlled substances, to the ex-
10 tent consistent with aviation safety.

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

16 (1) strengthening the competitive position of air carriers to ensure
17 at least equality with foreign air carriers, including the attainment of
18 the opportunity for air carriers to maintain and increase their profit-
19 ability in foreign air transportation.

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

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

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

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

28 (6) integrating domestic and international air transportation.

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

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

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

36 (A) excessive landing and user fees;

37 (B) unreasonable ground handling requirements;

38 (C) unreasonable restrictions on operations;

39 (D) prohibitions against change of gauge; and

40 (E) similar restrictive practices.

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

3 (f) STRENGTHENING COMPETITION.—In selecting an air carrier to pro-
4 vide foreign air transportation from among competing applicants, the Sec-
5 retary of Transportation shall consider, in addition to the matters specified
6 in subsections (a) and (b) of this section, the strengthening of competition
7 among air carriers operating in the United States to prevent unreasonable
8 concentration in the air carrier industry.

9 **§ 40102. Definitions**

10 (a) GENERAL DEFINITIONS.—In this part—

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

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

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

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

21 (A) a landing area;

22 (B) a light;

23 (C) apparatus or equipment for distributing weather informa-
24 tion, signaling, radio-directional finding, or radio or other electro-
25 magnetic communication; and

26 (D) another structure or mechanism for guiding or controlling
27 flight in the air or the landing and takeoff of aircraft.

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

30 (6) “aircraft” means any contrivance invented, used, or designed to
31 navigate, or fly in, the air.

32 (7) “aircraft engine” means an engine used, or intended to be used,
33 to propel an aircraft, including a part, appurtenance, and accessory of
34 the engine, except a propeller.

35 (8) “airman” means an individual—

36 (A) in command, or as pilot, mechanic, or member of the crew,
37 who navigates aircraft when under way;

38 (B) except to the extent the Administrator of the Federal Avia-
39 tion Administration may provide otherwise for individuals em-
40 ployed outside the United States, who is directly in charge of in-

1 pecting, maintaining, overhauling, or repairing aircraft, aircraft
2 engines, propellers, or appliances; or

3 (C) who serves as an aircraft dispatcher or air traffic control-
4 tower operator.

5 (9) “airport” means a landing area used regularly by aircraft for re-
6 ceiving or discharging passengers or cargo.

7 (10) “all-cargo air transportation” means the transportation by air-
8 craft in interstate air transportation of only property or only mail, or
9 both.

10 (11) “appliance” means an instrument, equipment, apparatus, a
11 part, an appurtenance, or an accessory used, capable of being used, or
12 intended to be used, in operating or controlling aircraft in flight, in-
13 cluding a parachute, communication equipment, and another mecha-
14 nism installed in or attached to aircraft during flight, and not a part
15 of an aircraft, aircraft engine, or propeller.

16 (12) “cargo” means property, mail, or both.

17 (13) “charter air carrier” means an air carrier holding a certificate
18 of public convenience and necessity that authorizes it to provide charter
19 air transportation.

20 (14) “charter air transportation” means charter trips in air trans-
21 portation authorized under this part.

22 (15) “citizen of the United States” means—

23 (A) an individual who is a citizen of the United States;

24 (B) a partnership each of whose partners is an individual who
25 is a citizen of the United States; or

26 (C) a corporation or association organized under the laws of the
27 United States or a State, the District of Columbia, or a territory
28 or possession of the United States, of which the president and at
29 least two-thirds of the board of directors and other managing offi-
30 cers are citizens of the United States, and in which at least 75
31 percent of the voting interest is owned or controlled by persons
32 that are citizens of the United States.

33 (16) “civil aircraft” means an aircraft except a public aircraft.

34 (17) “civil aircraft of the United States” means an aircraft reg-
35 istered under chapter 441 of this title.

36 (18) “conditional sales contract” means a contract—

37 (A) for the sale of an aircraft, aircraft engine, propeller, appli-
38 ance, or spare part, under which the buyer takes possession of the
39 property but title to the property vests in the buyer at a later time
40 on—

41 (i) paying any part of the purchase price;

- 1 (ii) performing another condition; or
2 (iii) the happening of a contingency; or
3 (B) to bail or lease an aircraft, aircraft engine, propeller, appli-
4 ance, or spare part, under which the bailee or lessee—
5 (i) agrees to pay an amount substantially equal to the value
6 of the property; and
7 (ii) is to become, or has the option of becoming, the owner
8 of the property on complying with the contract.
- 9 (19) “conveyance” means an instrument, including a conditional
10 sales contract, affecting title to, or an interest in, property.
- 11 (20) “Federal airway” means a part of the navigable airspace that
12 the Administrator designates as a Federal airway.
- 13 (21) “foreign air carrier” means a person, not a citizen of the Unit-
14 ed States, undertaking by any means, directly or indirectly, to provide
15 foreign air transportation.
- 16 (22) “foreign air commerce” means the transportation of passengers
17 or property by aircraft for compensation, the transportation of mail by
18 aircraft, or the operation of aircraft in furthering a business or voca-
19 tion, between a place in the United States and a place outside the
20 United States when any part of the transportation or operation is by
21 aircraft.
- 22 (23) “foreign air transportation” means the transportation of pas-
23 sengers or property by aircraft as a common carrier for compensation,
24 or the transportation of mail by aircraft, between a place in the United
25 States and a place outside the United States when any part of the
26 transportation is by aircraft.
- 27 (24) “interstate air commerce” means the transportation of pas-
28 sengers or property by aircraft for compensation, the transportation of
29 mail by aircraft, or the operation of aircraft in furthering a business
30 or vocation—
31 (A) between a place in—
32 (i) a State, territory, or possession of the United States
33 and a place in the District of Columbia or another State, ter-
34 ritory, or possession of the United States;
35 (ii) a State and another place in the same State through
36 the airspace over a place outside the State;
37 (iii) the District of Columbia and another place in the Dis-
38 trict of Columbia; or
39 (iv) a territory or possession of the United States and an-
40 other place in the same territory or possession; and

1 (B) when any part of the transportation or operation is by air-
2 craft.

3 (25) “interstate air transportation” means the transportation of pas-
4 sengers or property by aircraft as a common carrier for compensation,
5 or the transportation of mail by aircraft—

6 (A) between a place in—

7 (i) a State, territory, or possession of the United States
8 and a place in the District of Columbia or another State, ter-
9 ritory, or possession of the United States;

10 (ii) Hawaii and another place in Hawaii through the air-
11 space over a place outside Hawaii;

12 (iii) the District of Columbia and another place in the Dis-
13 trict of Columbia; or

14 (iv) a territory or possession of the United States and an-
15 other place in the same territory or possession; and

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

17 (26) “intrastate air carrier” means a citizen of the United States un-
18 dertaking by any means to provide only intrastate air transportation.

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

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

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

29 (30) “navigable airspace” means airspace above the minimum alti-
30 tudes of flight prescribed by regulations under subparts I and III of
31 this part, including airspace needed to ensure safety in the takeoff and
32 landing of aircraft.

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

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

37 (A) the navigation of aircraft; and

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

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

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

6 (35) “price” means a rate, fare, or charge for air transportation.

7 (36) “propeller” includes a part, appurtenance, and accessory of a
8 propeller.

9 (37) “public aircraft”—

10 (A) means an aircraft—

11 (i) used only for the United States Government; or

12 (ii) owned and operated (except for commercial purposes),
13 or exclusively leased for at least 90 continuous days, by a
14 government (except the United States Government), including
15 a State, the District of Columbia, or a territory or possession
16 of the United States, or political subdivision of that govern-
17 ment; but

18 (B) does not include a government-owned aircraft transporting
19 passengers or property for commercial purposes.

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

24 (39) “State authority” means an authority of a State designated
25 under State law—

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

28 (B) as the representative of the State before the Secretary of
29 Transportation in any matter about which the Secretary is re-
30 quired to consult with or consider the views of a State authority
31 under subpart II of this part.

32 (40) “ticket agent” means a person (except an air carrier, a foreign
33 air carrier, or an employee of an air carrier or foreign air carrier) that
34 as a principal or agent sells, offers for sale, negotiates for, or holds it-
35 self out as selling, providing, or arranging for, air transportation.

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

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

1 **§ 40103. Sovereignty and use of airspace**

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

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

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

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

21 (A) navigating, protecting, and identifying aircraft;

22 (B) protecting individuals and property on the ground;

23 (C) using the navigable airspace efficiently; and

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

26 (3) To establish security provisions that will encourage and allow maxi-
27 mum use of the navigable airspace by civil aircraft consistent with national
28 security, the Administrator, in consultation with the Secretary of Defense,
29 shall—

30 (A) establish areas in the airspace the Administrator decides are nec-
31 essary in the interest of national defense; and

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

35 (4) Notwithstanding the military exception in section 553(a)(1) of title
36 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed
37 under this subsection.

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

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

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

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

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

13 **§ 40104. Promotion of civil aeronautics and air commerce**

14 The Administrator of the Federal Aviation Administration shall encour-
15 age the development of civil aeronautics and air commerce in and outside
16 the United States. In carrying out this section, the Administrator shall take
17 action that the Administrator considers necessary to establish, within avail-
18 able resources, a program to distribute civil aviation information in each re-
19 gion served by the Administration. The program shall provide, on request,
20 informational material and expertise on civil aviation to State and local
21 school administrators, college and university officials, and officers of other
22 interested organizations.

23 **§ 40105. International negotiations, agreements, and obliga-**
24 **tions**

25 (a) ADVICE AND CONSULTATION.—The Secretary of State shall advise
26 the Administrator of the Federal Aviation Administration and the Secretar-
27 ies of Transportation and Commerce, and consult with them as appropriate,
28 about negotiations for an agreement with a government of a foreign country
29 to establish or develop air navigation, including air routes and services. The
30 Secretary of Transportation shall consult with the Secretary of State in car-
31 rying out this part to the extent this part is related to foreign air transpor-
32 tation.

33 (b) ACTIONS OF SECRETARY AND ADMINISTRATOR.—(1) In carrying out
34 this part, the Secretary of Transportation and the Administrator—

35 (A) shall act consistently with obligations of the United States Gov-
36 ernment under an international agreement;

37 (B) shall consider applicable laws and requirements of a foreign
38 country; and

39 (C) may not limit compliance by an air carrier with obligations or
40 liabilities imposed by the government of a foreign country when the

1 Secretary takes any action related to a certificate of public convenience
2 and necessity issued under chapter 411 of this title.

3 (2) This subsection does not apply to an agreement between an air carrier
4 or an officer or representative of an air carrier and the government of a
5 foreign country, if the Secretary of Transportation disapproves the agree-
6 ment because it is not in the public interest. Section 40106(b)(2) of this
7 title applies to this subsection.

8 (c) CONSULTATION ON INTERNATIONAL AIR TRANSPORTATION POLICY.—
9 In carrying out section 40101(e) of this title, the Secretaries of State and
10 Transportation, to the maximum extent practicable, shall consult on broad
11 policy goals and individual negotiations with—

- 12 (1) the Secretaries of Commerce and Defense;
- 13 (2) airport operators;
- 14 (3) scheduled air carriers;
- 15 (4) charter air carriers;
- 16 (5) airline labor;
- 17 (6) consumer interest groups;
- 18 (7) travel agents and tour organizers; and
- 19 (8) other groups, institutions, and governmental authorities affected
20 by international aviation policy.

21 (d) CONGRESSIONAL OBSERVERS AT INTERNATIONAL AVIATION NEGOTIATIONS.—The President shall grant to at least one representative of each
22 House of Congress the privilege of attending international aviation negotia-
23 tions as an observer if the privilege is requested in advance in writing.

24 **§ 40106. Emergency powers**

25 (a) DEVIATIONS FROM REGULATIONS.—Appropriate military authority
26 may authorize aircraft of the armed forces of the United States to deviate
27 from air traffic regulations prescribed under section 40103(b)(1) and (2) of
28 this title when the authority decides the deviation is essential to the national
29 defense because of a military emergency or urgent military necessity. The
30 authority shall—

- 31 (1) give the Administrator of the Federal Aviation Administration
32 prior notice of the deviation at the earliest practicable time; and
- 33 (2) to the extent time and circumstances allow, make every reason-
34 able effort to consult with the Administrator and arrange for the devi-
35 ation in advance on a mutually agreeable basis.

36 (b) SUSPENSION OF AUTHORITY.—(1) When the President decides that
37 the government of a foreign country is acting inconsistently with the Con-
38 vention for the Suppression of Unlawful Seizure of Aircraft or that the gov-
39 ernment of a foreign country allows territory under its jurisdiction to be
40 used as a base of operations or training of, or as a sanctuary for, or arms,
41

1 aids, or abets, a terrorist organization that knowingly uses the unlawful sei-
2 zure, or the threat of an unlawful seizure, of an aircraft as an instrument
3 of policy, the President may suspend the authority of—

4 (A) an air carrier or foreign air carrier to provide foreign air trans-
5 portation to and from that foreign country;

6 (B) a person to operate aircraft in foreign air commerce to and from
7 that foreign country;

8 (C) a foreign air carrier to provide foreign air transportation be-
9 tween the United States and another country that maintains air service
10 with the foreign country; and

11 (D) a foreign person to operate aircraft in foreign air commerce be-
12 tween the United States and another country that maintains air service
13 with the foreign country.

14 (2) The President may act under this subsection without notice or a hear-
15 ing. The suspension remains in effect for as long as the President decides
16 is necessary to ensure the security of aircraft against unlawful seizure. Not-
17 withstanding section 40105(b) of this title, the authority of the President
18 to suspend rights under this subsection is a condition to a certificate of pub-
19 lic convenience and necessity, air carrier operating certificate, foreign air
20 carrier or foreign aircraft permit, or foreign air carrier operating specifica-
21 tion issued by the Secretary of Transportation under this part.

22 (3) An air carrier or foreign air carrier may not provide foreign air trans-
23 portation, and a person may not operate aircraft in foreign air commerce,
24 in violation of a suspension of authority under this subsection.

25 **§ 40107. Presidential transfers**

26 (a) GENERAL AUTHORITY.—The President may transfer to the Adminis-
27 trator of the Federal Aviation Administration a duty, power, activity, or fa-
28 cility of a department, agency, or instrumentality of the executive branch
29 of the United States Government, or an officer or unit of a department,
30 agency, or instrumentality of the executive branch, related primarily to se-
31 lecting, developing, testing, evaluating, establishing, operating, or maintain-
32 ing a system, procedure, facility, or device for safe and efficient air naviga-
33 tion and air traffic control. In making a transfer, the President may trans-
34 fer records and property and make officers and employees from the depart-
35 ment, agency, instrumentality, or unit available to the Administrator.

36 (b) DURING WAR.—If war occurs, the President by executive order may
37 transfer to the Secretary of Defense a duty, power, activity, or facility of
38 the Administrator. In making the transfer, the President may transfer
39 records, property, officers, and employees of the Administration to the De-
40 partment of Defense.

§ 40108. Training schools

(a) AUTHORITY TO OPERATE.—The Administrator of the Federal Aviation Administration may operate schools to train officers and employees of the Administration to carry out duties, powers, and activities of the Administrator.

(b) ATTENDANCE.—The Administrator may authorize officers and employees of other departments, agencies, or instrumentalities of the United States Government, officers and employees of governments of foreign countries, and individuals from the aeronautics industry to attend those schools. However, if the attendance of any of those officers, employees, or individuals increases the cost of operating the schools, the Administrator may require the payment or transfer of amounts or other consideration to offset the additional cost. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

§ 40109. Authority to exempt

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

(A) an air carrier not engaged directly in operating aircraft in air transportation; or

(B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

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

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

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, sections 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter 419, subchapter II of chapter 421, and section 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

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

1 from section 42112(b)(1) and (2) an air carrier not providing scheduled air
2 transportation, and the operations conducted during daylight hours by an
3 air carrier providing scheduled air transportation, when the Secretary de-
4 cides that—

5 (1) because of the limited extent of, or unusual circumstances affect-
6 ing, the operation of the air carrier, the enforcement of section
7 42112(b)(1) and (2) of this title is or would be an unreasonable burden
8 on the air carrier that would obstruct its development and prevent it
9 from beginning or continuing operations; and

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

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

15 (f) SMALLER AIRCRAFT.—(1) An air carrier is exempt from section
16 41101(a)(1) of this title, and the Secretary may exempt an air carrier from
17 another provision of subpart II of this part, if the air carrier—

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

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

22 (B) complies with liability insurance requirements and other regula-
23 tions the Secretary prescribes.

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

26 (3)(A) An exemption under this subsection applies to an air carrier pro-
27 viding air transportation between 2 places in Alaska, or between Alaska and
28 Canada, only if the carrier is authorized by Alaska to provide the transpor-
29 tation.

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

38 (g) EMERGENCY AIR TRANSPORTATION BY FOREIGN AIR CARRIERS.—(1)
39 To the extent that the Secretary decides an exemption is in the public inter-
40 est, the Secretary may exempt by order a foreign air carrier from the re-
41 quirements and limitations of this part for not more than 30 days to allow

1 the foreign air carrier to carry passengers or cargo in interstate air trans-
2 portation in certain markets if the Secretary finds that—

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

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

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

11 (ii) the air carriers' reservations systems to the extent prac-
12 ticable;

13 (C) the exemption is necessary to avoid unreasonable hardship for
14 the traffic in the markets that cannot be accommodated by the air car-
15 riers; and

16 (D) granting the exemption will not result in an unreasonable advan-
17 tage to any party in a labor dispute where the inability to accommodate
18 traffic in a market is a result of the dispute.

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

21 (A) ensure that air transportation that the foreign air carrier pro-
22 vides under the exemption is made available on reasonable terms;

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

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

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

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

35 **§ 40110. General procurement authority**

36 (a) GENERAL.—In carrying out this part, the Administrator of the Fed-
37 eral Aviation Administration may—

38 (1) acquire, to the extent that amounts are available for obligation,
39 services or an interest in property, including an interest in airspace im-
40 mediately adjacent to and needed for airports and other air navigation

1 facilities owned by the United States Government and operated by the
2 Administrator;

3 (2) dispose of an interest in property for adequate compensation; and

4 (3) construct and improve laboratories and other test facilities.

5 (b) DUTIES AND POWERS.—When carrying out subsection (a) of this sec-
6 tion, the Administrator of the Federal Aviation Administration—

7 (1) is the senior procurement executive referred to in section 16(3)
8 of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))
9 for approving the justification for using procedures other than competi-
10 tive procedures, as required under section 303(f)(1)(B)(iii) of the Fed-
11 eral Property and Administrative Services Act of 1949 (41 U.S.C.
12 253(f)(1)(B)(iii)); and

13 (2) may—

14 (A) lease an interest in property for not more than 20 years;

15 (B) consider the reasonable probable future use of the underly-
16 ing land in making an award for a condemnation of an interest
17 in airspace;

18 (C) construct, or acquire an interest in, a public building (as
19 defined in section 13 of the Public Buildings Act of 1959 (40
20 U.S.C. 612)) only under a delegation of authority from the Ad-
21 ministrator of General Services;

22 (D) use procedures other than competitive procedures, as pro-
23 vided under section 303(c) of the Federal Property and Adminis-
24 trative Services Act of 1949 (41 U.S.C. 253(c));

25 (E) use procedures other than competitive procedures only when
26 the property or services needed by the Administrator of the Fed-
27 eral Aviation Administration are available from only one respon-
28 sible source or only from a limited number of responsible sources
29 and no other type of property or services will satisfy the needs of
30 the Administrator; and

31 (F) dispose of property under subsection (a)(2) of this section,
32 except for airport and airway property and technical equipment
33 used for the special purposes of the Administration, only under
34 title II of the Federal Property and Administrative Services Act
35 of 1949 (40 U.S.C. 481 et seq.).

36 **§40111. Multiyear procurement contracts for services and**
37 **related items**

38 (a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of
39 title 31, the Administrator of the Federal Aviation Administration may
40 make a contract of not more than 5 years for the following types of services
41 and items of supply related to those services for which amounts otherwise

1 would be available for obligation only in the fiscal year for which appro-
2 priated:

3 (1) operation, maintenance, and support of facilities and installa-
4 tions.

5 (2) operation, maintenance, and modification of aircraft, vehicles,
6 and other highly complex equipment.

7 (3) specialized training requiring high quality instructor skills, in-
8 cluding training of pilots and aircrew members and foreign language
9 training.

10 (4) base services, including ground maintenance, aircraft refueling,
11 bus transportation, and refuse collection and disposal.

12 (b) REQUIRED FINDINGS.—The Administrator may make a contract
13 under this section only if the Administrator finds that—

14 (1) there will be a continuing requirement for the service consistent
15 with current plans for the proposed contract period;

16 (2) providing the service will require a substantial initial investment
17 in plant or equipment, or will incur a substantial contingent liability
18 for assembling, training, or transporting a specialized workforce; and

19 (3) the contract will promote the best interests of the United States
20 by encouraging effective competition and promoting economies in oper-
21 ation.

22 (c) CONSIDERATIONS.—When making a contract under this section, the
23 Administrator shall be guided by the following:

24 (1) The part of the cost of a plant or equipment amortized as a cost
25 of contract performance may not be more than the ratio between the
26 period of contract performance and the anticipated useful commercial
27 life (instead of physical life) of the plant or equipment, considering the
28 location and specialized nature of the plant or equipment, obsolescence,
29 and other similar factors.

30 (2) The Administrator shall consider the desirability of—

31 (A) obtaining an option to renew the contract for a reasonable
32 period of not more than 3 years, at a price that does not include
33 charges for nonrecurring costs already amortized; and

34 (B) reserving in the Administrator the right, on payment of the
35 unamortized part of the cost of the plant or equipment, to take
36 title to the plant or equipment under appropriate circumstances.

37 (d) ENDING CONTRACTS.—A contract made under this section shall be
38 ended if amounts are not made available to continue the contract into a sub-
39 sequent fiscal year. The cost of ending the contract may be paid from—

40 (1) an appropriation originally available for carrying out the con-
41 tract;

1 (2) an appropriation currently available for procuring the type of
2 service concerned and not otherwise obligated; or

3 (3) amounts appropriated for payments to end the contract.

4 **§ 40112. Multiyear procurement contracts for property**

5 (a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of
6 title 31 and to the extent that amounts otherwise are available for obliga-
7 tion, the Administrator of the Federal Aviation Administration may make
8 a contract of more than one but not more than 5 fiscal years to purchase
9 property, except a contract to construct, alter, or make a major repair or
10 improvement to real property or a contract to purchase property to which
11 section 111 of the Federal Property and Administrative Services Act of
12 1949 (40 U.S.C. 759) applies.

13 (b) REQUIRED FINDINGS.—The Administrator may make a contract
14 under this section if the Administrator finds that—

15 (1) the contract will promote the safety or efficiency of the national
16 airspace system and will result in reduced total contract costs;

17 (2) the minimum need for the property to be purchased is expected
18 to remain substantially unchanged during the proposed contract period
19 in terms of production rate, procurement rate, and total quantities;

20 (3) there is a reasonable expectation that throughout the proposed
21 contract period the Administrator will request appropriations for the
22 contract at the level required to avoid cancellation;

23 (4) there is a stable design for the property to be acquired and the
24 technical risks associated with the property are not excessive; and

25 (5) the estimates of the contract costs and the anticipated savings
26 from the contract are realistic.

27 (c) REGULATIONS.—The Administrator shall prescribe regulations for ac-
28 quiring property under this section to promote the use of contracts under
29 this section in a way that will allow the most efficient use of those contracts.
30 The regulations may provide for a cancellation provision in the contract to
31 the extent the provision is necessary and in the best interest of the United
32 States. The provision may include consideration of recurring and non-
33 recurring costs of the contractor associated with producing the item to be
34 delivered under the contract. The regulations shall provide that, to the ex-
35 tent practicable—

36 (1) to broaden the aviation industrial base—

37 (A) a contract under this section shall be used to seek, retain,
38 and promote the use under that contract of subcontractors, ven-
39 dors, or suppliers; and

40 (B) on accrual of a payment or other benefit accruing on a con-
41 tract under this section to a subcontractor, vendor, or supplier

1 participating in the contract, the payment or benefit shall be deliv-
 2 ered in the most expeditious way practicable; and

3 (2) this section and regulations prescribed under this section may
 4 not be carried out in a way that precludes or curtails the existing abil-
 5 ity of the Administrator to provide for—

6 (A) competition in producing items to be delivered under a con-
 7 tract under this section; or

8 (B) ending a prime contract when performance is deficient with
 9 respect to cost, quality, or schedule.

10 (d) CONTRACT PROVISIONS.—(1) A contract under this section may—

11 (A) be used for the advance procurement of components, parts, and
 12 material necessary to manufacture equipment to be used in the na-
 13 tional airspace system;

14 (B) provide that performance under the contract after the first year
 15 is subject to amounts being appropriated; and

16 (C) contain a negotiated priced option for varying the number of end
 17 items to be procured over the period of the contract.

18 (2) If feasible and practicable, an advance procurement contract may be
 19 made to achieve economic-lot purchases and more efficient production rates.

20 (e) CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEIL-
 21 ING.—(1) If a contract under this section provides that performance is sub-
 22 ject to an appropriation being made, it also may provide for a cancellation
 23 payment to be made to the contractor if the appropriation is not made.

24 (2) Before awarding a contract under this section containing a cancella-
 25 tion ceiling of more than \$100,000,000, the Administrator shall give written
 26 notice of the proposed contract and cancellation ceiling to the Committee
 27 on Commerce, Science, and Transportation of the Senate and the Commit-
 28 tee on Public Works and Transportation of the House of Representatives.
 29 The contract may not be awarded until the end of the 30-day period begin-
 30 ning on the date of the notice.

31 (f) ENDING CONTRACTS.—A contract made under this section shall be
 32 ended if amounts are not made available to continue the contract into a sub-
 33 sequent fiscal year. The cost of ending the contract may be paid from—

34 (1) an appropriation originally available for carrying out the con-
 35 tract;

36 (2) an appropriation currently available for procuring the type of
 37 property concerned and not otherwise obligated; or

38 (3) amounts appropriated for payments to end the contract.

39 **§ 40113. Administrative**

40 (a) GENERAL AUTHORITY.—The Secretary of Transportation (or the Ad-
 41 ministrator of the Federal Aviation Administration with respect to aviation

1 safety duties and powers designated to be carried out by the Administrator)
2 may take action the Secretary or Administrator, as appropriate, considers
3 necessary to carry out this part, including conducting investigations, pre-
4 scribing regulations, standards, and procedures, and issuing orders.

5 (b) HAZARDOUS MATERIAL.—In carrying out this part, the Secretary has
6 the same authority to regulate the transportation of hazardous material by
7 air that the Secretary has under section 5103 of this title. However, this
8 subsection does not prohibit or regulate the transportation of a firearm (as
9 defined in section 232 of title 18) or ammunition for a firearm, when trans-
10 ported by an individual for personal use.

11 (c) GOVERNMENTAL ASSISTANCE.—The Secretary (or the Administrator
12 of the Federal Aviation Administration with respect to aviation safety duties
13 and powers designated to be carried out by the Administrator) may use the
14 assistance of the Administrator of the National Aeronautics and Space Ad-
15 ministration and any research or technical department, agency, or instru-
16 mentality of the United States Government on matters related to aircraft
17 fuel and oil, and to the design, material, workmanship, construction, per-
18 formance, maintenance, and operation of aircraft, aircraft engines, propel-
19 lers, appliances, and air navigation facilities. Each department, agency, and
20 instrumentality may conduct scientific and technical research, investigations,
21 and tests necessary to assist the Secretary or Administrator of the Federal
22 Aviation Administration in carrying out this part. This part does not au-
23 thorize duplicating laboratory research activities of a department, agency,
24 or instrumentality.

25 (d) INDEMNIFICATION.—The Administrator of the Federal Aviation Ad-
26 ministration may indemnify an officer or employee of the Administration
27 against a claim or judgment arising out of an act that the Administrator
28 decides was committed within the scope of the official duties of the officer
29 or employee.

30 **§ 40114. Reports and records**

31 (a) WRITTEN REPORTS.—(1) Except as provided in this part, the Sec-
32 retary of Transportation (or the Administrator of the Federal Aviation Ad-
33 ministration with respect to aviation safety duties and powers designated to
34 be carried out by the Administrator) shall make a written report of each
35 proceeding and investigation under this part in which a formal hearing was
36 held and shall provide a copy to each party to the proceeding or investiga-
37 tion. The report shall include the decision, conclusions, order, and require-
38 ments of the Secretary or Administrator as appropriate.

39 (2) The Secretary (or the Administrator with respect to aviation safety
40 duties and powers designated to be carried out by the Administrator) shall
41 have all reports, orders, decisions, and regulations the Secretary or Adminis-

1 trator, as appropriate, issues or prescribes published in the form and way
2 best adapted for public use. A publication of the Secretary or Administrator
3 is competent evidence of its contents.

4 (b) PUBLIC RECORDS.—Except as provided in subpart II of this part,
5 copies of tariffs and arrangements filed with the Secretary under subpart
6 II, and the statistics, tables, and figures contained in reports made to the
7 Secretary under subpart II, are public records. The Secretary is the custo-
8 dian of those records. A public record, or a copy or extract of it, certified
9 by the Secretary under the seal of the Department of Transportation is
10 competent evidence in an investigation by the Secretary and in a judicial
11 proceeding.

12 **§ 40115. Withholding information**

13 (a) OBJECTIONS TO DISCLOSURE.—(1) A person may object to the public
14 disclosure of information—

15 (A) in a record filed under this part; or

16 (B) obtained under this part by the Secretary of Transportation or
17 State or the United States Postal Service.

18 (2) An objection must be in writing and must state the reasons for the
19 objection. The Secretary of Transportation or State or the Postal Service
20 shall order the information withheld from public disclosure when the appro-
21 priate Secretary or the Postal Service decides that disclosure of the informa-
22 tion would—

23 (A) prejudice the United States Government in preparing and pre-
24 senting its position in international negotiations; or

25 (B) have an adverse effect on the competitive position of an air car-
26 rier in foreign air transportation.

27 (b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does
28 not authorize information to be withheld from a committee of Congress au-
29 thorized to have the information.

30 **§ 40116. State taxation**

31 (a) DEFINITION.—In this section, “State” includes the District of Colum-
32 bia, a territory or possession of the United States, and a political authority
33 of at least 2 States.

34 (b) PROHIBITIONS.—Except as provided in subsection (c) of this section
35 and section 40117 of this title, a State or political subdivision of a State
36 may not levy or collect a tax, fee, head charge, or other charge on—

37 (1) an individual traveling in air commerce;

38 (2) the transportation of an individual traveling in air commerce;

39 (3) the sale of air transportation; or

40 (4) the gross receipts from that air commerce or transportation.

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

6 (d) UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTER-
7 STATE COMMERCE.—(1) In this subsection—

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

11 (B) “assessment” means valuation for a property tax levied by a tax-
12 ing district.

13 (C) “assessment jurisdiction” means a geographical area in a State
14 used in determining the assessed value of property for ad valorem tax-
15 ation.

16 (D) “commercial and industrial property” means property (except
17 transportation property and land used primarily for agriculture or tim-
18 ber growing) devoted to a commercial or industrial use and subject to
19 a property tax levy.

20 (2)(A) A State, political subdivision of a State, or authority acting for
21 a State or political subdivision may not do any of the following acts because
22 those acts unreasonably burden and discriminate against interstate com-
23 merce:

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

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

31 (iii) levy or collect an ad valorem property tax on air carrier trans-
32 portation property at a tax rate greater than the tax rate applicable
33 to commercial and industrial property in the same assessment jurisdic-
34 tion.

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

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

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

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

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

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

9 (B) “State” means a State of the United States, the District of Co-
10 lumbia, and a territory or possession of the United States.

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

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

19 (A) the State or political subdivision of the State that is the resi-
20 dence of the employee.

21 (B) the State or political subdivision of the State in which the em-
22 ployee earns more than 50 percent of the pay received by the employee
23 from the carrier.

24 **§ 40117. Passenger facility fees**

25 (a) DEFINITIONS.—In this section—

26 (1) “airport”, “commercial service airport”, and “public agency”
27 have the same meanings given those terms in section 47102 of this
28 title.

29 (2) “eligible agency” means a public agency that controls a commer-
30 cial service airport.

31 (3) “eligible airport-related project” means a project—

32 (A) for airport development or airport planning under sub-
33 chapter I of chapter 471 of this title;

34 (B) for terminal development described in section 47110(d) of
35 this title;

36 (C) for airport noise capability planning under section 47505 of
37 this title;

38 (D) to carry out noise compatibility measures eligible for assist-
39 ance under section 47504 of this title, whether or not a program
40 for those measures has been approved under section 47504; and

1 (E) for constructing gates and related areas at which pas-
2 sengers board or exit aircraft.

3 (4) “passenger facility fee” means a fee imposed under this section.

4 (5) “passenger facility revenue” means revenue derived from a pas-
5 senger facility fee.

6 (b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may au-
7 thorize under this section an eligible agency to impose a passenger facility
8 fee of \$1, \$2, or \$3 on each paying passenger of an air carrier or foreign
9 air carrier boarding an aircraft at an airport the agency controls to finance
10 an eligible airport-related project, including making payments for debt serv-
11 ice on indebtedness incurred to carry out the project, to be carried out in
12 connection with the airport or any other airport the agency controls.

13 (2) A State, political subdivision of a State, or authority of a State or
14 political subdivision that is not the eligible agency may not regulate or pro-
15 hibit the imposition or collection of a passenger facility fee or the use of
16 the passenger facility revenue.

17 (3) A passenger facility fee may be imposed on a passenger of an air car-
18 rier or foreign air carrier originating or connecting at the commercial serv-
19 ice airport that the agency controls.

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

24 (2) Before submitting an application, the eligible agency must provide
25 reasonable notice to, and an opportunity for consultation with, air carriers
26 and foreign air carriers operating at the airport. The Secretary shall pre-
27 scribe regulations that define reasonable notice and contain at least the fol-
28 lowing requirements:

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

33 (B) Not later than 30 days after written notice is provided under
34 subparagraph (A) of this paragraph, each air carrier and foreign air
35 carrier operating at the airport must provide to the agency written no-
36 tice of receipt of the notice. Failure of a carrier to provide the notice
37 may be deemed certification of agreement with the project by the car-
38 rier under subparagraph (D) of this paragraph.

39 (C) Not later than 45 days after written notice is provided under
40 subparagraph (A) of this paragraph, the agency must conduct a meet-

1 ing to provide air carriers and foreign air carriers with descriptions of
2 projects and justifications and a detailed financial plan for projects.

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

9 (3) After receiving an application, the Secretary shall provide notice and
10 an opportunity to air carriers, foreign air carriers, and other interested per-
11 sons to comment on the application. The Secretary shall make a final deci-
12 sion on the application not later than 120 days after receiving it.

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

17 (1) the amount and duration of the proposed passenger facility fee
18 will result in revenue (including interest and other returns on the reve-
19 nue) that is not more than the amount necessary to finance the specific
20 project; and

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

22 (A) preserve or enhance capacity, safety, or security of the na-
23 tional air transportation system;

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

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

28 (e) LIMITATIONS ON IMPOSING FEES.—(1) An eligible agency may im-
29 pose a passenger facility fee only—

30 (A) if the Secretary approves an application that the agency has sub-
31 mitted under subsection (c) of this section; and

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

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

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

37 (B) for the boarding to an eligible place under subchapter II of chap-
38 ter 417 of this title for which essential air service compensation is paid
39 under subchapter II; and

40 (C) for a project the Secretary does not approve under this section
41 before October 1, 1993, if, during the fiscal year ending September 30,

1 1993, the amount available for obligation under subchapter II of chap-
2 ter 417 of this title is less than \$38,600,000, except that this clause—

3 (i) does not apply if the amount available for obligation under
4 subchapter II of chapter 417 of this title is less than \$38,600,000
5 because of sequestration or other general appropriations reduc-
6 tions applied proportionately to appropriations accounts through-
7 out an appropriation law; and

8 (ii) does not affect the authority of the Secretary to approve the
9 imposition of a fee or the use of revenues, derived from a fee im-
10 posed under an approval made under this section, by a public
11 agency that has received an approval to impose a fee under this
12 section before September 30, 1993, regardless of whether the fee
13 is being imposed on September 30, 1993.

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

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

22 (3) A lease or use agreement of an air carrier or foreign air carrier relat-
23 ed to a project whose construction or expansion was financed with a pas-
24 senger facility fee may not restrict the eligible agency from financing, devel-
25 oping, or assigning new capacity at the airport with passenger facility reve-
26 nue.

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

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

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

40 (h) COMPLIANCE.—(1) As necessary to ensure compliance with this sec-
41 tion, the Secretary shall prescribe regulations requiring recordkeeping and

1 auditing of accounts maintained by an air carrier or foreign air carrier and
2 its agent collecting a passenger facility fee and by the eligible agency impos-
3 ing the fee.

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

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

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

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

18 (2) shall—

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

22 (B) establish procedures for handling and remitting money col-
23 lected;

24 (C) ensure that the money, less a uniform amount the Secretary
25 determines reflects the average necessary and reasonable expenses
26 (net of interest accruing to the carrier and agent after collection
27 and before remittance) incurred in collecting and handling the fee,
28 is paid promptly to the eligible agency for which they are collected;
29 and

30 (D) require that the amount collected for any air transportation
31 be noted on the ticket for that air transportation.

32 **§ 40118. Government-financed air transportation**

33 (a) TRANSPORTATION BY AIR CARRIERS HOLDING CERTIFICATES.—A
34 department, agency, or instrumentality of the United States Government
35 shall take necessary steps to ensure that the transportation of passengers
36 and property by air is provided by an air carrier holding a certificate under
37 section 41102 of this title if—

38 (1) the department, agency, or instrumentality—

39 (A) obtains the transportation for itself or in carrying out an
40 arrangement under which payment is made by the Government or

1 payment is made from amounts provided for the use of the Gov-
2 ernment; or

3 (B) provides the transportation to or for a foreign country or
4 international or other organization without reimbursement;

5 (2) the transportation is authorized by the certificate or by regula-
6 tion or exemption of the Secretary of Transportation; and

7 (3) the air carrier is—

8 (A) available, if the transportation is between a place in the
9 United States and a place outside the United States; or

10 (B) reasonably available, if the transportation is between 2
11 places outside the United States.

12 (b) TRANSPORTATION BY FOREIGN AIR CARRIERS.—This section does
13 not preclude the transportation of passengers and property by a foreign air
14 carrier if the transportation is provided under a bilateral or multilateral air
15 transportation agreement to which the Government and the government of
16 a foreign country are parties if the agreement—

17 (1) is consistent with the goals for international aviation policy of
18 section 40101(e) of this title; and

19 (2) provides for the exchange of rights or benefits of similar mag-
20 nitude.

21 (c) PROOF.—The Comptroller General shall allow the expenditure of an
22 appropriation for transportation in violation of this section only when satis-
23 factory proof is presented showing the necessity for the transportation.

24 (d) TRANSPORTATION BY FOREIGN AIR CARRIERS.—Notwithstanding
25 subsections (a) and (c) of this section, any amount appropriated to the Sec-
26 retary of State, the Director of the United States Information Agency, the
27 Director of the United States International Development Cooperation Agen-
28 cy, or the Director of the Arms Control and Disarmament Agency may be
29 used to pay for the transportation of an officer or employee of the Depart-
30 ment of State or one of those agencies, a dependent of the officer or em-
31 ployee, and accompanying baggage, by a foreign air carrier when the trans-
32 portation is between 2 places outside the United States.

33 (e) RELATIONSHIP TO OTHER LAWS.—This section does not affect the
34 application of the antidiscrimination provisions of this part.

35 **§ 40119. Security and research and development activities**

36 (a) GENERAL REQUIREMENTS.—The Administrator of the Federal Avia-
37 tion Administration shall conduct research (including behavioral research)
38 and development activities appropriate to develop, modify, test, and evaluate
39 a system, procedure, facility, or device to protect passengers and property
40 against acts of criminal violence and aircraft piracy.

(b) DISCLOSURE.—(1) Notwithstanding section 552 of title 5, the Administrator shall prescribe regulations prohibiting disclosure of information obtained or developed in carrying out security or research and development activities under section 44501(a) or (c), 44502(a)(1) or (3), (b), or (c), 44504, 44505, 44507, 44508, 44511, 44512, 44513, 44901, 44903(a), (b), (c), or (e), 44905, 44912, 44935, 44936, or 44938(a) or (b) of this title if the Administrator decides disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to the safety of passengers in air transportation.

(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(c) TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as otherwise provided by law, the Administrator may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.

§ 40120. Relationship to other laws

(a) NONAPPLICATION.—Except as provided in the International Navigational Rules Act of 1977 (33 U.S.C. 1601 et seq.), the navigation and shipping laws of the United States and the rules for the prevention of collisions do not apply to aircraft or to the navigation of vessels related to those aircraft.

(b) EXTENDING APPLICATION OUTSIDE UNITED STATES.—The President may extend (in the way and for periods the President considers necessary) the application of this part to outside the United States when—

(1) an international arrangement gives the United States Government authority to make the extension; and

(2) the President decides the extension is in the national interest.

(c) ADDITIONAL REMEDIES.—A remedy under this part is in addition to any other remedies provided by law.

SUBPART II—ECONOMIC REGULATION

CHAPTER 411—AIR CARRIER CERTIFICATES

Sec.

41101. Requirement for a certificate.

41102. General, temporary, and charter air transportation certificates of air carriers.

41103. All-cargo air transportation certificates of air carriers.

41104. Additional limitations and requirements of charter air carriers.

41105. Transfers of certificates.

41106. Airlift service.

41107. Transportation of mail.

41108. Applications for certificates.

41109. Terms of certificates.

41110. Effective periods and amendments, modifications, suspensions, and revocations of certificates.

41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates.

41112. Liability insurance and financial responsibility.

1 **§ 41101. Requirement for a certificate**

2 (a) GENERAL.—Except as provided in this chapter or another law—

3 (1) an air carrier may provide air transportation only if the air carrier holds a certificate issued under this chapter authorizing the air transportation;

4 (2) a charter air carrier may provide charter air transportation only if the charter air carrier holds a certificate issued under this chapter authorizing the charter air transportation; and

5 (3) an air carrier may provide all-cargo air transportation only if the air carrier holds a certificate issued under this chapter authorizing the all-cargo air transportation.

6 (b) THROUGH SERVICE AND JOINT TRANSPORTATION.—A citizen of the United States providing transportation in a State of passengers or property as a common carrier for compensation with aircraft capable of carrying at least 30 passengers, under authority granted by the appropriate State authority—

7 (1) may provide transportation for passengers and property that includes through service by the citizen over its routes in the State and in air transportation by an air carrier or foreign air carrier; and

8 (2) subject to sections 41309 and 42111 of this title, may make an agreement with an air carrier or foreign air carrier to provide the joint transportation.

9 (c) PROPRIETARY OR EXCLUSIVE RIGHT NOT CONFERRED.—A certificate issued under this chapter does not confer a proprietary or exclusive right to use airspace, an airway of the United States, or an air navigation facility.

10 **§ 41102. General, temporary, and charter air transportation certificates of air carriers**

11 (a) ISSUANCE.—The Secretary of Transportation may issue a certificate of public convenience and necessity to a citizen of the United States authorizing the citizen to provide any part of the following air transportation the citizen has applied for under section 41108 of this title:

12 (1) air transportation as an air carrier.

13 (2) temporary air transportation as an air carrier for a limited period.

14 (3) charter air transportation as a charter air carrier.

15 (b) FINDINGS REQUIRED FOR ISSUANCE.—(1) Before issuing a certificate under subsection (a) of this section, the Secretary must find that the citizen is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this part and regulations of the Secretary.

1 (2) In addition to the findings under paragraph (1) of this subsection,
2 the Secretary, before issuing a certificate under subsection (a) of this sec-
3 tion for foreign air transportation, must find that the transportation is con-
4 sistent with the public convenience and necessity.

5 (c) TEMPORARY CERTIFICATES.—The Secretary may issue a certificate
6 under subsection (a) of this section for interstate air transportation (except
7 the transportation of passengers) or foreign air transportation for a tem-
8 porary period of time (whether the application is for permanent or tem-
9 porary authority) when the Secretary decides that a test period is desir-
10 able—

11 (1) to decide if the projected services, efficiencies, methods, and
12 prices and the projected results will materialize and remain for a sus-
13 tained period of time; or

14 (2) to evaluate the new transportation.

15 (d) FOREIGN AIR TRANSPORTATION.—The Secretary shall submit each
16 decision authorizing the provision of foreign air transportation to the Presi-
17 dent under section 41307 of this title.

18 **§41103. All-cargo air transportation certificates of air car-**
19 **riers**

20 (a) APPLICATIONS.—A citizen of the United States may apply to the Sec-
21 retary of Transportation for a certificate authorizing the citizen to provide
22 all-property air transportation. The application must contain information
23 and be in the form the Secretary by regulation requires.

24 (b) ISSUANCE.—Not later than 180 days after an application for a certifi-
25 cate is filed under this section, the Secretary shall issue the certificate to
26 a citizen of the United States authorizing the citizen, as an air carrier, to
27 provide any part of the all-cargo air transportation applied for unless the
28 Secretary finds that the citizen is not fit, willing, and able to provide the
29 all-cargo air transportation to be authorized by the certificate and to comply
30 with regulations of the Secretary.

31 (c) TERMS.—The Secretary may impose terms the Secretary considers
32 necessary when issuing a certificate under this section. However, the Sec-
33 retary may not impose terms that restrict the places served or prices
34 charged by the holder of the certificate.

35 (d) EXEMPTIONS AND STATUS.—A citizen issued a certificate under this
36 section—

37 (1) is exempt in providing the transportation under the certificate
38 from the requirements of—

39 (A) section 41101(a)(1) of this title and regulations or proce-
40 dures prescribed under section 41101(a)(1); and

1 (B) other provisions of this part and regulations or procedures
2 prescribed under those provisions when the Secretary finds under
3 regulations of the Secretary that the exemption is appropriate; and
4 (2) is an air carrier under this part except to the extent the carrier
5 is exempt under this section from a requirement of this part.

6 **§41104. Additional limitations and requirements of charter**
7 **air carriers**

8 (a) RESTRICTIONS.—The Secretary of Transportation may prescribe a
9 regulation or issue an order restricting the marketability, flexibility, acces-
10 sibility, or variety of charter air transportation provided under a certificate
11 issued under section 41102 of this title only to the extent required by the
12 public interest. A regulation prescribed or order issued under this subsection
13 may not be more restrictive than a regulation related to charter air trans-
14 portation that was in effect on October 1, 1978.

15 (b) ALASKA.—An air carrier holding a certificate issued under section
16 41102 of this title may provide charter air transportation between places
17 in Alaska only to the extent the Secretary decides the transportation is re-
18 quired by public convenience and necessity. The Secretary may make that
19 decision when issuing, amending, or modifying the certificate. This sub-
20 section does not apply to a certificate issued under section 41102 to a citi-
21 zen of the United States who, before July 1, 1977—

22 (1) maintained a principal place of business in Alaska; and
23 (2) conducted air transport operations between places in Alaska with
24 aircraft with a certificate for gross takeoff weight of more than 40,000
25 pounds.

26 (c) SUSPENSIONS.—(1) The Secretary shall suspend for not more than
27 30 days any part of the certificate of a charter air carrier if the Secretary
28 decides that the failure of the carrier to comply with the requirements de-
29 scribed in sections 41110(e) and 41112 of this title, or a regulation or order
30 of the Secretary under section 41110(e) or 41112, requires immediate sus-
31 pension in the interest of the rights, welfare, or safety of the public. The
32 Secretary may act under this paragraph without notice or a hearing.

33 (2) The Secretary shall begin immediately a hearing to decide if the cer-
34 tificate referred to in paragraph (1) of this subsection should be amended,
35 modified, suspended, or revoked. Until the hearing is completed, the Sec-
36 retary may suspend the certificate for additional periods totaling not more
37 than 60 days. If the Secretary decides that the carrier is complying with
38 the requirements described in sections 41110(e) and 41112 of this title and
39 regulations and orders under sections 41110(e) and 41112, the Secretary
40 immediately may end the suspension period and proceeding begun under
41 this subsection. However, the Secretary is not prevented from imposing a

1 civil penalty on the carrier for violating the requirements described in sec-
2 tion 41110(e) or 41112 or a regulation or order under section 41110(e) or
3 41112.

4 **§ 41105. Transfers of certificates**

5 (a) GENERAL.—A certificate issued under section 41102 of this title may
6 be transferred only when the Secretary of Transportation approves the
7 transfer as being consistent with the public interest.

8 (b) CERTIFICATION TO CONGRESS.—When a certificate is transferred, the
9 Secretary shall certify to the Committee on Commerce, Science, and Trans-
10 portation of the Senate and the Committee on Public Works and Transpor-
11 tation of the House of Representatives that the transfer is consistent with
12 the public interest. The Secretary shall include with the certification a re-
13 port analyzing the effects of the transfer on—

14 (1) the viability of each carrier involved in the transfer;

15 (2) competition in the domestic airline industry; and

16 (3) the trade position of the United States in the international air
17 transportation market.

18 **§ 41106. Airlift service**

19 (a) GENERAL.—(1) Except as provided in subsection (b) of this section,
20 the transportation of passengers or property by transport category aircraft
21 in interstate air transportation obtained by the Secretary of Defense or the
22 Secretary of a military department through a contract of at least 31 days
23 for airlift service in the United States may be provided only by an air car-
24 rier that—

25 (A) has aircraft in the civil reserve air fleet or offers to place the
26 aircraft in that fleet; and

27 (B) holds a certificate issued under section 41102 of this title.

28 (2) The Secretary of Transportation shall act as expeditiously as possible
29 on an application for a certificate under section 41102 of this title to pro-
30 vide airlift service.

31 (b) EXCEPTION.—When the Secretary of Defense decides that no air car-
32 rier holding a certificate under section 41102 is capable of providing, and
33 willing to provide, the airlift service, the Secretary of Defense may make
34 a contract to provide the service with an air carrier not having a certificate.

35 **§ 41107. Transportation of mail**

36 When the United States Postal Service finds that the needs of the Postal
37 Service require the transportation of mail by aircraft in foreign air transpor-
38 tation or between places in Alaska, in addition to the transportation of mail
39 authorized under certificates in effect, the Postal Service shall certify that
40 finding to the Secretary of Transportation with a statement about the addi-
41 tional transportation and facilities necessary to provide the additional trans-

1 portation. A copy of each certification and statement shall be posted for at
2 least 20 days in the office of the Secretary. After notice and an opportunity
3 for a hearing, the Secretary shall issue a new certificate under section
4 41102 of this title, or amend or modify an existing certificate under section
5 41110(a)(2)(A) of this title, to provide the additional transportation and fa-
6 cilities if the Secretary finds the additional transportation is required by the
7 public convenience and necessity.

8 **§ 41108. Applications for certificates**

9 (a) FORM, CONTENTS, AND PROOF OF SERVICE.—To be issued a certifi-
10 cate of public convenience and necessity under section 41102 of this title,
11 a citizen of the United States must apply to the Secretary of Transpor-
12 tation. The application must—

13 (1) be in the form and contain information required by regulations
14 of the Secretary; and

15 (2) be accompanied by proof of service on interested persons as re-
16 quired by regulations of the Secretary and on each community that
17 may be affected by the issuance of the certificate.

18 (b) NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) When an
19 application is filed, the Secretary shall post a notice of the application in
20 the office of the Secretary and give notice of the application to other per-
21 sons as required by regulations of the Secretary. An interested person may
22 file a response with the Secretary opposing or supporting the issuance of
23 the certificate. Not later than 90 days after the application is filed, the Sec-
24 retary shall—

25 (A) provide an opportunity for a public hearing on the application;

26 (B) begin the procedure under section 41111 of this title; or

27 (C) dismiss the application on its merits.

28 (2) An order of dismissal issued by the Secretary under paragraph (1)(C)
29 of this subsection is a final order and may be reviewed judicially under sec-
30 tion 46110 of this title.

31 (3) If the Secretary provides an opportunity for a hearing under para-
32 graph (1)(A) of this subsection, an initial or recommended decision shall be
33 issued not later than 150 days after the date the Secretary provides the op-
34 portunity. The Secretary shall issue a final order on the application not
35 later than 90 days after the decision is issued. However, if the Secretary
36 does not act within the 90-day period, the initial or recommended decision
37 on an application to provide—

38 (A) interstate air transportation is a final order and may be reviewed
39 judicially under section 46110 of this title; and

40 (B) foreign air transportation shall be submitted to the President
41 under section 41307 of this title.

1 (4) If the Secretary acts under paragraph (1)(B) of this subsection, the
2 Secretary shall issue a final order on the application not later than 180 days
3 after beginning the procedure on the application.

4 (5) If a citizen applying for a certificate does not meet the procedural
5 schedule adopted by the Secretary in a proceeding, the Secretary may extend
6 the period for acting under paragraphs (3) and (4) of this subsection
7 by a period equal to the period of delay caused by the citizen. In addition
8 to an extension under this paragraph, an initial or recommended decision
9 under paragraph (3) of this subsection may be delayed for not more than
10 30 days in extraordinary circumstances.

11 (c) PROOF REQUIREMENTS.—(1) A citizen applying for a certificate must
12 prove that the citizen is fit, willing, and able to provide the transportation
13 referred to in section 41102 of this title and to comply with this part.

14 (2) A person opposing a citizen applying for a certificate must prove that
15 the transportation referred to in section 41102(b)(2) of this title is not consistent
16 with the public convenience and necessity. The transportation is
17 deemed to be consistent with the public convenience and necessity unless the
18 Secretary finds, by a preponderance of the evidence, that the transportation
19 is not consistent with the public convenience and necessity.

20 **§41109. Terms of certificates**

21 (a) GENERAL.—(1) Each certificate issued under section 41102 of this
22 title shall specify the type of transportation to be provided.

23 (2) The Secretary of Transportation—

24 (A) may prescribe terms for providing air transportation under the
25 certificate that the Secretary finds may be required in the public interest;
26 but

27 (B) may not prescribe a term preventing an air carrier from adding
28 or changing schedules, equipment, accommodations, and facilities for
29 providing the authorized transportation to satisfy business development
30 and public demand.

31 (3) A certificate issued under section 41102 of this title to provide foreign
32 air transportation shall specify the places between which the air carrier is
33 authorized to provide the transportation only to the extent the Secretary
34 considers practicable and otherwise only shall specify each general route to
35 be followed. The Secretary shall authorize an air carrier holding a certificate
36 to provide foreign air transportation to handle and transport mail of countries
37 other than the United States.

38 (4) A certificate issued under section 41102 of this title to provide foreign
39 charter air transportation shall specify the places between which the air carrier
40 is authorized to provide the transportation only to the extent the Sec-

1 retary considers practicable and otherwise only shall specify each geographi-
2 cal area in which, or between which, the transportation may be provided.

3 (b) MODIFYING TERMS.—(1) An air carrier may file with the Secretary
4 an application to modify any term of its certificate issued under section
5 41102 of this title to provide interstate or foreign air transportation. Not
6 later than 60 days after an application is filed, the Secretary shall—

7 (A) provide the carrier an opportunity for an oral evidentiary hearing
8 on the record; or

9 (B) begin to consider the application under section 41111 of this
10 title.

11 (2) The Secretary shall modify each term the Secretary finds to be incon-
12 sistent with the criteria under section 40101(a) and (b) of this title.

13 (3) An application under this subsection may not be dismissed under sec-
14 tion 41108(b)(1)(C) of this title.

15 **§41110. Effective periods and amendments, modifications,**
16 **suspensions, and revocations of certificates**

17 (a) GENERAL.—(1) Each certificate issued under section 41102 of this
18 title is effective from the date specified in it and remains in effect until—

19 (A) the Secretary of Transportation suspends or revokes the certifi-
20 cate under this section;

21 (B) the end of the period the Secretary specifies for an air carrier
22 having a certificate of temporary authority issued under section
23 41102(a)(2) of this title; or

24 (C) the Secretary certifies that transportation is no longer being pro-
25 vided under a certificate.

26 (2) On application or on the initiative of the Secretary and after notice
27 and an opportunity for a hearing or, except as provided in paragraph (4)
28 of this subsection, under section 41111 of this title, the Secretary may—

29 (A) amend, modify, or suspend any part of a certificate if the Sec-
30 retary finds the public convenience and necessity require amendment,
31 modification, or suspension; and

32 (B) revoke any part of a certificate if the Secretary finds that the
33 holder of the certificate intentionally does not comply with this chapter,
34 sections 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511,
35 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chap-
36 ter 419, subchapter II of chapter 421, and section 46301(b) of this
37 title, a regulation or order of the Secretary under any of those provi-
38 sions, or a term of its certificate.

39 (3) The Secretary may revoke a certificate under paragraph (2)(B) of
40 this subsection only if the holder of the certificate does not comply, within

1 a reasonable time the Secretary specifies, with an order to the holder requir-
2 ing compliance.

3 (4) A certificate to provide foreign air transportation may not be amend-
4 ed, modified, suspended, or revoked under section 41111 of this title if the
5 holder of the certificate requests an oral evidentiary hearing or the Sec-
6 retary finds, under all the facts and circumstances, that the hearing is re-
7 quired in the public interest.

8 (b) ALL-CARGO AIR TRANSPORTATION.—The Secretary may order that a
9 certificate issued under section 41103 of this title authorizing all-cargo air
10 transportation is ineffective if, after notice and an opportunity for a hear-
11 ing, the Secretary finds that the transportation is not provided to the mini-
12 mum extent specified by the Secretary.

13 (c) FOREIGN AIR TRANSPORTATION.—(1) Notwithstanding subsection
14 (a)(2)–(4) of this section, after notice and a reasonable opportunity for the
15 affected air carrier to present its views, but without a hearing, the Secretary
16 may suspend or revoke the authority of an air carrier to provide foreign air
17 transportation to a place under a certificate issued under section 41102 of
18 this title if the carrier—

19 (A) notifies the Secretary, under section 41734(a) of this title or a
20 regulation of the Secretary, that it intends to suspend all transpor-
21 tation to that place; or

22 (B) does not provide regularly scheduled transportation to the place
23 for 90 days immediately before the date the Secretary notifies the car-
24 rier of the action the Secretary proposes.

25 (2) Paragraph (1)(B) of this subsection does not apply to a place pro-
26 vided seasonal transportation comparable to the transportation provided
27 during the prior year.

28 (d) TEMPORARY CERTIFICATES.—On application or on the initiative of
29 the Secretary, the Secretary may—

30 (1) review the performance of an air carrier issued a certificate
31 under section 41102(c) of this title on the basis that the air carrier
32 will provide innovative or low-priced air transportation under the cer-
33 tificate; and

34 (2) amend, modify, suspend, or revoke the certificate or authority
35 under subsection (a)(2) or (c) of this section if the air carrier has not
36 provided, or is not providing, the transportation.

37 (e) CONTINUING REQUIREMENTS.—After notice and an opportunity for a
38 hearing, the Secretary shall amend, modify, suspend, or revoke any part of
39 a certificate issued under section 41102 of this title if the Secretary finds
40 that the air carrier—

1 (1) is not fit, willing, and able to continue to provide the transpor-
2 tation authorized by the certificate and to comply with this part and
3 regulations of the Secretary; or

4 (2) does not file reports necessary for the Secretary to decide if the
5 carrier is complying with the requirements of clause (1) of this sub-
6 section.

7 (f) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Sec-
8 retary—

9 (1) in consultation with appropriate departments, agencies, and in-
10 strumentalities of the United States Government, shall reexamine im-
11 mediately the fitness of an air carrier that—

12 (A) violates the laws and regulations of the United States relat-
13 ed to the illegal importation of a controlled substance; or

14 (B) does not adopt available measures to prevent the illegal im-
15 portation of a controlled substance into the United States on its
16 aircraft; and

17 (2) when appropriate, shall amend, modify, suspend, or revoke the
18 certificate of the carrier issued under this chapter.

19 (g) RESPONSES.—An interested person may file a response with the Sec-
20 retary opposing or supporting the amendment, modification, suspension, or
21 revocation of a certificate under subsection (a) of this section.

22 **§41111. Simplified procedure to apply for, amend, modify,**
23 **suspend, and transfer certificates**

24 (a) GENERAL REQUIREMENTS.—(1) The Secretary of Transportation
25 shall prescribe regulations that simplify the procedure for—

26 (A) acting on an application for a certificate to provide air transpor-
27 tation under section 41102 of this title; and

28 (B) amending, modifying, suspending, or transferring any part of
29 that certificate under section 41105 or 41110(a) or (c) of this title.

30 (2) Regulations under this section shall provide for notice and an oppor-
31 tunity for each interested person to file appropriate written evidence and ar-
32 gument. An oral evidentiary hearing is not required to be provided under
33 this section.

34 (b) WHEN SIMPLIFIED PROCEDURE USED.—The Secretary may use the
35 simplified procedure to act on an application for a certificate to provide air
36 transportation under section 41102 of this title, or to amend, modify, sus-
37 pend, or transfer any part of that certificate under section 41105 or
38 41110(a) or (c) of this title, when the Secretary decides the use of the pro-
39 cedure is in the public interest.

1 (c) CONTENTS.—(1) To the extent the Secretary finds practicable, regula-
 2 tions under this section shall include each standard the Secretary will apply
 3 when—

4 (A) deciding whether to use the simplified procedure; and

5 (B) making a decision on an action in which the procedure is used.

6 (2) The regulations may provide that written evidence and argument may
 7 be filed under section 41108(b) of this title as a part of a response opposing
 8 or supporting the issuance of a certificate.

9 **§ 41112. Liability insurance and financial responsibility**

10 (a) LIABILITY INSURANCE.—The Secretary of Transportation may issue
 11 a certificate to a citizen of the United States to provide air transportation
 12 as an air carrier under section 41102 of this title only if the citizen complies
 13 with regulations and orders of the Secretary governing the filing of an in-
 14 surance policy or self-insurance plan approved by the Secretary. The policy
 15 or plan must be sufficient to pay, not more than the amount of the insur-
 16 ance, for bodily injury to, or death of, an individual or for loss of, or dam-
 17 age to, property of others, resulting from the operation or maintenance of
 18 the aircraft under the certificate. A certificate does not remain in effect un-
 19 less the carrier complies with this subsection.

20 (b) FINANCIAL RESPONSIBILITY.—To protect passengers and shippers
 21 using an aircraft operated by an air carrier issued a certificate under sec-
 22 tion 41102 of this title, the Secretary may require the carrier to file a per-
 23 formance bond or equivalent security in the amount and on terms the Sec-
 24 retary prescribes. The bond or security must be sufficient to ensure the car-
 25 rier adequately will pay the passengers and shippers when the transpor-
 26 tation the carrier agrees to provide is not provided. The Secretary shall pre-
 27 scribe the amounts to be paid under this subsection.

28 **CHAPTER 413—FOREIGN AIR TRANSPORTATION**

Sec.

41301. Requirement for a permit.

41302. Permits of foreign air carriers.

41303. Transfers of permits.

41304. Effective periods and amendments, modifications, suspensions, and revocations of per-
 mits.

41305. Applications for permits.

41306. Simplified procedure to apply for, amend, modify, and suspend permits.

41307. Presidential review of actions about foreign air transportation.

41308. Exemption from the antitrust laws.

41309. Cooperative agreements and requests.

41310. Discriminatory practices.

29 **§ 41301. Requirement for a permit**

30 A foreign air carrier may provide foreign air transportation only if the
 31 foreign air carrier holds a permit issued under this chapter authorizing the
 32 foreign air transportation.

§ 41302. Permits of foreign air carriers

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

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

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

(B) the foreign air transportation to be provided under the permit will be in the public interest.

§ 41303. Transfers of permits

A permit issued under section 41302 of this title may be transferred only when the Secretary of Transportation approves the transfer because the transfer is in the public interest.

§ 41304. Effective periods and amendments, modifications, suspensions, and revocations of permits

(a) GENERAL.—The Secretary of Transportation may prescribe the period during which a permit issued under section 41302 of this title is in effect. After notice and an opportunity for a hearing, the Secretary may amend, modify, suspend, or revoke the permit if the Secretary finds that action to be in the public interest.

(b) SUSPENSIONS AND RESTRICTIONS.—Without a hearing, but subject to the approval of the President, the Secretary—

(1) may suspend summarily the permits of foreign air carriers of a foreign country, or amend, modify, or limit the operations of the foreign air carriers under the permits, when the Secretary finds—

(A) the action is in the public interest; and

(B) the government, an aeronautical authority, or a foreign air carrier of the foreign country, over the objection of the United States Government, has—

(i) limited or denied the operating rights of an air carrier;

or

(ii) engaged in unfair, discriminatory, or restrictive practices that have a substantial adverse competitive impact on an air carrier related to air transportation to, from, through, or over the territory of the foreign country; and

(2) to make this subsection effective, may restrict operations between the United States and the foreign country by a foreign air carrier of a third country.

1 (c) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Sec-
2 retary—

3 (1) in consultation with appropriate departments, agencies, and in-
4 strumentalities of the Government, shall reexamine immediately the fit-
5 ness of a foreign air carrier that—

6 (A) violates the laws and regulations of the United States relat-
7 ed to the illegal importation of a controlled substance; or

8 (B) does not adopt available measures to prevent the illegal im-
9 portation of a controlled substance into the United States on its
10 aircraft; and

11 (2) when appropriate, shall amend, modify, suspend, or revoke the
12 permit of the carrier issued under this chapter.

13 (d) RESPONSES.—An interested person may file a response with the Sec-
14 retary opposing or supporting the amendment, modification, suspension, or
15 revocation of a permit under subsection (a) of this section.

16 **§ 41305. Applications for permits**

17 (a) FORM, CONTENTS, NOTICE, RESPONSE, AND ACTIONS ON APPLICA-
18 TIONS.—(1) A person must apply in writing to the Secretary of Transpor-
19 tation to be issued a permit under section 41302 of this title. The Secretary
20 shall prescribe regulations to require that the application be—

21 (A) verified;

22 (B) in a certain form and contain certain information;

23 (C) served on interested persons; and

24 (D) accompanied by proof of service on those persons.

25 (2) When an application is filed, the Secretary shall post a notice of the
26 application in the office of the Secretary and give notice of the application
27 to other persons as required by regulations of the Secretary. An interested
28 person may file a response with the Secretary opposing or supporting the
29 issuance of the permit. The Secretary shall act on an application as expedi-
30 tiously as possible.

31 (b) TERMS.—The Secretary may impose terms for providing foreign air
32 transportation under the permit that the Secretary finds may be required
33 in the public interest.

34 **§ 41306. Simplified procedure to apply for, amend, modify,
35 and suspend permits**

36 (a) REGULATIONS.—The Secretary of Transportation shall prescribe reg-
37 ulations that simplify the procedure for—

38 (1) acting on an application for a permit to provide foreign air trans-
39 portation under section 41302 of this title; and

40 (2) amending, modifying, or suspending any part of that permit
41 under section 41304(a) or (b) of this title.

1 (b) NOTICE AND OPPORTUNITY TO RESPOND.—Regulations under this
2 section shall provide for notice and an opportunity for each interested per-
3 son to file appropriate written evidence and argument. An oral evidentiary
4 hearing is not required to be provided under this section.

5 **§41307. Presidential review of actions about foreign air**
6 **transportation**

7 The Secretary of Transportation shall submit to the President for review
8 each decision of the Secretary to issue, deny, amend, modify, suspend, re-
9 voke, or transfer a certificate issued under section 41102 of this title au-
10 thORIZING an air carrier, or a permit issued under section 41302 of this title
11 authorizing a foreign air carrier, to provide foreign air transportation. The
12 President may disapprove the decision of the Secretary only if the reason
13 for disapproval is based on foreign relations or national defense consider-
14 ations that are under the jurisdiction of the President. The President may
15 not disapprove a decision of the Secretary if the reason is economic or relat-
16 ed to carrier selection. A decision of the Secretary—

17 (1) is void if the President disapproves the decision and publishes
18 the reasons (to the extent allowed by national security) for disapproval
19 not later than 60 days after it is submitted to the President; or

20 (2)(A) takes effect as a decision of the Secretary if the President
21 does not disapprove the decision not later than 60 days after the deci-
22 sion is submitted to the President; and

23 (B) when effective, may be reviewed judicially under section 46110
24 of this title.

25 **§41308. Exemption from the antitrust laws**

26 (a) DEFINITION.—In this section, “antitrust laws” has the same meaning
27 given that term in the first section of the Clayton Act (15 U.S.C. 12).

28 (b) EXEMPTION AUTHORIZED.—When the Secretary of Transportation
29 decides it is required by the public interest, the Secretary, as part of an
30 order under section 41309 or 42111 of this title, may exempt a person af-
31 fected by the order from the antitrust laws to the extent necessary to allow
32 the person to proceed with the transaction specifically approved by the order
33 and with any transaction necessarily contemplated by the order.

34 (c) EXEMPTION REQUIRED.—In an order under section 41309 of this
35 title approving an agreement, request, modification, or cancellation, the Sec-
36 retary, on the basis of the findings required under section 41309(b)(1), shall
37 exempt a person affected by the order from the antitrust laws to the extent
38 necessary to allow the person to proceed with the transaction specifically ap-
39 proved by the order and with any transaction necessarily contemplated by
40 the order.

§ 41309. Cooperative agreements and requests

(a) FILING.—An air carrier or foreign air carrier may file with the Secretary of Transportation a true copy of or, if oral, a true and complete memorandum of, an agreement (except an agreement related to interstate air transportation), or a request for authority to discuss cooperative arrangements (except arrangements related to interstate air transportation), and any modification or cancellation of an agreement, between the air carrier or foreign air carrier and another air carrier, a foreign carrier, or another carrier.

(b) APPROVAL.—The Secretary of Transportation shall approve an agreement, request, modification, or cancellation referred to in subsection (a) of this section when the Secretary finds it is not adverse to the public interest and is not in violation of this part. However, the Secretary shall disapprove—

(1) or, after periodic review, end approval of, an agreement, request, modification, or cancellation, that substantially reduces or eliminates competition unless the Secretary finds that—

(A) the agreement, request, modification, or cancellation is necessary to meet a serious transportation need or to achieve important public benefits (including international comity and foreign policy considerations); and

(B) the transportation need cannot be met or those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive; or

(2) an agreement that—

(A) is between an air carrier not directly operating aircraft in foreign air transportation and a common carrier subject to subtitle IV of this title; and

(B) governs the compensation the common carrier may receive for the transportation.

(c) NOTICE AND OPPORTUNITY TO RESPOND OR FOR HEARING.—(1) When an agreement, request, modification, or cancellation is filed, the Secretary of Transportation shall give the Attorney General and the Secretary of State written notice of, and an opportunity to submit written comments about, the filing. On the initiative of the Secretary of Transportation or on request of the Attorney General or Secretary of State, the Secretary of Transportation may conduct a hearing to decide whether an agreement, request, modification, or cancellation is consistent with this part whether or not it was approved previously.

(2) In a proceeding before the Secretary of Transportation applying standards under subsection (b)(1) of this section, a party opposing an

1 agreement, request, modification, or cancellation has the burden of proving
2 that it substantially reduces or eliminates competition and that less anti-
3 competitive alternatives are available. The party defending the agreement,
4 request, modification, or cancellation has the burden of proving the trans-
5 portation need or public benefits.

6 (3) The Secretary of Transportation shall include the findings required
7 by subsection (b)(1) of this section in an order of the Secretary approving
8 or disapproving an agreement, request, modification, or cancellation.

9 **§ 41310. Discriminatory practices**

10 (a) PROHIBITION.—An air carrier or foreign air carrier may not subject
11 a person, place, port, or type of traffic in foreign air transportation to un-
12 reasonable discrimination.

13 (b) REVIEW AND NEGOTIATION OF DISCRIMINATORY FOREIGN
14 CHARGES.—(1) The Secretary of Transportation shall survey charges im-
15 posed on an air carrier by the government of a foreign country or another
16 foreign entity for the use of airport property or airway property in foreign
17 air transportation. If the Secretary of Transportation decides that a charge
18 is discriminatory, the Secretary promptly shall report the decision to the
19 Secretary of State. The Secretaries of State and Transportation promptly
20 shall begin negotiations with the appropriate government to end the dis-
21 crimination. If the discrimination is not ended in a reasonable time through
22 negotiation, the Secretary of Transportation shall establish a compensating
23 charge equal to the discriminatory charge. With the approval of the Sec-
24 retary of State, the Secretary of the Treasury shall impose the compensat-
25 ing charge on a foreign air carrier of that country as a condition to accept-
26 ing the general declaration of the aircraft of the foreign air carrier when
27 it lands or takes off.

28 (2) The Secretary of the Treasury shall maintain an account to credit
29 money collected under paragraph (1) of this subsection. An air carrier shall
30 be paid from the account an amount certified by the Secretary of Transpor-
31 tation to compensate the air carrier for the discriminatory charge paid to
32 the government.

33 (c) ACTIONS AGAINST DISCRIMINATORY ACTIVITY.—(1) The Secretary of
34 Transportation may take actions the Secretary considers are in the public
35 interest to eliminate an activity of a government of a foreign country or an-
36 other foreign entity, including a foreign air carrier, when the Secretary, on
37 the initiative of the Secretary or on complaint, decides that the activity—

38 (A) is an unjustifiable or unreasonable discriminatory, predatory, or
39 anticompetitive practice against an air carrier; or

40 (B) imposes an unjustifiable or unreasonable restriction on access of
41 an air carrier to a foreign market.

1 (2) The Secretary of Transportation may deny, amend, modify, suspend,
2 revoke, or transfer under paragraph (1) of this subsection a foreign air car-
3 rier permit or tariff under section 41302, 41303, 41304(a), 41504(c),
4 41507, or 41509 of this title.

5 (d) FILING OF, AND ACTING ON, COMPLAINTS.—(1) An air carrier or a
6 department, agency, or instrumentality of the United States Government
7 may file a complaint under subsection (c) of this section with the Secretary
8 of Transportation. The Secretary shall approve, deny, or dismiss the com-
9 plaint, set the complaint for a hearing or investigation, or begin another
10 proceeding proposing remedial action not later than 60 days after receiving
11 the complaint. The Secretary may extend the period for acting for addi-
12 tional periods totaling not more than 30 days if the Secretary decides that
13 with additional time it is likely that a complaint can be resolved satisfac-
14 torily through negotiations with the government of the foreign country or
15 foreign entity. The Secretary must act not later than 90 days after receiving
16 the complaint. However, the Secretary may extend this 90-day period for
17 not more than an additional 90 days if, on the last day of the initial 90-
18 day period, the Secretary finds that—

19 (A) negotiations with the government have progressed to a point that
20 a satisfactory resolution of the complaint appears imminent;

21 (B) an air carrier has not been subjected to economic injury by the
22 government or entity as a result of filing the complaint; and

23 (C) the public interest requires additional time before the Secretary
24 acts on the complaint.

25 (2) In carrying out paragraph (1) of this subsection and subsection (c)
26 of this section, the Secretary of Transportation shall—

27 (A) solicit the views of the Secretaries of Commerce and State and
28 the United States Trade Representative;

29 (B) give an affected air carrier or foreign air carrier reasonable no-
30 tice and an opportunity to submit written evidence and arguments
31 within the time limits of this subsection; and

32 (C) submit to the President under section 41307 or 41509(f) of this
33 title actions proposed by the Secretary of Transportation.

34 (e) REVIEW.—(1) The Secretaries of State, the Treasury, and Transpor-
35 tation and the heads of other departments, agencies, and instrumentalities
36 of the Government shall keep under review, to the extent of each of their
37 jurisdictions, each form of discrimination or unfair competitive practice to
38 which an air carrier is subject when providing foreign air transportation.
39 Each Secretary and head shall—

40 (A) take appropriate action to eliminate any discrimination or unfair
41 competitive practice found to exist; and

1 (B) request Congress to enact legislation when the authority to elimi-
2 nate the discrimination or unfair practice is inadequate.

3 (2) The Secretary of Transportation shall report to Congress annually on
4 each action taken under paragraph (1) of this subsection and on the con-
5 tinuing program to eliminate discrimination and unfair competitive prac-
6 tices. The Secretaries of State and the Treasury each shall give the Sec-
7 retary of Transportation information necessary to prepare the report.

8 (f) REPORTS.—Not later than 30 days after acting on a complaint under
9 this section, the Secretary of Transportation shall report to the Committee
10 on Public Works and Transportation of the House of Representatives and
11 the Committee on Commerce, Science, and Transportation of the Senate on
12 action taken under this section on the complaint.

13 CHAPTER 415—PRICING

Sec.

- 41501. Establishing reasonable prices, classifications, rules, practices, and divisions of joint prices for foreign air transportation.
- 41502. Establishing joint prices for through routes with other common carriers.
- 41503. Establishing joint prices for through routes provided by State authorized carriers.
- 41504. Tariffs for foreign air transportation.
- 41505. Uniform methods for establishing joint prices, and divisions of joint prices, applicable to commuter air carriers.
- 41506. Price division filing requirements for foreign air transportation.
- 41507. Authority of the Secretary of Transportation to change prices, classifications, rules, and practices for foreign air transportation.
- 41508. Authority of the Secretary of Transportation to adjust divisions of joint prices for foreign air transportation.
- 41509. Authority of the Secretary of Transportation to suspend, cancel, and reject tariffs for foreign air transportation.
- 41510. Required adherence to foreign air transportation tariffs.
- 41511. Special prices for foreign air transportation.

14 **§ 41501. Establishing reasonable prices, classifications,** 15 **rules, practices, and divisions of joint prices for** 16 **foreign air transportation**

17 Every air carrier and foreign air carrier shall establish, comply with, and
18 enforce—

19 (1) reasonable prices, classifications, rules, and practices related to
20 foreign air transportation; and

21 (2) for joint prices established for foreign air transportation, reason-
22 able divisions of those prices among the participating air carriers or
23 foreign air carriers without unreasonably discriminating against any of
24 those carriers.

25 **§ 41502. Establishing joint prices for through routes with** 26 **other common carriers**

27 (a) JOINT PRICES.—An air carrier may establish reasonable joint prices
28 and through service with another common carrier. However, an air carrier
29 not directly operating aircraft in air transportation (except an air express
30 company) may not establish under this section a joint price for the trans-

1 portation of property with a common carrier subject to subtitle IV of this
2 title.

3 (b) PRICES, CLASSIFICATIONS, RULES, AND PRACTICES AND DIVISIONS
4 OF JOINT PRICES.—For through service by an air carrier and a common
5 carrier subject to subtitle IV of this title, the participating carriers shall es-
6 tablish—

7 (1) reasonable prices and reasonable classifications, rules, and prac-
8 tices affecting those prices or the value of the transportation provided
9 under those prices; and

10 (2) for joint prices established for the through service, reasonable di-
11 visions of those joint prices among the participating carriers.

12 (c) STATEMENTS INCLUDED IN TARIFFS.—An air carrier and a common
13 carrier subject to subtitle IV of this title that are participating in through
14 service and joint prices shall include in their tariffs, filed with the Secretary
15 of Transportation, a statement showing the through service and joint prices.

16 **§ 41503. Establishing joint prices for through routes pro-**
17 **vided by State authorized carriers**

18 Subject to sections 41309 and 42111 of this title, a citizen of the United
19 States providing transportation under section 41101(b) of this title may
20 make an agreement with an air carrier or foreign air carrier for joint prices
21 for that transportation. The joint prices agreed to must be the lowest of—

22 (1) the sum of the applicable prices for—

23 (A) the part of the transportation provided in the State and ap-
24 proved by the appropriate State authority; and

25 (B) the part of the transportation provided by the air carrier
26 or foreign air carrier;

27 (2) a joint price established and filed under section 41504 of this
28 title; or

29 (3) a joint price prescribed by the Secretary of Transportation under
30 section 41507 of this title.

31 **§ 41504. Tariffs for foreign air transportation**

32 (a) FILING AND CONTENTS.—In the way prescribed by regulation by the
33 Secretary of Transportation, every air carrier and foreign air carrier shall
34 file with the Secretary, publish, and keep open to public inspection, tariffs
35 showing the prices for the foreign air transportation provided between
36 places served by the carrier and provided between places served by the car-
37 rier and places served by another air carrier or foreign air carrier with
38 which through service and joint prices have been established. A tariff—

39 (1) shall contain—

1 (A) to the extent the Secretary requires by regulation, a descrip-
 2 tion of the classifications, rules, and practices related to the for-
 3 eign air transportation;

4 (B) a statement of the prices in money of the United States;
 5 and

6 (C) other information the Secretary requires by regulation; and
 7 (2) may contain—

8 (A) a statement of the prices in money that is not money of the
 9 United States; and

10 (B) information that is required under the laws of a foreign
 11 country in or to which the air carrier or foreign air carrier is au-
 12 thorized to operate.

13 (b) CHANGES.—(1) Except as provided in paragraph (2) of this sub-
 14 section, an air carrier or foreign air carrier may change a price or a classi-
 15 fication, rule, or practice affecting that price or the value of the transpor-
 16 tation provided under that price, specified in a tariff of the carrier for for-
 17 eign air transportation only after 30 days after the carrier has filed, pub-
 18 lished, and posted notice of the proposed change in the same way as re-
 19 quired for a tariff under subsection (a) of this section. However, the Sec-
 20 retary may prescribe an alternative notice requirement, of at least 25 days,
 21 to allow an air carrier or foreign air carrier to match a proposed change
 22 in a passenger fare or a charge of another air carrier or foreign air carrier.
 23 A notice under this paragraph must state plainly the change proposed and
 24 when the change will take effect.

25 (2) If the effect of a proposed change would be to begin a passenger fare
 26 that is outside of, or not covered by, the range of passenger fares specified
 27 under section 41509(e)(2) and (3) of this title, the proposed change may
 28 be put into effect only on the expiration of 60 days after the notice is filed
 29 under regulations prescribed by the Secretary.

30 (c) REJECTION OF CHANGES.—The Secretary may reject a tariff or tariff
 31 change that is not consistent with this section and regulations prescribed
 32 by the Secretary. A tariff or change that is rejected is void.

33 **§ 41505. Uniform methods for establishing joint prices, and**
 34 **divisions of joint prices, applicable to commuter**
 35 **air carriers**

36 (a) DEFINITION.—In this section, “commuter air carrier” means an air
 37 carrier providing transportation under section 40109(f) of this title that
 38 provides at least 5 scheduled roundtrips a week between the same 2 places.

39 (b) GENERAL.—Except as provided in subsection (c) of this section, when
 40 the Secretary of Transportation prescribes under section 41508 or 41509
 41 of this title a uniform method generally applicable to establishing joint

1 prices and divisions of joint prices for and between air carriers holding cer-
2 tificates issued under section 41102 of this title, the Secretary shall make
3 that uniform method apply to establishing joint prices and divisions of joint
4 prices for and between air carriers and commuter air carriers.

5 (c) NOTICE REQUIRED BEFORE MODIFYING, SUSPENDING, OR ENDING
6 TRANSPORTATION.—A commuter air carrier that has an agreement with an
7 air carrier to provide transportation for passengers and property that in-
8 cludes through service by the commuter air carrier over the commuter air
9 carrier's routes and air transportation provided by the air carrier shall give
10 the air carrier and the Secretary at least 90 days' notice before modifying,
11 suspending, or ending the transportation. If the commuter air carrier does
12 not give that notice, the uniform method of establishing joint prices and di-
13 visions of joint prices referred to in subsection (b) of this section does not
14 apply to the commuter air carrier.

15 **§41506. Price division filing requirements for foreign air**
16 **transportation**

17 Every air carrier and foreign air carrier shall keep currently on file with
18 the Secretary of Transportation, if the Secretary requires, the established
19 divisions of all joint prices for foreign air transportation in which the carrier
20 participates.

21 **§41507. Authority of the Secretary of Transportation to**
22 **change prices, classifications, rules, and practices**
23 **for foreign air transportation**

24 (a) GENERAL.—When the Secretary of Transportation decides that a
25 price charged or received by an air carrier or foreign air carrier for foreign
26 air transportation, or a classification, rule, or practice affecting that price
27 or the value of the transportation provided under that price, is or will be
28 unreasonably discriminatory, the Secretary may—

29 (1) change the price, classification, rule, or practice as necessary to
30 correct the discrimination; and

31 (2) order the air carrier or foreign air carrier to stop charging or
32 collecting the discriminatory price or carrying out the discriminatory
33 classification, rule, or practice.

34 (b) WHEN SECRETARY MAY ACT.—The Secretary may act under this sec-
35 tion on the Secretary's own initiative or on a complaint filed with the Sec-
36 retary and only after notice and an opportunity for a hearing.

37 **§41508. Authority of the Secretary of Transportation to ad-**
38 **just divisions of joint prices for foreign air trans-**
39 **portation**

40 (a) GENERAL.—When the Secretary of Transportation decides that a di-
41 vision between air carriers, foreign air carriers, or both, of a joint price for

1 foreign air transportation is or will be unreasonable or unreasonably dis-
2 criminatory against any of those carriers, the Secretary shall prescribe a
3 reasonable division of the joint price among those carriers. The Secretary
4 may order the adjustment in the division of the joint price to be made retro-
5 actively to the date the complaint was filed, the date the order for an inves-
6 tigation was made, or a later date the Secretary decides is reasonable.

7 (b) WHEN SECRETARY MAY ACT.—The Secretary may act under this sec-
8 tion on the Secretary's own initiative or on a complaint filed with the Sec-
9 retary and only after notice and an opportunity for a hearing.

10 **§ 41509. Authority of the Secretary of Transportation to**
11 **suspend, cancel, and reject tariffs for foreign air**
12 **transportation**

13 (a) CANCELLATION AND REJECTION.—(1) On the initiative of the Sec-
14 retary of Transportation or on a complaint filed with the Secretary, the Sec-
15 retary may conduct a hearing to decide whether a price for foreign air
16 transportation contained in an existing or newly filed tariff of an air carrier
17 or foreign air carrier, a classification, rule, or practice affecting that price,
18 or the value of the transportation provided under that price, is lawful. The
19 Secretary may begin the hearing at once and without an answer or another
20 formal pleading by the air carrier or foreign air carrier, but only after rea-
21 sonable notice. If, after the hearing, the Secretary decides that the price,
22 classification, rule, or practice is or will be unreasonable or unreasonably
23 discriminatory, the Secretary may cancel or reject the tariff and prevent the
24 use of the price, classification, rule, or practice.

25 (2) With or without a hearing, the Secretary may cancel or reject an ex-
26 isting or newly filed tariff of a foreign air carrier and prevent the use of
27 a price, classification, rule, or practice when the Secretary decides that the
28 cancellation or rejection is in the public interest.

29 (3) In deciding whether to cancel or reject a tariff of an air carrier or
30 foreign air carrier under this subsection, the Secretary shall consider—

31 (A) the effect of the price on the movement of traffic;

32 (B) the need in the public interest of adequate and efficient trans-
33 portation by air carriers and foreign air carriers at the lowest cost con-
34 sistent with providing the transportation;

35 (C) the standards prescribed under law related to the character and
36 quality of transportation to be provided by air carriers and foreign air
37 carriers;

38 (D) the inherent advantages of transportation by aircraft;

39 (E) the need of the air carrier and foreign air carrier for revenue
40 sufficient to enable the air carrier and foreign air carrier, under honest,

1 economical, and efficient management, to provide adequate and effi-
2 cient air carrier and foreign air carrier transportation;

3 (F) whether the price will be predatory or tend to monopolize com-
4 petition among air carriers and foreign air carriers in foreign air trans-
5 portation;

6 (G) reasonably estimated or foreseeable future costs and revenues for
7 the air carrier or foreign air carrier for a reasonably limited future pe-
8 riod during which the price would be in effect; and

9 (H) other factors.

10 (b) SUSPENSION.—(1)(A) Pending a decision under subsection (a)(1) of
11 this section, the Secretary may suspend a tariff and the use of a price con-
12 tained in the tariff or a classification, rule, or practice affecting that price.

13 (B) The Secretary may suspend a tariff of a foreign air carrier and the
14 use of a price, classification, rule, or practice when the suspension is in the
15 public interest.

16 (2) A suspension becomes effective when the Secretary files with the tariff
17 and delivers to the air carrier or foreign air carrier affected by the suspen-
18 sion a written statement of the reasons for the suspension. To suspend a
19 tariff, reasonable notice of the suspension must be given to the affected car-
20 rier.

21 (3) The suspension of a newly filed tariff may be for periods totaling not
22 more than 365 days after the date the tariff otherwise would go into effect.
23 The suspension of an existing tariff may be for periods totaling not more
24 than 365 days after the effective date of the suspension. The Secretary may
25 rescind at any time the suspension of a newly filed tariff and allow the
26 price, classification, rule, or practice to go into effect.

27 (c) EFFECTIVE TARIFFS AND PRICES WHEN TARIFF IS SUSPENDED,
28 CANCELED, OR REJECTED.—(1) If a tariff is suspended pending the out-
29 come of a proceeding under subsection (a) of this section and the Secretary
30 does not take final action in the proceeding during the suspension period,
31 the tariff goes into effect at the end of that period subject to cancellation
32 when the proceeding is concluded.

33 (2)(A) During the period of suspension, or after the cancellation or rejec-
34 tion, of a newly filed tariff (including a tariff that has gone into effect provi-
35 sionally), the affected air carrier or foreign air carrier shall maintain in ef-
36 fect and use—

37 (i) the corresponding seasonal prices, or the classifications, rules,
38 and practices affecting those prices or the value of transportation pro-
39 vided under those prices, that were in effect for the carrier immediately
40 before the new tariff was filed; or

1 (ii) another price provided for under an applicable intergovernmental
2 agreement or understanding.

3 (B) If the suspended, canceled, or rejected tariff is the first tariff of the
4 carrier for the covered transportation, the carrier, for the purpose of oper-
5 ations during the period of suspension or pending effectiveness of a new tar-
6 iff, may file another tariff containing a price or another classification, rule,
7 or practice affecting the price, or the value of the transportation provided
8 under the price, that is in effect (and not subject to a suspension order)
9 for any air carrier providing the same transportation.

10 (3) If an existing tariff is suspended or canceled, the affected air carrier
11 or foreign air carrier, for the purpose of operations during the period of sus-
12 pension or pending effectiveness of a new tariff, may file another tariff con-
13 taining a price or another classification, rule, or practice affecting the price,
14 or the value of the transportation provided under the price, that is in effect
15 (and not subject to a suspension order) for any air carrier providing the
16 same transportation.

17 (d) RESPONSE TO REFUSAL OF FOREIGN COUNTRY TO ALLOW AIR CAR-
18 RIER TO CHARGE A PRICE.—When the Secretary finds that the government
19 or an aeronautical authority of a foreign country has refused to allow an
20 air carrier to charge a price contained in a tariff filed and published under
21 section 41504 of this title for foreign air transportation to the foreign coun-
22 try—

23 (1) the Secretary, without a hearing—

24 (A) may suspend any existing tariff of a foreign air carrier pro-
25 viding transportation between the United States and the foreign
26 country for periods totaling not more than 365 days after the date
27 of the suspension; and

28 (B) may order the foreign air carrier to charge, during the sus-
29 pension periods, prices that are the same as those contained in a
30 tariff (designated by the Secretary) of an air carrier filed and pub-
31 lished under section 41504 of this title for foreign air transpor-
32 tation to the foreign country; and

33 (2) a foreign air carrier may continue to provide foreign air trans-
34 portation to the foreign country only if the government or aeronautical
35 authority of the foreign country allows an air carrier to start or con-
36 tinue foreign air transportation to the foreign country at the prices des-
37 ignated by the Secretary.

38 (e) STANDARD FOREIGN FARE LEVEL.—(1)(A) In this subsection,
39 “standard foreign fare level” means—

40 (i) for a class of fares existing on October 1, 1979, the fare between
41 2 places (as adjusted under subparagraph (B) of this paragraph) filed

1 for and allowed by the Civil Aeronautics Board to go into effect after
2 September 30, 1979, and before August 13, 1980 (with seasonal fares
3 adjusted by the percentage difference that prevailed between seasons in
4 1978), or the fare established under section 1002(j)(8) of the Federal
5 Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), as added by
6 section 24(a) of the International Air Transportation Competition Act
7 of 1979 (Public Law 96–192, 94 Stat. 46); or

8 (ii) for a class of fares established after October 1, 1979, the fare
9 between 2 places in effect on the effective date of the establishment of
10 the new class.

11 (B) At least once every 60 days for fuel costs, and at least once every
12 180 days for other costs, the Secretary shall adjust the standard foreign
13 fare level for the particular foreign air transportation to which the standard
14 foreign fare level applies by increasing or decreasing that level by the per-
15 centage change from the last previous period in the actual operating cost
16 for each available seat-mile. In adjusting a standard foreign fare level, the
17 Secretary may not make an adjustment to costs actually incurred. In estab-
18 lishing a standard foreign fare level and making adjustments in the level
19 under this paragraph, the Secretary may use all relevant or appropriate in-
20 formation reasonably available to the Secretary.

21 (2) The Secretary may not decide that a proposed fare for foreign air
22 transportation is unreasonable on the basis that the fare is too low or too
23 high if the proposed fare is neither more than 5 percent higher nor 50 per-
24 cent lower than the standard foreign fare level for the same or essentially
25 similar class of transportation. The Secretary by regulation may increase
26 the 50 percent specified in this paragraph.

27 (3) Paragraph (2) of this subsection does not apply to a proposed fare
28 that is not more than—

29 (A) 5 percent higher than the standard foreign fare level when the
30 Secretary decides that the proposed fare may be unreasonably discrimi-
31 natory or that suspension of the fare is in the public interest because
32 of an unreasonable regulatory action by the government of a foreign
33 country that is related to a fare proposal of an air carrier; or

34 (B) 50 percent lower than the standard foreign fare level when the
35 Secretary decides that the proposed fare may be predatory or discrimi-
36 natory or that suspension of the fare is required because of an unrea-
37 sonable regulatory action by the government of a foreign country that
38 is related to a fare proposal of an air carrier.

39 (f) SUBMISSION OF ORDERS TO PRESIDENT.—The Secretary shall submit
40 to the President an order made under this section suspending, canceling,
41 or rejecting a price for foreign air transportation, and an order rescinding

1 the effectiveness of such an order, before publishing the order. Not later
 2 than 10 days after its submission, the President may disapprove the order
 3 on finding disapproval is necessary for United States foreign policy or na-
 4 tional defense reasons.

5 (g) COMPLIANCE AS CONDITION OF CERTIFICATE OR PERMIT.—This sec-
 6 tion and compliance with an order of the Secretary under this section are
 7 conditions to any certificate or permit held by an air carrier or foreign air
 8 carrier. An air carrier or foreign air carrier may provide foreign air trans-
 9 portation only as long as the carrier maintains prices for that transportation
 10 that comply with this section and orders of the Secretary under this section.

11 **§41510. Required adherence to foreign air transportation**
 12 **tariffs**

13 (a) PROHIBITED ACTIONS BY AIR CARRIERS, FOREIGN AIR CARRIERS,
 14 AND TICKET AGENTS.—An air carrier, foreign air carrier, or ticket agent
 15 may not—

16 (1) charge or receive compensation for foreign air transportation
 17 that is different from the price specified in the tariff of the carrier that
 18 is in effect for that transportation;

19 (2) refund or remit any part of the price specified in the tariff; or

20 (3) extend to any person a privilege or facility, related to a matter
 21 required by the Secretary of Transportation to be specified in a tariff
 22 for foreign air transportation, except as specified in the tariff.

23 (b) PROHIBITED ACTIONS BY ANY PERSON.—A person may not know-
 24 ingly—

25 (1) pay compensation for foreign air transportation of property that
 26 is different from the price specified in the tariff in effect for that trans-
 27 portation; or

28 (2) solicit, accept, or receive—

29 (A) a refund or remittance of any part of the price specified in
 30 the tariff; or

31 (B) a privilege or facility, related to a matter required by the
 32 Secretary to be specified in a tariff for foreign air transportation
 33 of property, except as specified in the tariff.

34 **§41511. Special prices for foreign air transportation**

35 (a) FREE AND REDUCED PRICING.—This chapter does not prohibit an air
 36 carrier or foreign air carrier, under terms the Secretary of Transportation
 37 prescribes, from issuing or interchanging tickets or passes for free or re-
 38 duced-price foreign air transportation to or for the following:

39 (1) a director, officer, or employee of the carrier (including a retired
 40 director, officer, or employee who is receiving retirement benefits from
 41 an air carrier or foreign air carrier).

1 (2) a parent or the immediate family of such an officer or employee
2 or the immediate family of such a director.

3 (3) a widow, widower, or minor child of an employee of the carrier
4 who died as a direct result of a personal injury sustained when per-
5 forming a duty in the service of the carrier.

6 (4) a witness or attorney attending a legal investigation in which the
7 air carrier is interested.

8 (5) an individual injured in an aircraft accident and a physician or
9 nurse attending the individual.

10 (6) a parent or the immediate family of an individual injured or
11 killed in an aircraft accident when the transportation is related to the
12 accident.

13 (7) an individual or property to provide relief in a general epidemic,
14 pestilence, or other emergency.

15 (8) other individuals under other circumstances the Secretary pre-
16 scribes by regulation.

17 (b) SPACE-AVAILABLE BASIS.—Under terms the Secretary prescribes, an
18 air carrier or foreign air carrier may grant reduced-price foreign air trans-
19 portation on a space-available basis to the following:

20 (1) a minister of religion.

21 (2) an individual who is at least 60 years of age and no longer gain-
22 fully employed.

23 (3) an individual who is at least 65 years of age.

24 (4) an individual who has severely impaired vision or hearing or an-
25 other physical or mental handicap and an accompanying attendant
26 needed by that individual.

CHAPTER 417—OPERATIONS OF CARRIERS

SUBCHAPTER I—REQUIREMENTS

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1 SUBCHAPTER I—REQUIREMENTS

2 **§ 41701. Classification of air carriers**

3 The Secretary of Transportation may establish—

- 4 (1) reasonable classifications for air carriers when required because
- 5 of the nature of the transportation provided by them; and
- 6 (2) reasonable requirements for each class when the Secretary de-
- 7 cides those requirements are necessary in the public interest.

8 **§ 41702. Interstate air transportation**

9 An air carrier shall provide safe and adequate interstate air transpor-
10 tation.

11 **§ 41703. Navigation of foreign civil aircraft**

12 (a) PERMITTED NAVIGATION.—A foreign aircraft, not part of the armed
13 forces of a foreign country, may be navigated in the United States only—

- 14 (1) if the country of registry grants a similar privilege to aircraft
- 15 of the United States;
- 16 (2) by an airman holding a certificate or license issued or made valid
- 17 by the United States Government or the country of registry;
- 18 (3) if the Secretary of Transportation authorizes the navigation; and
- 19 (4) if the navigation is consistent with terms the Secretary may pre-
- 20 scribe.

21 (b) REQUIREMENTS FOR AUTHORIZING NAVIGATION.—The Secretary
22 may authorize navigation under this section only if the Secretary decides the
23 authorization is—

- 24 (1) in the public interest; and
- 25 (2) consistent with any agreement between the Government and the
- 26 government of a foreign country.

27 (c) PROVIDING AIR COMMERCE.—The Secretary may authorize an air-
28 craft permitted to navigate in the United States under this section to pro-
29 vide air commerce in the United States. However, the aircraft may take on
30 for compensation, at a place in the United States, passengers or cargo des-
31 tined for another place in the United States only if—

- 32 (1) specifically authorized under section 40109(g) of this title; or
- 33 (2) under regulations the Secretary prescribes authorizing air car-
- 34 riers to provide otherwise authorized air transportation with foreign
- 35 registered aircraft under lease or charter to them without crew.

36 (d) PERMIT REQUIREMENTS NOT AFFECTED.—This section does not af-
37 fect section 41301 or 41302 of this title. However, a foreign air carrier

1 holding a permit under section 41302 does not need to obtain additional au-
2 thorization under this section for an operation authorized by the permit.

3 **§ 41704. Transporting property not to be transported in air-**
4 **craft cabins**

5 Under regulations or orders of the Secretary of Transportation, an air
6 carrier shall transport as baggage the property of a passenger traveling in
7 air transportation that may not be carried in an aircraft cabin because of
8 a law or regulation of the United States. The carrier is liable to pay an
9 amount not more than the amount declared to the carrier by that passenger
10 for actual loss of, or damage to, the property caused by the carrier. The
11 carrier may impose reasonable charges and conditions for its liability.

12 **§ 41705. Discrimination against handicapped individuals**

13 In providing air transportation, an air carrier may not discriminate
14 against an otherwise qualified individual on the following grounds:

- 15 (1) the individual has a physical or mental impairment that substan-
16 tially limits one or more major life activities.
17 (2) the individual has a record of such an impairment.
18 (3) the individual is regarded as having such an impairment.

19 **§ 41706. Prohibitions against smoking on scheduled flights**

20 (a) GENERAL.—An individual may not smoke in the passenger cabin or
21 lavatory of an aircraft on a scheduled airline flight segment in air transpor-
22 tation or intrastate air transportation that is—

- 23 (1) between places in a State of the United States, the District of
24 Columbia, Puerto Rico, or the Virgin Islands;
25 (2) between a place in any jurisdiction referred to in clause (1) of
26 this subsection (except Alaska and Hawaii) and a place in any other
27 of those jurisdictions; or
28 (3)(A) scheduled for not more than 6 hours' duration; and
29 (B)(i) between a place referred to in clause (1) of this subsection
30 (except Alaska and Hawaii) and Alaska or Hawaii; or
31 (ii) between Alaska and Hawaii.

32 (b) REGULATIONS.—The Secretary of Transportation shall prescribe reg-
33 ulations necessary to carry out this section.

34 **§ 41707. Incorporating contract terms into written instru-**
35 **ment**

36 To the extent the Secretary of Transportation prescribes by regulation,
37 an air carrier may incorporate by reference in a ticket or written instrument
38 any term of the contract for providing interstate air transportation.

39 **§ 41708. Reports**

40 (a) APPLICATION.—To the extent the Secretary of Transportation finds
41 necessary to carry out this subpart, this section and section 41709 of this

1 title apply to a person controlling an air carrier or affiliated (within the
2 meaning of section 11343(c) of this title) with a carrier.

3 (b) REQUIREMENTS.—The Secretary may require an air carrier or foreign
4 air carrier—

5 (1)(A) to file annual, monthly, periodical, and special reports with
6 the Secretary in the form and way prescribed by the Secretary; and

7 (B) to file the reports under oath;

8 (2) to provide specific answers to questions on which the Secretary
9 considers information to be necessary; and

10 (3) to file with the Secretary a copy of each agreement, arrangement,
11 contract, or understanding between the carrier and another carrier or
12 person related to transportation affected by this subpart.

13 **§ 41709. Records of air carriers**

14 (a) REQUIREMENTS.—The Secretary of Transportation shall prescribe the
15 form of records to be kept by an air carrier, including records on the move-
16 ment of traffic, receipts and expenditures of money, and the time period
17 during which the records shall be kept. A carrier may keep only records pre-
18 scribed or approved by the Secretary. However, a carrier may keep addi-
19 tional records if the additional records do not impair the integrity of the
20 records prescribed or approved by the Secretary and are not an unreason-
21 able financial burden on the carrier.

22 (b) INSPECTION.—(1) The Secretary at any time may—

23 (A) inspect the land, buildings, and equipment of an air carrier or
24 foreign air carrier when necessary to decide under subchapter II of this
25 chapter or section 41102, 41103, or 41302 of this title whether a car-
26 rier is fit, willing, and able; and

27 (B) inspect records kept or required to be kept by an air carrier, for-
28 eign air carrier, or ticket agent.

29 (2) The Secretary may employ special agents or auditors to carry out this
30 subsection.

31 **§ 41710. Time requirements**

32 When a matter requiring action of the Secretary of Transportation is sub-
33 mitted under section 40109(a) or (c)–(h), 41309, or 42111 of this title and
34 an evidentiary hearing—

35 (1) is ordered, the Secretary shall make a final decision on the mat-
36 ter not later than the last day of the 12th month that begins after the
37 date the matter is submitted; or

38 (2) is not ordered, the Secretary shall make a final decision on the
39 matter not later than the last day of the 6th month that begins after
40 the date the matter is submitted.

1 **§41711. Air carrier management inquiry and cooperation**
2 **with other authorities**

3 In carrying out this subpart, the Secretary of Transportation may—

4 (1) inquire into the management of the business of an air carrier
5 and obtain from the air carrier, and a person controlling, controlled by,
6 or under common control with the carrier, information the Secretary
7 decides reasonably is necessary to carry out the inquiry;

8 (2) confer and hold a joint hearing with a State authority; and

9 (3) exchange information related to aeronautics with a government
10 of a foreign country through appropriate departments, agencies, and
11 instrumentalities of the United States Government.

12 **§41712. Unfair and deceptive practices and unfair methods**
13 **of competition**

14 On the initiative of the Secretary of Transportation or the complaint of
15 an air carrier, foreign air carrier, or ticket agent, and if the Secretary con-
16 siders it is in the public interest, the Secretary may investigate and decide
17 whether an air carrier, foreign air carrier, or ticket agent has been or is
18 engaged in an unfair or deceptive practice or an unfair method of competi-
19 tion in air transportation or the sale of air transportation. If the Secretary,
20 after notice and an opportunity for a hearing, finds that an air carrier, for-
21 eign air carrier, or ticket agent is engaged in an unfair or deceptive practice
22 or unfair method of competition, the Secretary shall order the air carrier,
23 foreign air carrier, or ticket agent to stop the practice or method.

24 **§41713. Preemption of authority over prices, routes, and**
25 **service**

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

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

33 (2) Paragraph (1) of this subsection does not apply to air transportation
34 provided entirely in Alaska unless the transportation is air transportation
35 (except charter air transportation) provided under a certificate issued under
36 section 41102 of this title.

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

SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE

§ 41731. Definitions

(a) GENERAL.—In this subchapter—

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

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

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

(C) is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under this subchapter.

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

(3) “hub airport” means an airport that each year has at least .25 percent of the total annual boardings in the United States.

(4) “nonhub airport” means an airport that each year has less than .05 percent of the total annual boardings in the United States.

(5) “small hub airport” means an airport that each year has at least .05 percent, but less than .25 percent, of the total annual boardings in the United States.

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

§ 41732. Basic essential air service

(a) GENERAL.—Basic essential air service provided under section 41733 of this title is scheduled air transportation of passengers and cargo—

(1) to a hub airport that has convenient connecting or single-plane air service to a substantial number of destinations beyond that airport; or

(2) to a small hub or nonhub airport, when in Alaska or when the nearest hub airport is more than 400 miles from an eligible place.

(b) MINIMUM REQUIREMENTS.—Basic essential air service shall include at least the following:

(1)(A) for a place not in Alaska, 2 daily round trips 6 days a week, with not more than one intermediate stop on each flight; or

(B) for a place in Alaska, a level of service at least equal to that provided in 1976 or 2 round trips a week, whichever is greater, except that the Secretary of Transportation and the appropriate State author-

1 ity of Alaska may agree to a different level of service after consulting
2 with the affected community.

3 (2) flights at reasonable times considering the needs of passengers
4 with connecting flights at the airport and at prices that are not exces-
5 sive compared to the generally prevailing prices of other air carriers for
6 like service between similar places.

7 (3) for a place not in Alaska, service provided in an aircraft with
8 an effective capacity of at least 15 passengers if the average daily
9 boardings at the place in any calendar year from 1976-1986 were more
10 than 11 passengers unless—

11 (A) that level-of-service requirement would require paying com-
12 pensation in a fiscal year under section 41733(d) or 41734(d) or
13 (e) of this title for the place when compensation otherwise would
14 not have been paid for that place in that year; or

15 (B) the affected community agrees with the Secretary in writing
16 to the use of smaller aircraft to provide service to the place.

17 (4) service accommodating the estimated passenger and property
18 traffic at an average load factor, for each class of traffic considering
19 seasonal demands for the service, of not more than—

20 (A) 50 percent; or

21 (B) 60 percent when service is provided by aircraft with more
22 than 14 passenger seats.

23 (5) service provided in aircraft with at least 2 engines and using 2
24 pilots, unless scheduled air transportation has not been provided to the
25 place in aircraft with at least 2 engines and using 2 pilots for at least
26 60 consecutive operating days at any time since October 31, 1978.

27 (6) service provided by pressurized aircraft when the service is pro-
28 vided by aircraft that regularly fly above 8,000 feet in altitude.

29 **§ 41733. Level of basic essential air service**

30 (a) DECISIONS MADE BEFORE OCTOBER 1, 1988.—For each eligible
31 place for which a decision was made before October 1, 1988, under section
32 419 of the Federal Aviation Act of 1958, establishing the level of essential
33 air transportation, the level of basic essential air service for that place shall
34 be the level established by the Secretary of Transportation for that place
35 by not later than December 29, 1988.

36 (b) DECISIONS NOT MADE BEFORE OCTOBER 1, 1988.—(1) The Sec-
37 retary shall decide on the level of basic essential air service for each eligible
38 place for which a decision was not made before October 1, 1988, establish-
39 ing the level of essential air transportation, when the Secretary receives no-
40 tice that service to that place will be provided by only one air carrier. The
41 Secretary shall make the decision by the last day of the 6-month period be-

1 ginning on the date the Secretary receives the notice. The Secretary may
2 impose notice requirements necessary to carry out this subsection. Before
3 making a decision, the Secretary shall consider the views of any interested
4 community and the appropriate State authority of the State in which the
5 community is located.

6 (2) Until the Secretary has made a decision on a level of basic essential
7 air service for an eligible place under this subsection, the Secretary, on peti-
8 tion by an appropriate representative of the place, shall prohibit an air car-
9 rier from ending, suspending, or reducing air transportation to that place
10 that appears to deprive the place of basic essential air service.

11 (c) AVAILABILITY OF COMPENSATION.—(1) If the Secretary decides that
12 basic essential air service will not be provided to an eligible place without
13 compensation, the Secretary shall provide notice that an air carrier may
14 apply to provide basic essential air service to the place for compensation
15 under this section. In selecting an applicant, the Secretary shall consider,
16 among other factors—

17 (A) the demonstrated reliability of the applicant in providing sched-
18 uled air service;

19 (B) the contractual and marketing arrangements the applicant has
20 made with a larger carrier to ensure service beyond the hub airport;

21 (C) the interline arrangements that the applicant has made with a
22 larger carrier to allow passengers and cargo of the applicant at the hub
23 airport to be transported by the larger carrier through one reservation,
24 ticket, and baggage check-in;

25 (D) the preferences of the actual and potential users of air transpor-
26 tation at the eligible place, giving substantial weight to the views of the
27 elected officials representing the users; and

28 (E) for an eligible place in Alaska, the experience of the applicant
29 in providing, in Alaska, scheduled air service, or significant patterns of
30 non-scheduled air service under an exemption granted under section
31 40109(a) and (c)–(h) of this title.

32 (2) Under guidelines prescribed under section 41737(a) of this title, the
33 Secretary shall pay the rate of compensation for providing basic essential
34 air service under this section and section 41734 of this title.

35 (d) COMPENSATION PAYMENTS.—The Secretary shall pay compensation
36 under this section at times and in the way the Secretary decides is appro-
37 priate. The Secretary shall end payment of compensation to an air carrier
38 for providing basic essential air service to an eligible place when the Sec-
39 retary decides the compensation is no longer necessary to maintain basic es-
40 sential air service to the place.

1 (e) REVIEW.—The Secretary shall review periodically the level of basic es-
2 sential air service for each eligible place. Based on the review and consulta-
3 tions with an interested community and the appropriate State authority of
4 the State in which the community is located, the Secretary may make ap-
5 propriate adjustments in the level of service.

6 **§41734. Ending, suspending, and reducing basic essential**
7 **air service**

8 (a) NOTICE REQUIRED.—An air carrier may end, suspend, or reduce air
9 transportation to an eligible place below the level of basic essential air serv-
10 ice established for that place under section 41733 of this title only after giv-
11 ing the Secretary of Transportation, the appropriate State authority, and
12 the affected communities at least 90 days' notice before ending, suspending,
13 or reducing that transportation.

14 (b) CONTINUATION OF SERVICE FOR 30 DAYS AFTER NOTICE PERIOD.—
15 If at the end of the notice period under subsection (a) of this section the
16 Secretary has not found another air carrier to provide basic essential air
17 service to the eligible place, the Secretary shall require the carrier providing
18 notice to continue to provide basic essential air service to the place for an
19 additional 30-day period or until another carrier begins to provide basic es-
20 sential air service to the place, whichever occurs first.

21 (c) CONTINUATION OF SERVICE FOR ADDITIONAL 30-DAY PERIODS.—If
22 at the end of the 30-day period under subsection (b) of this section the Sec-
23 retary decides another air carrier will not provide basic essential air service
24 to the place on a continuing basis, the Secretary shall require the carrier
25 providing service to continue to provide service for additional 30-day periods
26 until another carrier begins providing service on a continuing basis. At the
27 end of each 30-day period, the Secretary shall decide if another carrier will
28 provide service on a continuing basis.

29 (d) CONTINUATION OF COMPENSATION AFTER NOTICE PERIOD.—If an
30 air carrier receiving compensation under section 41733 of this title for pro-
31 viding basic essential air service to an eligible place is required to continue
32 to provide service to the place under this section after the 90-day notice pe-
33 riod under subsection (a) of this section, the Secretary shall continue to pay
34 that compensation after the last day of that period. The Secretary shall pay
35 the compensation until the Secretary finds another carrier to provide the
36 service to the place or the 90th day after the end of that notice period,
37 whichever is earlier. If, after the 90th day after the end of the 90-day notice
38 period, the Secretary has not found another carrier to provide the service,
39 the carrier required to continue to provide that service shall receive com-
40 pensation sufficient—

1 (1) to pay for the fully allocated actual cost to the carrier of per-
2 forming the basic essential air service that was being provided when
3 the 90-day notice was given under subsection (a) of this section plus
4 a reasonable return on investment that is at least 5 percent of operat-
5 ing costs; and

6 (2) to provide the carrier an additional return that recognizes the
7 demonstrated additional lost profits from opportunities foregone and
8 the likelihood that those lost profits increase as the period during which
9 the carrier is required to provide the service continues.

10 (e) COMPENSATION TO AIR CARRIERS ORIGINALLY PROVIDING SERVICE
11 WITHOUT COMPENSATION.—If the Secretary requires an air carrier provid-
12 ing basic essential air service to an eligible place without compensation
13 under section 41733 of this title to continue providing that service after the
14 90-day notice period required by subsection (a) of this section, the Secretary
15 shall provide the carrier with compensation after the end of the 90-day no-
16 tice period that is sufficient—

17 (1) to pay for the fully allocated actual cost to the carrier of per-
18 forming the basic essential air service that was being provided when
19 the 90-day notice was given under subsection (a) of this section plus
20 a reasonable return on investment that is at least 5 percent of operat-
21 ing costs; and

22 (2) to provide the carrier an additional return that recognizes the
23 demonstrated additional lost profits from opportunities foregone and
24 the likelihood that those lost profits increase as the period during which
25 the carrier is required to provide the service continues.

26 (f) FINDING REPLACEMENT CARRIERS.—When the Secretary requires an
27 air carrier to continue to provide basic essential air service to an eligible
28 place, the Secretary shall continue to make every effort to find another car-
29 rier to provide at least that basic essential air service to the place on a con-
30 tinuing basis.

31 (g) TRANSFER OF AUTHORITY.—If an air carrier, providing basic essen-
32 tial air service under section 41733 of this title between an eligible place
33 and an airport at which the Administrator of the Federal Aviation Adminis-
34 tration limits the number of instrument flight rule takeoffs and landings of
35 aircraft, provides notice under subsection (a) of this section of an intention
36 to end, suspend, or reduce that service and another carrier is found to pro-
37 vide the service, the Secretary shall require the carrier providing notice to
38 transfer any operational authority the carrier has to land or take off at that
39 airport related to the service to the eligible place to the carrier that will pro-
40 vide the service, if—

41 (1) the carrier that will provide the service needs the authority; and

1 (2) the authority to be transferred is being used only to provide air
2 service to the eligible place.

3 **§ 41735. Enhanced essential air service**

4 (a) PROPOSALS.—(1) A State or local government may submit a proposal
5 to the Secretary of Transportation for enhanced essential air service to an
6 eligible place for which basic essential air service is being provided under
7 section 41733 of this title. The proposal shall—

8 (A) specify the level and type of enhanced essential air service the
9 State or local government considers appropriate; and

10 (B) include an agreement related to compensation required for the
11 proposed service.

12 (2) The agreement submitted under paragraph (1)(B) of this subsection
13 shall provide that—

14 (A) the State or local government or a person pay 50 percent of the
15 compensation required for the proposed service and the United States
16 Government pay the remaining 50 percent; or

17 (B)(i) the Government pay 100 percent of the compensation; and

18 (ii) if the proposed service is not successful for at least a 2-year pe-
19 riod under the criteria prescribed by the Secretary under paragraph (3)
20 of this subsection, the eligible place is not eligible for air service or air
21 transportation for which compensation is paid by the Secretary under
22 this subchapter.

23 (3) The Secretary shall prescribe by regulation objective criteria for decid-
24 ing whether enhanced essential air service to an eligible place under this sec-
25 tion is successful in terms of—

26 (A) increasing passenger usage of the airport facilities at the place;
27 and

28 (B) reducing the amount of compensation provided by the Secretary
29 under this subchapter for that service.

30 (b) DECISIONS.—Not later than 90 days after receiving a proposal under
31 subsection (a) of this section, the Secretary shall—

32 (1) approve the proposal if the Secretary decides the proposal is rea-
33 sonable; or

34 (2) if the Secretary decides the proposal is not reasonable, dis-
35 approve the proposal and notify the State or local government of the
36 disapproval and the reasons for the disapproval.

37 (c) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensa-
38 tion under this section when and in the way the Secretary decides is appro-
39 priate. Compensation for enhanced essential air service under this section
40 may be paid only for the costs incurred in providing air service to an eligible
41 place that are in addition to the costs incurred in providing basic essential

1 air service to the place under section 41733 of this title. The Secretary shall
2 continue to pay compensation under this section only as long as—

3 (A) the air carrier maintains the level of enhanced essential air serv-
4 ice;

5 (B) the State or local government or person agreeing to pay com-
6 pensation under this section continues to pay the compensation; and

7 (C) the Secretary decides the compensation is necessary to maintain
8 the service to the place.

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

12 (d) REVIEW.—(1) The Secretary shall review periodically the enhanced
13 essential air service provided to each eligible place under this section.

14 (2) For service for which the Government pays 50 percent of the com-
15 pensation, based on the review and consultation with the affected commu-
16 nity and the State or local government or person paying the remaining 50
17 percent of the compensation, the Secretary shall make appropriate adjust-
18 ments in the type and level of service to the place.

19 (3) For service for which the Government pays 100 percent of the com-
20 pensation, based on the review and consultation with the State or local gov-
21 ernment submitting the proposal, the Secretary shall decide whether the
22 service has succeeded for at least a 2-year period under the criteria pre-
23 scribed under subsection (a)(3) of this section. If unsuccessful, the place is
24 not eligible for air service or air transportation for which compensation is
25 paid by the Secretary under this subchapter.

26 (e) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An
27 air carrier may end, suspend, or reduce air transportation to an eligible
28 place below the level of enhanced essential air service established for that
29 place by the Secretary under this section only after giving the Secretary,
30 the affected community, and the State or local government or person paying
31 compensation for that service at least 30 days' notice before ending, sus-
32 pending, or reducing the service. This subsection does not relieve the carrier
33 of an obligation under section 41734 of this title.

34 **§ 41736. Air transportation to noneligible places**

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

40 (A) decide whether to designate the place as eligible to receive com-
41 pensation under this section; and

1 (B)(i) approve the proposal if the State or local government or a per-
2 son is willing and able to pay 50 percent of the compensation for pro-
3 viding the transportation, and notify the State or local government of
4 the approval; or

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

9 (2) In deciding whether a proposal is reasonable, the Secretary shall con-
10 sider, among other factors—

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

12 (B) the cost to the United States Government of providing the pro-
13 posed transportation; and

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

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

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

23 (2) the place is more than 50 miles from the nearest small hub air-
24 port or an eligible place;

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

27 (4) the State or local government submitting the proposal or a per-
28 son is willing and able to pay 25 percent of the cost of providing the
29 compensated transportation.

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

39 (2) After making the decision under paragraph (1) of this subsection, the
40 Secretary shall provide notice that any air carrier that is willing to provide
41 the level of air transportation established under paragraph (1) for a place

1 may submit an application to provide the transportation. In selecting an ap-
2 plicant, the Secretary shall consider, among other factors—

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

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

6 (d) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensa-
7 tion under this section when and in the way the Secretary decides is appro-
8 priate. The Secretary shall continue to pay compensation under this section
9 only as long as—

10 (A) the air carrier maintains the level of air transportation estab-
11 lished by the Secretary under subsection (c)(1) of this section;

12 (B) the State or local government or person agreeing to pay com-
13 pensation for transportation under this section continues to pay that
14 compensation; and

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

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

20 (e) REVIEW.—The Secretary shall review periodically the level of air
21 transportation provided under this section. Based on the review and con-
22 sultation with any interested community, the appropriate State authority of
23 the State in which the community is located, and the State or local govern-
24 ment or person paying compensation under this section, the Secretary may
25 make appropriate adjustments in the level of transportation.

26 (f) WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.—After providing no-
27 tice and an opportunity for interested persons to comment, the Secretary
28 may withdraw the designation of a place under subsection (a)(1) of this sec-
29 tion as eligible to receive compensation under this section if the place has
30 received air transportation under this section for at least 2 years and the
31 Secretary decides the withdrawal would be in the public interest. The Sec-
32 retary by regulation shall prescribe standards for deciding whether the with-
33 drawal of a designation under this subsection is in the public interest. The
34 standards shall include the factors listed in subsection (a)(2) of this section.

35 (g) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An
36 air carrier providing air transportation for compensation under this section
37 may end, suspend, or reduce that transportation below the level of transpor-
38 tation established by the Secretary under this section only after giving the
39 Secretary, the affected community, and the State or local government or
40 person paying compensation under this section at least 30 days' notice be-
41 fore ending, suspending, or reducing the transportation.

§ 41737. Compensation guidelines, limitations, and claims

(a) COMPENSATION GUIDELINES.—(1) The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter. The guidelines shall—

(A) provide for a reduction in compensation when an air carrier does not provide service or transportation agreed to be provided;

(B) consider amounts needed by an air carrier to promote public use of the service or transportation for which compensation is being paid; and

(C) include expense elements based on representative costs of air carriers providing scheduled air transportation of passengers, property, and mail on aircraft of the type the Secretary decides is appropriate for providing the service or transportation for which compensation is being provided.

(2) Promotional amounts described in paragraph (1)(B) of this subsection shall be a special, segregated element of the compensation provided to a carrier under this subchapter.

(b) REQUIRED FINDING.—The Secretary may pay compensation to an air carrier for providing air service or air transportation under this subchapter only if the Secretary finds the carrier is able to provide the service or transportation in a reliable way.

(c) CLAIMS.—Not later than 15 days after receiving a written claim from an air carrier for compensation under this subchapter, the Secretary shall—

(1) pay or deny the United States Government's share of a claim; and

(2) if denying the claim, notify the carrier of the denial and the reasons for the denial.

(d) AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.—(1) The Secretary may make agreements and incur obligations from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to pay compensation under this subchapter. An agreement by the Secretary under this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

(2) Not more than \$38,600,000 is available to the Secretary out of the Fund for each of the fiscal years ending September 30, 1993–1998, to incur obligations under this section. Amounts made available under this section remain available until expended.

§ 41738. Fitness of air carriers

Notwithstanding section 40109(a) and (c)–(h) of this title, an air carrier may provide air service to an eligible place or air transportation to a place designated under section 41736 of this title only when the Secretary of Transportation decides that—

(1) the carrier is fit, willing, and able to perform the service or transportation; and

(2) aircraft used to provide the service or transportation, and operations related to the service or transportation, conform to the safety standards prescribed by the Administrator of the Federal Aviation Administration.

§ 41739. Air carrier obligations

If at least 2 air carriers make an agreement to operate under or use a single carrier designator code to provide air transportation, the carrier whose code is being used shares responsibility with the other carriers for the quality of transportation provided the public under the code by the other carriers.

§ 41740. Joint proposals

The Secretary of Transportation shall encourage the submission of joint proposals by 2 or more air carriers for providing air service or air transportation under this subchapter through arrangements that maximize the service or transportation to and from major destinations beyond the hub.

§ 41741. Insurance

The Secretary of Transportation may pay an air carrier compensation under this subchapter only when the carrier files with the Secretary an insurance policy or self-insurance plan approved by the Secretary. The policy or plan must be sufficient to pay for bodily injury to, or death of, an individual, or for loss of or damage to property of others, resulting from the operation of aircraft, but not more than the amount of the policy or plan limits.

§ 41742. Ending effective date

This subchapter is not effective after September 30, 1998.

CHAPTER 419—TRANSPORTATION OF MAIL

Sec.

- 41901. General authority.
- 41902. Schedules for certain transportation of mail.
- 41903. Duty to provide certain transportation of mail.
- 41904. Noncitizens transporting mail to or in foreign countries.
- 41905. Regulating air carrier transportation of foreign mail.
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- 41909. Duty to oppose unreasonable prices under the Universal Postal Union Convention.
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- 41911. Evidence of providing mail service.
- 41912. Effect on foreign postal arrangements.

1 **§41901. General authority**

2 (a) TITLE 39.—The United States Postal Service may provide for the
3 transportation of mail by aircraft in interstate air transportation under sec-
4 tion 5402(d) and (f) of title 39.

5 (b) AUTHORITY TO PRESCRIBE PRICES.—Except as provided in section
6 5402 of title 39, on the initiative of the Secretary of Transportation or on
7 petition by the Postal Service or an air carrier, the Secretary shall prescribe
8 and publish—

9 (1) after notice and an opportunity for a hearing on the record, rea-
10 sonable prices to be paid by the Postal Service for the transportation
11 of mail by aircraft in foreign air transportation or between places in
12 Alaska, the facilities used in and useful for the transportation of mail,
13 and the services related to the transportation of mail for each carrier
14 holding a certificate that authorizes that transportation;

15 (2) the methods used, whether by aircraft-mile, pound-mile, weight,
16 space, or a combination of those or other methods, to determine the
17 prices for each air carrier or class of air carriers; and

18 (3) the effective date of the prices.

19 (c) OTHER TRANSPORTATION.—In prescribing prices under subsection (b)
20 of this section, the Secretary may include transportation other than by air-
21 craft that is incidental to transportation of mail by aircraft or necessary be-
22 cause of emergency conditions related to aircraft operations.

23 (d) AUTHORITY TO PRESCRIBE DIFFERENT PRICES.—Considering condi-
24 tions peculiar to transportation by aircraft and to particular air carriers or
25 classes of air carriers, the Secretary may prescribe different prices under
26 this section for different air carriers or classes of air carriers and for dif-
27 ferent classes of service. In prescribing a price for a carrier under this sec-
28 tion, the Secretary shall consider, among other factors, the following:

29 (1) the condition that the carrier may hold and operate under a cer-
30 tificate authorizing the transportation of mail only by providing nec-
31 essary and adequate facilities and service for the transportation of
32 mail.

33 (2) standards related to the character and quality of service to be
34 provided that are prescribed by or under law.

35 (e) STATEMENTS ON PRICES.—A petition for prescribing a reasonable
36 price under this section must include a statement of the price the petitioner
37 believes is reasonable.

38 (f) STATEMENTS ON REQUIRED SERVICES.—The Postal Service shall in-
39 troduce as part of the record in every proceeding under this section a com-
40 prehensive statement of the services to be required of the air carrier and

1 other information the Postal Service has that the Secretary considers mate-
2 rial to the proceeding.

3 (g) EXPIRATION DATE.—The authority of the Secretary under this part
4 and section 5402 of title 39 providing for the transportation of mail by air-
5 craft between places in Alaska expires on the date specified in section
6 5402(f) of title 39.

7 **§ 41902. Schedules for certain transportation of mail**

8 (a) REQUIREMENT.—Except as provided in section 41906 of this title and
9 section 5402 of title 39, an air carrier may transport mail by aircraft in
10 foreign air transportation or between places in Alaska only under a schedule
11 designated or required to be established under subsection (c) of this section
12 for the transportation of mail.

13 (b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall
14 file with the Secretary of Transportation and the United States Postal Serv-
15 ice a statement showing—

16 (1) the places between which the carrier is authorized to provide for-
17 eign air transportation;

18 (2) the places between which the carrier is authorized to transport
19 mail in Alaska;

20 (3) every schedule of aircraft regularly operated by the carrier be-
21 tween places described in clauses (1) and (2) of this subsection and
22 every change in each schedule; and

23 (4) for each schedule, the places served by the carrier and the time
24 of arrival at, and departure from, each place.

25 (c) DESIGNATING AND ADDITIONAL SCHEDULES.—The Postal Service
26 may—

27 (1) designate any schedule of an air carrier filed under subsection
28 (b)(3) of this section for the transportation of mail between the places
29 between which the carrier is authorized by its certificate to transport
30 mail; and

31 (2) require the carrier to establish additional schedules for the trans-
32 portation of mail between those places.

33 (d) CHANGING SCHEDULES.—A schedule designated or required to be es-
34 tablished for the transportation of mail under subsection (c) of this section
35 may be changed only after 10 days' notice of the change is filed as provided
36 in subsection (b)(3) of this section. The Postal Service may disapprove a
37 proposed change in a schedule or amend or modify the schedule or proposed
38 change.

39 (e) ORDERS.—An order of the Postal Service under this section may be-
40 come effective only after 10 days after the order is issued. A person ad-
41 versely affected by the order may appeal the order to the Secretary before

1 the end of the 10-day period under regulations the Secretary prescribes. If
2 the public convenience and necessity require, the Secretary may amend,
3 modify, suspend, or cancel the order. Pending a decision about the order,
4 the Secretary may postpone the effective date of the order.

5 (f) PROCEEDINGS PREFERENCES.—The Secretary shall give preference to
6 a proceeding under this section over all other proceedings before the Sec-
7 retary under this subpart.

8 **§ 41903. Duty to provide certain transportation of mail**

9 (a) AIR CARRIERS.—Subject to subsection (b) of this section, an air car-
10 rier authorized by its certificate to transport mail by aircraft in foreign air
11 transportation or between places in Alaska shall—

12 (1) provide facilities and services necessary and adequate to provide
13 that transportation; and

14 (2) transport mail between the places authorized in the certificate for
15 transportation of mail when required, and under regulations prescribed,
16 by the United States Postal Service.

17 (b) MAXIMUM MAIL LOAD.—The Secretary of Transportation may pre-
18 scribe the maximum mail load for a schedule or for an aircraft or type of
19 aircraft for the transportation of mail by aircraft in foreign air transpor-
20 tation or between places in Alaska. If the Postal Service tenders to an air
21 carrier mail exceeding the maximum load for transportation by the carrier
22 under a schedule designated or required to be established for the transpor-
23 tation of mail under section 41902(c) of this title, the carrier, as nearly in
24 accordance with the schedule as the Secretary decides is possible, shall—

25 (1) provide facilities sufficient to transport the mail to the extent the
26 Secretary decides the carrier reasonably is able to do so; and

27 (2) transport that mail.

28 **§ 41904. Noncitizens transporting mail to or in foreign coun-**
29 **tries**

30 When the United States Postal Service decides that it may be necessary
31 to have a person not a citizen of the United States transport mail by air-
32 craft to or in a foreign country, the Postal Service may make an arrange-
33 ment with the person, without advertising, to provide the transportation.

34 **§ 41905. Regulating air carrier transportation of foreign**
35 **mail**

36 An air carrier holding a certificate that authorizes foreign air transpor-
37 tation and transporting mail of a foreign country shall transport that mail
38 under the control of, and subject to regulation by, the United States Gov-
39 ernment.

§ 41906. Emergency mail transportation

(a) CONTRACT AUTHORITY.—In an emergency caused by a flood, fire, or other disaster, the United States Postal Service may make a contract without advertising to transport mail by aircraft to or from a locality affected by the emergency when the available facilities of persons authorized to transport mail to or from the locality are inadequate to meet the requirements of the Postal Service during the emergency. The contract may be only for periods necessary to maintain mail service because of the inadequacy of the facilities. Payment for transportation provided under the contract shall be made at prices provided in the contract.

(b) TRANSPORTATION NOT AIR TRANSPORTATION.—Transportation provided under a contract made under subsection (a) of this section is not air transportation within the meaning of this part.

§ 41907. Prices for foreign transportation of mail

(a) LIMITATIONS.—When air transportation is provided between the United States and a foreign country both by aircraft owned or operated by an air carrier holding a certificate under chapter 411 of this title and by aircraft owned or operated by a foreign air carrier, the United States Postal Service may not pay to or for the account of the foreign air carrier a price for transporting mail by aircraft between the United States and the foreign country that the Postal Service believes will result (over a reasonable period determined by the Postal Service considering exchange fluctuations and other factors) in the foreign air carrier receiving a price for transporting the mail that is higher than the price—

(1) the government of a foreign country or foreign postal administration pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and the United States; or

(2) determined by the Postal Service to be comparable to the price the government of a foreign country or foreign postal administration pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and an intermediate country on the route of the air carrier between the foreign country and the United States.

(b) CHANGES.—The Secretary of Transportation shall act expeditiously on proposed changes in prices for transporting mail by aircraft in foreign air transportation. When prescribing those prices, the Secretary shall consider—

(1) the prices paid for transportation of mail under the Universal Postal Union Convention as ratified by the United States Government;

(2) the price-making elements used by the Universal Postal Union in prescribing its airmail prices; and

1 (3) the competitive disadvantage to United States flag air carriers
2 resulting from foreign air carriers receiving Universal Postal Union
3 prices for transporting United States mail and national origin mail of
4 their own countries.

5 **§ 41908. Prices for transporting mail of foreign countries**

6 (a) PRICE DETERMINATIONS.—The United States Postal Service shall de-
7 termine the prices that an air carrier holding a certificate that authorizes
8 foreign air transportation must charge a government of a foreign country
9 or foreign postal administration for transporting mail of the foreign country.
10 The Postal Service shall put those prices into effect under the postal con-
11 vention regulating postal relations between the United States and the fore-
12 ign country or as provided under this section.

13 (b) CHANGES.—The Postal Service may authorize an air carrier holding
14 a certificate that authorizes foreign air transportation, under limitations the
15 Postal Service prescribes, to change the prices the carrier charges a govern-
16 ment of a foreign country or foreign postal administration for transporting
17 mail of the foreign country in the foreign country or between the foreign
18 country and another foreign country.

19 (c) COLLECTING COMPENSATION.—(1) When an air carrier holding a cer-
20 tificate that authorizes foreign air transportation transports mail of a fore-
21 ign country—

22 (A) under an arrangement with a government of a foreign country
23 or foreign postal administration made or approved under this section,
24 the carrier must collect its compensation for the transportation from
25 the foreign country under the arrangement; and

26 (B) without having an arrangement with a government of a foreign
27 country or foreign postal administration consistent with this section,
28 the compensation collected by the United States Government for the
29 transportation shall be for the account of the air carrier.

30 (2) An air carrier holding a certificate that authorizes foreign air trans-
31 portation is not entitled to receive compensation from both a government
32 of a foreign country or foreign postal administration and the United States
33 Government for transporting the same mail of the foreign country.

34 **§ 41909. Duty to oppose unreasonable prices under the Uni-**
35 **versal Postal Union Convention**

36 The Secretary of State and the United States Postal Service shall—

37 (1) take appropriate action to ensure that the prices paid for trans-
38 porting mail under the Universal Postal Union Convention are not
39 higher than reasonable prices for transporting mail; and

40 (2) oppose any existing or proposed Universal Postal Union price
41 that is higher than a reasonable price for transporting mail.

§ 41910. Weighing mail

The United States Postal Service may weigh mail transported by aircraft and make statistical and administrative computations necessary in the interest of mail service. When the Secretary of Transportation decides that additional or more frequent weighings of mail are advisable or necessary to carry out this part, the Postal Service shall provide the weighings, but it is not required to provide them for continuous periods of more than 30 days.

§ 41911. Evidence of providing mail service

When and in the form required by the United States Postal Service, an air carrier transporting or handling—

(1) United States mail shall submit evidence, signed by an authorized official, that the transportation or handling has been provided; and

(2) mail of a foreign country shall submit evidence, signed by an authorized official, of the amount of mail transported or handled and the compensation payable and received for that transportation or handling.

§ 41912. Effect on foreign postal arrangements

This part does not—

(1) affect an arrangement made by the United States Government with the postal administration of a foreign country related to the transportation of mail by aircraft; or

(2) impair the authority of the United States Postal Service to make such an arrangement.

CHAPTER 421—LABOR-MANAGEMENT PROVISIONS

SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM

Sec.

- 42101. Definitions.
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SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR REQUIREMENTS OF AIR CARRIERS

- 42111. Mutual aid agreements.
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SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM

§ 42101. Definitions

(a) GENERAL.—In this subchapter—

(1) “eligible protected employee” means a protected employee who is deprived of employment, or who is adversely affected related to compensation, because of a qualifying dislocation.

(2) “major contraction” means a reduction (except as provided in subsection (b) of this section) of at least 7.5 percent in the number of full-time employees of an air carrier within a 12-month period, ex-

1 cept for employees deprived of employment because of a strike or whose
2 employment is ended for cause.

3 (3) “protected employee” means an individual who on October 24,
4 1978, had been employed for at least 4 years by an air carrier that
5 held a certificate under section 401 of the Federal Aviation Act of
6 1958, but does not include a director or officer of a corporation.

7 (4) “qualifying dislocation” means a bankruptcy or major contrac-
8 tion of an air carrier holding a certificate under section 41102 of this
9 title when the Secretary of Transportation finds the bankruptcy or con-
10 traction occurred after December 31, 1978, and before January 1,
11 1989, the major cause of which was the change in regulatory structure
12 provided by the Airline Deregulation Act of 1978.

13 (b) MAJOR CONTRACTION.—The Secretary may find a reduction of less
14 than 7.5 percent of the number of full-time employees is part of a major
15 contraction if the Secretary decides another reduction is likely to occur with-
16 in the 12-month period in which the first reduction occurs that, when in-
17 cluded with the first reduction, will result in a total reduction of more than
18 7.5 percent.

19 **§ 42102. Payments to eligible protected employees**

20 (a) AUTHORITY TO PAY AND APPLICATIONS FOR PAYMENTS.—Subject to
21 amounts provided in an appropriation law, the Secretary of Labor shall
22 make monthly assistance payments, moving expense payments, and reim-
23 bursement payments as provided under this section to an eligible protected
24 employee whose employment is not ended for cause. The employee must
25 apply to receive the payments and cooperate with the Secretary in finding
26 other employment.

27 (b) NUMBER AND AMOUNT OF PAYMENTS.—(1) Subject to amounts pro-
28 vided in an appropriation law, an eligible protected employee shall receive
29 72 monthly assistance payments. However, an eligible protected employee
30 deprived of employment may not receive a payment after obtaining other
31 employment. For each class or craft of protected employees, the Secretary
32 of Labor, after consulting with the Secretary of Transportation, shall pre-
33 scribe by regulation guidelines for computing the amount of each monthly
34 assistance payment to be made to a member of the class or craft and what
35 percentage of salary that payment represents.

36 (2) The amount of a monthly payment payable under paragraph (1) of
37 this subsection to an eligible protected employee shall be reduced—

38 (A) by unemployment compensation the employee receives; or

39 (B) if the employee does not accept reasonably comparable employ-
40 ment, to an amount the employee would be entitled to receive if the
41 employee had accepted the employment.

1 (3) If accepting comparable employment to avoid a reduction in the
2 monthly assistance payment under paragraph (2) of this subsection would
3 force an eligible protected employee to relocate, the employee may decide not
4 to relocate. Instead of the payments provided under this section, the em-
5 ployee may receive the lesser of 3 payments or the maximum number of
6 payments that remain to be paid under paragraph (1) of this subsection.

7 (c) MOVING EXPENSES AND REIMBURSEMENTS.—(1) Subject to amounts
8 provided in an appropriation law, an eligible protected employee who relo-
9 cates shall receive—

10 (A) reasonable moving expense payments to move the employee and
11 the employee's immediate family; and

12 (B) reimbursement payments for a loss incurred in selling the em-
13 ployee's principal place of residence for less than fair market value or
14 in cancelling a lease on, or contract to buy, the residence.

15 (2) The Secretary of Labor shall decide on the amount of the moving ex-
16 penses and the fair market value of the residence.

17 **§ 42103. Duty to hire protected employees**

18 (a) REHIRING PROTECTED EMPLOYEES.—A protected employee of an air
19 carrier regulated by the Secretary of Transportation who was furloughed or
20 whose employment was ended by the carrier (except for cause) before Octo-
21 ber 23, 1988, is entitled to be the first employed in the occupational spe-
22 cialty of the employee, regardless of the employee's age, by any other air
23 carrier holding a certificate under section 41102 of this title before October
24 24, 1978. However, the air carrier may recall its furloughed employees be-
25 fore hiring a protected employee of another air carrier regulated by the Sec-
26 retary who was furloughed or whose employment was ended by the other
27 carrier (except for cause) before October 23, 1988. An employee hired by
28 an air carrier under this section retains seniority and recall rights with the
29 air carrier that furloughed or ended the employment of the employee.

30 (b) DUTIES OF SECRETARY OF LABOR.—The Secretary of Labor—

31 (1) shall establish and publish periodically a list of jobs available
32 with an air carrier holding a certificate under section 41102 of this
33 title that includes necessary information and detail;

34 (2) shall assist eligible protected employees to find other employ-
35 ment;

36 (3) shall encourage negotiations between air carriers and representa-
37 tives of employees on rehiring practices and seniority; and

38 (4) may require an air carrier to file with the Secretary information
39 necessary to carry out this section.

§ 42104. Congressional review of regulations

(a) DEFINITION.—In this section, “legislative day” means a calendar day on which both Houses of Congress are in session.

(b) SUBMISSION TO CONGRESS.—The Secretary of Labor may not prescribe a regulation under this subchapter until 30 legislative days after the regulation is submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(c) EFFECTIVENESS OF REGULATIONS.—A proposed regulation under this subchapter shall be submitted to Congress and becomes effective only if, during the period of 60 legislative days after the regulation is submitted to Congress, either House does not pass a resolution disapproving the regulation. However, if Congress adopts a resolution approving the regulation during the 60-day period, the regulation is effective on that date.

§ 42105. Airline Employees Protective Account

The Department of Labor has an Airline Employees Protective Account consisting of amounts appropriated to it. An amount necessary to carry out this subchapter, including administrative expenses, may be appropriated to the Account annually.

§ 42106. Ending effective date

This subchapter is not effective after the last day the Secretary of Labor must make a payment under this subchapter.

SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR
REQUIREMENTS OF AIR CARRIERS

§ 42111. Mutual aid agreements

An air carrier that will receive payments from another air carrier under an agreement between the air carriers for the time the one air carrier is not providing foreign air transportation, or is providing reduced levels of foreign air transportation, because of a labor strike must file a true copy of the agreement with the Secretary of Transportation and have it approved by the Secretary under section 41309 of this title. Notwithstanding section 41309, the Secretary shall approve the agreement only if it provides that—

(1) the air carrier will receive payments of not more than 60 percent of direct operating expenses, including interest expenses, but not depreciation or amortization expenses;

(2) benefits may be paid for not more than 8 weeks, and may not be for losses incurred during the first 30 days of a strike; and

(3) on request of the striking employees, the dispute will be submitted to binding arbitration under the Railway Labor Act (45 U.S.C. 151 et seq.).

1 **§ 42112. Labor requirements of air carriers**

2 (a) DEFINITIONS.—In this section—

3 (1) “copilot” means an employee whose duties include assisting or
4 relieving the pilot in manipulating an aircraft and who is qualified to
5 serve as, and has in effect an airman certificate authorizing the em-
6 ployee to serve as, a copilot.

7 (2) “pilot” means an employee who is—

8 (A) responsible for manipulating or who manipulates the flight
9 controls of an aircraft when under way, including the landing and
10 takeoff of an aircraft; and

11 (B) qualified to serve as, and has in effect an airman certificate
12 authorizing the employee to serve as, a pilot.

13 (b) DUTIES OF AIR CARRIERS.—An air carrier shall—

14 (1) maintain rates of compensation, maximum hours, and other
15 working conditions and relations for its pilots and copilots who are pro-
16 viding interstate air transportation in the 48 contiguous States and the
17 District of Columbia to conform with decision number 83, May 10,
18 1934, National Labor Board, notwithstanding any limitation in that
19 decision on the period of its effectiveness;

20 (2) maintain rates of compensation for its pilots and copilots who are
21 providing foreign air transportation or air transportation only in one
22 territory or possession of the United States; and

23 (3) comply with title II of the Railway Labor Act (45 U.S.C. 181
24 et seq.) as long as it holds its certificate.

25 (c) MINIMUM ANNUAL RATE OF COMPENSATION.—A minimum annual
26 rate under subsection (b)(2) of this section may not be less than the annual
27 rate required to be paid for comparable service to a pilot or copilot under
28 subsection (b)(1) of this section.

29 (d) COLLECTIVE BARGAINING.—This section does not prevent pilots or
30 copilots of an air carrier from obtaining by collective bargaining higher rates
31 of compensation or more favorable working conditions or relations.

32 SUBPART III—SAFETY

33 **CHAPTER 441—REGISTRATION AND RECORDATION OF**
34 **AIRCRAFT**

Sec.

- 44101. Operation of aircraft.
- 44102. Registration requirements.
- 44103. Registration of aircraft.
- 44104. Registration of aircraft components and dealers' certificates of registration.
- 44105. Suspension and revocation of aircraft certificates.
- 44106. Revocation of aircraft certificates for controlled substance violations.
- 44107. Recordation of conveyances, leases, and security instruments.
- 44108. Validity of conveyances, leases, and security instruments.
- 44109. Reporting transfer of ownership.
- 44110. Information about aircraft ownership and rights.

44111. Modifications in registration and recordation system for aircraft not providing air transportation.

44112. Limitation of liability.

1 **§ 44101. Operation of aircraft**

2 (a) REGISTRATION REQUIREMENT.—Except as provided in subsection (b)
3 of this section, a person may operate an aircraft only when the aircraft is
4 registered under section 44103 of this title.

5 (b) EXCEPTIONS.—A person may operate an aircraft in the United States
6 that is not registered—

7 (1) when authorized under section 40103(d) or 41703 of this title;

8 (2) when it is an aircraft of the national defense forces of the United
9 States and is identified in a way satisfactory to the Administrator of
10 the Federal Aviation Administration; and

11 (3) for a reasonable period of time after a transfer of ownership,
12 under regulations prescribed by the Administrator.

13 **§ 44102. Registration requirements**

14 (a) ELIGIBILITY.—An aircraft may be registered under section 44103 of
15 this title only when the aircraft is—

16 (1) not registered under the laws of a foreign country and is owned
17 by—

18 (A) a citizen of the United States;

19 (B) an individual citizen of a foreign country lawfully admitted
20 for permanent residence in the United States; or

21 (C) a corporation not a citizen of the United States when the
22 corporation is organized and doing business under the laws of the
23 United States or a State, and the aircraft is based and primarily
24 used in the United States; or

25 (2) an aircraft of—

26 (A) the United States Government; or

27 (B) a State, the District of Columbia, a territory or possession
28 of the United States, or a political subdivision of a State, territory,
29 or possession.

30 (b) DUTY TO DEFINE CERTAIN TERM.—In carrying out subsection
31 (a)(1)(C) of this section, the Secretary of Transportation shall define
32 “based and primarily used in the United States”.

33 **§ 44103. Registration of aircraft**

34 (a) GENERAL.—(1) On application of the owner of an aircraft that meets
35 the requirements of section 44102 of this title, the Administrator of the
36 Federal Aviation Administration shall—

37 (A) register the aircraft; and

38 (B) issue a certificate of registration to its owner.

1 (2) The Administrator may prescribe the extent to which an aircraft
2 owned by the holder of a dealer's certificate of registration issued under sec-
3 tion 44104(2) of this title also is registered under this section.

4 (b) CONTROLLED SUBSTANCE VIOLATIONS.—(1) The Administrator may
5 not issue an owner's certificate of registration under subsection (a)(1) of
6 this section to a person whose certificate is revoked under section 44106
7 of this title during the 5-year period beginning on the date of the revoca-
8 tion, except—

9 (A) as provided in section 44106(e)(2) of this title; or

10 (B) that the Administrator may issue the certificate to the person
11 after the one-year period beginning on the date of the revocation if the
12 Administrator decides that the aircraft otherwise meets the require-
13 ments of section 44102 of this title and that denial of a certificate for
14 the 5-year period—

15 (i) would be excessive considering the nature of the offense or
16 the act committed and the burden the denial places on the person;

17 or

18 (ii) would not be in the public interest.

19 (2) A decision of the Administrator under paragraph (1)(B)(i) or (ii) of
20 this subsection is within the discretion of the Administrator. That decision
21 or failure to make a decision is not subject to administrative or judicial re-
22 view.

23 (c) CERTIFICATES AS EVIDENCE.—A certificate of registration issued
24 under this section is—

25 (1) conclusive evidence of the nationality of an aircraft for inter-
26 national purposes, but not conclusive evidence in a proceeding under
27 the laws of the United States; and

28 (2) not evidence of ownership of an aircraft in a proceeding in which
29 ownership is or may be in issue.

30 (d) CERTIFICATES AVAILABLE FOR INSPECTION.—An operator of an air-
31 craft shall make available for inspection a certificate of registration for the
32 aircraft when requested by a United States Government, State, or local law
33 enforcement officer.

34 **§44104. Registration of aircraft components and dealers'**
35 **certificates of registration**

36 The Administrator of the Federal Aviation Administration may prescribe
37 regulations—

38 (1) in the interest of safety for registering and identifying an aircraft
39 engine, propeller, or appliance; and

1 (2) in the public interest for issuing, suspending, and revoking a
2 dealer's certificate of registration under this chapter and for its use by
3 a person manufacturing, distributing, or selling aircraft.

4 **§ 44105. Suspension and revocation of aircraft certificates**

5 The Administrator of the Federal Aviation Administration may suspend
6 or revoke a certificate of registration issued under section 44103 of this title
7 when the aircraft no longer meets the requirements of section 44102 of this
8 title.

9 **§ 44106. Revocation of aircraft certificates for controlled**
10 **substance violations**

11 (a) DEFINITION.—In this section, “controlled substance” has the same
12 meaning given that term in section 102 of the Comprehensive Drug Abuse
13 Prevention and Control Act of 1970 (21 U.S.C. 802).

14 (b) REVOCATIONS.—(1) The Administrator of the Federal Aviation Ad-
15 ministration shall issue an order revoking the certificate of registration for
16 an aircraft issued to an owner under section 44103 of this title and any
17 other certificate of registration that the owner of the aircraft holds under
18 section 44103, if the Administrator finds that—

19 (A) the aircraft was used to carry out, or facilitate, an activity that
20 is punishable by death or imprisonment for more than one year under
21 a law of the United States or a State related to a controlled substance
22 (except a law related to simple possession of a controlled substance);
23 and

24 (B) the owner of the aircraft permitted the use of the aircraft know-
25 ing that the aircraft was to be used for the activity described in clause
26 (A) of this paragraph.

27 (2) An aircraft owner that is not an individual is deemed to have per-
28 mitted the use of the aircraft knowing that the aircraft was to be used for
29 the activity described in paragraph (1)(A) of this subsection only if a major-
30 ity of the individuals who control the owner of the aircraft or who are in-
31 volved in forming the major policy of the owner permitted the use of the
32 aircraft knowing that the aircraft was to be used for the activity described
33 in paragraph (1)(A).

34 (c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the
35 Administrator revokes a certificate under subsection (b) of this section, the
36 Administrator shall—

37 (1) advise the holder of the certificate of the charges or reasons on
38 which the Administrator bases the proposed action; and

39 (2) provide the holder of the certificate an opportunity to answer the
40 charges and state why the certificate should not be revoked.

1 (d) APPEALS.—(1) A person whose certificate is revoked by the Adminis-
2 trator under subsection (b) of this section may appeal the revocation order
3 to the National Transportation Safety Board. The Board shall affirm or re-
4 verse the order after providing notice and a hearing on the record. In con-
5 ducting the hearing, the Board is not bound by the findings of fact of the
6 Administrator.

7 (2) When a person files an appeal with the Board under this subsection,
8 the order of the Administrator revoking the certificate is stayed. However,
9 if the Administrator advises the Board that safety in air transportation or
10 air commerce requires the immediate effectiveness of the order—

11 (A) the order remains effective; and

12 (B) the Board shall dispose of the appeal not later than 60 days
13 after notification by the Administrator under this paragraph.

14 (3) A person substantially affected by an order of the Board under this
15 subsection may seek judicial review of the order under section 46110 of this
16 title. The Administrator shall be made a party to that judicial proceeding.

17 (e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board
18 may not affirm a revocation of, a certificate of registration under this sec-
19 tion on the basis of an activity described in subsection (b)(1)(A) of this sec-
20 tion if the holder of the certificate is acquitted of all charges related to a
21 controlled substance in an indictment or information arising from the activ-
22 ity.

23 (2) If the Administrator has revoked a certificate of registration of a per-
24 son under this section because of an activity described in subsection
25 (b)(1)(A) of this section, the Administrator shall reissue a certificate to the
26 person if the person—

27 (A) subsequently is acquitted of all charges related to a controlled
28 substance in an indictment or information arising from the activity;
29 and

30 (B) otherwise meets the requirements of section 44102 of this title.

31 **§ 44107. Recordation of conveyances, leases, and security in-**
32 **struments**

33 (a) ESTABLISHMENT OF SYSTEM.—The Administrator of the Federal
34 Aviation Administration shall establish a system for recording—

35 (1) conveyances that affect an interest in civil aircraft of the United
36 States;

37 (2) leases and instruments executed for security purposes, including
38 conditional sales contracts, assignments, and amendments, that affect
39 an interest in—

40 (A) a specifically identified aircraft engine having at least 750
41 rated takeoff horsepower or its equivalent;

1 (B) a specifically identified aircraft propeller capable of absorb-
2 ing at least 750 rated takeoff shaft horsepower;

3 (C) an aircraft engine, propeller, or appliance maintained for in-
4 stallation or use in an aircraft, aircraft engine, or propeller, by or
5 for an air carrier holding a certificate issued under section 44705
6 of this title; and

7 (D) spare parts maintained by or for an air carrier holding a
8 certificate issued under section 44705 of this title; and

9 (3) releases, cancellations, discharges, and satisfactions related to a
10 conveyance, lease, or instrument recorded under clause (1) or (2) of
11 this subsection.

12 (b) GENERAL DESCRIPTION REQUIRED.—A lease or instrument recorded
13 under subsection (a)(2)(C) or (D) of this section only has to describe gen-
14 erally the engine, propeller, appliance, or spare part by type and designate
15 its location.

16 (c) ACKNOWLEDGMENT.—Except as the Administrator otherwise may
17 provide, a conveyance, lease, or instrument may be recorded under sub-
18 section (a) of this section only after it has been acknowledged before—

19 (1) a notary public; or

20 (2) another officer authorized under the laws of the United States,
21 a State, the District of Columbia, or a territory or possession of the
22 United States to acknowledge deeds.

23 (d) RECORDS AND INDEXES.—The Administrator shall—

24 (1) keep a record of the time and date that each conveyance, lease,
25 and instrument is filed and recorded with the Administrator; and

26 (2) record each conveyance, lease, and instrument filed with the Ad-
27 ministrator, in the order of their receipt, and index them by—

28 (A) the identifying description of the aircraft, aircraft engine,
29 or propeller, or location specified in a lease or instrument recorded
30 under subsection (a)(2)(C) or (D) of this section; and

31 (B) the names of the parties to each conveyance, lease, and in-
32 strument.

33 **§ 44108. Validity of conveyances, leases, and security instru-**
34 **ments**

35 (a) VALIDITY BEFORE FILING.—Until a conveyance, lease, or instrument
36 executed for security purposes that may be recorded under section
37 44107(a)(1) or (2) of this title is filed for recording, the conveyance, lease,
38 or instrument is valid only against—

39 (1) the person making the conveyance, lease, or instrument;

40 (2) that person's heirs and devisees; and

1 (3) a person having actual notice of the conveyance, lease, or instru-
2 ment.

3 (b) PERIOD OF VALIDITY.—When a conveyance, lease, or instrument is
4 recorded under section 44107 of this title, the conveyance, lease, or instru-
5 ment is valid from the date of filing against all persons, without other rec-
6 ordation, except that—

7 (1) a lease or instrument recorded under section 44107(a)(2)(A) or
8 (B) of this title is valid for a specifically identified engine or propeller
9 without regard to a lease or instrument previously or subsequently re-
10 corded under section 44107(a)(2)(C) or (D); and

11 (2) a lease or instrument recorded under section 44107(a)(2)(C) or
12 (D) of this title is valid only for items at the location designated in
13 the lease or instrument.

14 (c) APPLICABLE LAWS.—(1) The validity of a conveyance, lease, or in-
15 strument that may be recorded under section 44107 of this title is subject
16 to the laws of the State, the District of Columbia, or the territory or posses-
17 sion of the United States at which the conveyance, lease, or instrument is
18 delivered, regardless of the place at which the subject of the conveyance,
19 lease, or instrument is located or delivered. If the conveyance, lease, or in-
20 strument specifies the place at which delivery is intended, it is presumed
21 that the conveyance, lease, or instrument was delivered at the specified
22 place.

23 (2) This subsection does not take precedence over the Convention on the
24 International Recognition of Rights in Aircraft (4 U.S.T. 1830).

25 (d) NONAPPLICATION.—This section does not apply to—

26 (1) a conveyance described in section 44107(a)(1) of this title that
27 was made before August 22, 1938; or

28 (2) a lease or instrument described in section 44107(a)(2) of this
29 title that was made before June 20, 1948.

30 **§ 44109. Reporting transfer of ownership**

31 (a) FILING NOTICES.—A person having an ownership interest in an air-
32 craft for which a certificate of registration was issued under section 44103
33 of this title shall file a notice with the Secretary of the Treasury that the
34 Secretary requires by regulation, not later than 15 days after a sale, condi-
35 tional sale, transfer, or conveyance of the interest.

36 (b) EXEMPTIONS.—The Secretary—

37 (1) shall prescribe regulations that establish guidelines for exempting
38 a person or class from subsection (a) of this section; and

39 (2) may exempt a person or class under the regulations.

1 **§ 44110. Information about aircraft ownership and rights**

2 The Administrator of the Federal Aviation Administration may provide
3 by regulation for—

4 (1) endorsing information on each certificate of registration issued
5 under section 44103 of this title and each certificate issued under sec-
6 tion 44704 of this title about ownership of the aircraft for which each
7 certificate is issued; and

8 (2) recording transactions affecting an interest in, and for other
9 records, proceedings, and details necessary to decide the rights of a
10 party related to, a civil aircraft of the United States, aircraft engine,
11 propeller, appliance, or spare part.

12 **§ 44111. Modifications in registration and recordation sys-**
13 **tem for aircraft not providing air transportation**

14 (a) APPLICATION.—This section applies only to aircraft not used to pro-
15 vide air transportation.

16 (b) AUTHORITY TO MAKE MODIFICATIONS.—The Administrator of the
17 Federal Aviation Administration shall make modifications in the system for
18 registering and recording aircraft necessary to make the system more effec-
19 tive in serving the needs of—

20 (1) buyers and sellers of aircraft;

21 (2) officials responsible for enforcing laws related to the regulation
22 of controlled substances (as defined in section 102 of the Comprehen-
23 sive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802));
24 and

25 (3) other users of the system.

26 (c) NATURE OF MODIFICATIONS.—Modifications made under subsection
27 (b) of this section—

28 (1) may include a system of titling aircraft or registering all aircraft,
29 even aircraft not operated;

30 (2) shall ensure positive, verifiable, and timely identification of the
31 true owner; and

32 (3) shall address at least each of the following deficiencies in and
33 abuses of the existing system:

34 (A) the registration of aircraft to fictitious persons.

35 (B) the use of false or nonexistent addresses by persons reg-
36 istering aircraft.

37 (C) the use by a person registering an aircraft of a post office
38 box or “mail drop” as a return address to evade identification of
39 the person’s address.

40 (D) the registration of aircraft to entities established to facili-
41 tate unlawful activities.

1 (E) the submission of names of individuals on applications for
2 registration of aircraft that are not identifiable.

3 (F) the ability to make frequent legal changes in the registra-
4 tion markings assigned to aircraft.

5 (G) the use of false registration markings on aircraft.

6 (H) the illegal use of “reserved” registration markings on air-
7 craft.

8 (I) the large number of aircraft classified as being in “self-re-
9 ported status”.

10 (J) the lack of a system to ensure timely and adequate notice
11 of the transfer of ownership of aircraft.

12 (K) the practice of allowing temporary operation and navigation
13 of aircraft without the issuance of a certificate of registration.

14 (d) REGULATIONS.—(1) The Administrator of the Federal Aviation Ad-
15 ministration shall prescribe regulations to carry out this section and provide
16 a written explanation of how the regulations address each of the deficiencies
17 and abuses described in subsection (c) of this section. In prescribing the
18 regulations, the Administrator of the Federal Aviation Administration shall
19 consult with the Administrator of Drug Enforcement, the Commissioner of
20 Customs, other law enforcement officials of the United States Government,
21 representatives of State and local law enforcement officials, representatives
22 of the general aviation aircraft industry, representatives of users of general
23 aviation aircraft, and other interested persons.

24 (2) Regulations prescribed under this subsection shall require that—

25 (A) each individual listed in an application for registration of an air-
26 craft provide with the application the individual’s driver’s license num-
27 ber; and

28 (B) each person (not an individual) listed in an application for reg-
29 istration of an aircraft provide with the application the person’s tax-
30 payer identifying number.

31 **§ 44112. Limitation of liability**

32 (a) DEFINITIONS.—In this section—

33 (1) “lessor” means a person leasing for at least 30 days a civil air-
34 craft, aircraft engine, or propeller.

35 (2) “owner” means a person that owns a civil aircraft, aircraft en-
36 gine, or propeller.

37 (3) “secured party” means a person having a security interest in, or
38 security title to, a civil aircraft, aircraft engine, or propeller under a
39 conditional sales contract, equipment trust contract, chattel or cor-
40 porate mortgage, or similar instrument.

1 (b) LIABILITY.—A lessor, owner, or secured party is liable for personal
 2 injury, death, or property loss or damage on land or water only when a civil
 3 aircraft, aircraft engine, or propeller is in the actual possession or control
 4 of the lessor, owner, or secured party, and the personal injury, death, or
 5 property loss or damage occurs because of—

6 (1) the aircraft, engine, or propeller; or

7 (2) the flight of, or an object falling from, the aircraft, engine, or
 8 propeller.

9 **CHAPTER 443—INSURANCE**

Sec.

44301. Definitions.

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44307. Revolving fund.

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10 **§ 44301. Definitions**

11 In this chapter—

12 (1) “American aircraft” means—

13 (A) a civil aircraft of the United States; and

14 (B) an aircraft owned or chartered by, or made available to—

15 (i) the United States Government; or

16 (ii) a State, the District of Columbia, a territory or posses-
 17 sion of the United States, or a political subdivision of the
 18 State, territory, or possession.

19 (2) “insurance carrier” means a person authorized to do aviation in-
 20 surance business in a State, including a mutual or stock insurance
 21 company and a reciprocal insurance association.

22 **§ 44302. General authority**

23 (a) INSURANCE AND REINSURANCE.—(1) Subject to subsection (b) of this
 24 section and section 44305(a) of this title, the Secretary of Transportation
 25 may provide insurance and reinsurance against loss or damage arising out
 26 of any risk from the operation of an American aircraft or foreign-flag air-
 27 craft—

28 (A) in foreign air commerce; or

29 (B) between at least 2 places, all of which are outside the United
 30 States.

31 (2) An aircraft may be insured or reinsured for not more than its reason-
 32 able value as determined by the Secretary. Insurance or reinsurance may
 33 be provided only when the Secretary decides that the insurance cannot be
 34 obtained on reasonable terms from an insurance carrier.

1 (b) PRESIDENTIAL APPROVAL.—The Secretary may provide insurance or
2 reinsurance under subsection (a) of this section only with the approval of
3 the President. The President may approve the insurance or reinsurance only
4 after deciding that the continued operation of the American aircraft or for-
5 eign-flag aircraft to be insured or reinsured is necessary to carry out the
6 foreign policy of the United States Government.

7 (c) CONSULTATION.—The President may require the Secretary to consult
8 with interested departments, agencies, and instrumentalities of the Govern-
9 ment before providing insurance or reinsurance under this chapter.

10 (d) ADDITIONAL INSURANCE.—With the approval of the Secretary, a per-
11 son having an insurable interest in an aircraft may insure with other under-
12 writers in an amount that is more than the amount insured with the Sec-
13 retary. However, the Secretary may not benefit from the additional insur-
14 ance. This subsection does not prevent the Secretary from making contracts
15 of coinsurance.

16 **§ 44303. Coverage**

17 The Secretary of Transportation may provide insurance and reinsurance
18 authorized under section 44302 of this title for the following:

19 (1) an American aircraft or foreign-flag aircraft engaged in aircraft
20 operations the President decides are necessary to carry out the foreign
21 policy of the United States Government.

22 (2) property transported or to be transported on aircraft referred to
23 in clause (1) of this section, including—

24 (A) shipments by express or registered mail;

25 (B) property owned by citizens or residents of the United
26 States;

27 (C) property—

28 (i) imported to, or exported from, the United States; and

29 (ii) bought or sold by a citizen or resident of the United
30 States under a contract putting the risk of loss or obligation
31 to provide insurance against risk of loss on the citizen or resi-
32 dent; and

33 (D) property transported between—

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

36 (ii) a place in a territory or possession of the United States
37 and a place in another territory or possession of the United
38 States; or

39 (iii) 2 places in the same territory or possession of the
40 United States.

1 (3) the personal effects and baggage of officers and members of the
2 crew of an aircraft referred to in clause (1) of this section and of other
3 individuals employed or transported on that aircraft.

4 (4) officers and members of the crew of an aircraft referred to in
5 clause (1) of this section and other individuals employed or transported
6 on that aircraft against loss of life, injury, or detention.

7 (5) statutory or contractual obligations or other liabilities, customar-
8 ily covered by insurance, of an aircraft referred to in clause (1) of this
9 section or of the owner or operator of that aircraft.

10 **§ 44304. Reinsurance**

11 (a) GENERAL AUTHORITY.—To the extent the Secretary of Transporta-
12 tion is authorized to provide insurance under this chapter, the Secretary
13 may reinsure any part of the insurance provided by an insurance carrier.
14 The Secretary may reinsure with, transfer to, or transfer back to, the car-
15 rier any insurance or reinsurance provided by the Secretary under this
16 chapter.

17 (b) PREMIUM LEVELS.—The Secretary may provide reinsurance at pre-
18 miums not less than, or obtain reinsurance at premiums not higher than,
19 the premiums the Secretary establishes on similar risks or the premiums the
20 insurance carrier charges for the insurance to be reinsured by the Secretary,
21 whichever is most advantageous to the Secretary. However, the Secretary
22 may make allowances to the insurance carrier for expenses incurred in pro-
23 viding services and facilities that the Secretary considers good business
24 practice, except for payments by the carrier for the stimulation or sollicita-
25 tion of insurance business.

26 **§ 44305. Insuring United States Government property**

27 (a) GENERAL.—With the approval of the President, a department, agen-
28 cy, or instrumentality of the United States Government may obtain—

29 (1) insurance under this chapter, including insurance for risks from
30 operating an aircraft in intrastate or interstate air commerce, but not
31 including insurance on valuables subject to sections 1 and 2 of the Gov-
32 ernment Losses in Shipment Act (40 U.S.C. 721, 722); and

33 (2) insurance for risks arising from providing goods or services di-
34 rectly related to and necessary for operating an aircraft covered by in-
35 surance obtained under clause (1) of this subsection if the aircraft is
36 operated—

37 (A) in carrying out a contract of the department, agency, or in-
38 strumentality; or

39 (B) to transport military forces or materiel on behalf of the
40 United States under an agreement between the Government and
41 the government of a foreign country.

1 (b) PREMIUM WAIVERS AND INDEMNIFICATION.—With the approval re-
2 quired under subsection (a) of this section, the Secretary of Transportation
3 may provide the insurance without premium at the request of the Secretary
4 of Defense or the head of a department, agency, or instrumentality des-
5 ignated by the President when the Secretary of Defense or the designated
6 head agrees to indemnify the Secretary of Transportation against all losses
7 covered by the insurance. The Secretary of Defense and any designated
8 head may make indemnity agreements with the Secretary of Transportation
9 under this section.

10 **§ 44306. Premiums and limitations on coverage and claims**

11 (a) PREMIUMS BASED ON RISK.—To the extent practical, the premium
12 charged for insurance or reinsurance under this chapter shall be based on
13 consideration of the risk involved.

14 (b) TIME LIMITS.—The Secretary of Transportation may provide insur-
15 ance and reinsurance under this chapter for a period of not more than 60
16 days. The period may be extended for additional periods of not more than
17 60 days each only if the President decides, before each additional period,
18 that the continued operation of the aircraft to be insured or reinsured is
19 necessary to carry out the foreign policy of the United States Government.

20 (c) MAXIMUM INSURED AMOUNT.—The insurance policy on an aircraft
21 insured or reinsured under this chapter shall specify a stated amount that
22 is not more than the value of the aircraft, as determined by the Secretary.
23 A claim under the policy may not be paid for more than that stated amount.

24 **§ 44307. Revolving fund**

25 (a) EXISTENCE, DISBURSEMENTS, APPROPRIATIONS, AND DEPOSITS.—
26 (1) There is a revolving fund in the Treasury. The Secretary of the Treas-
27 ury shall disburse from the fund payments to carry out this chapter.

28 (2) Necessary amounts to carry out this chapter may be appropriated to
29 the fund. The amounts appropriated and other amounts received in carrying
30 out this chapter shall be deposited in the fund.

31 (b) INVESTMENT.—On request of the Secretary of Transportation, the
32 Secretary of the Treasury may invest any part of the amounts in the revolv-
33 ing fund in interest-bearing securities of the United States Government.
34 The interest on, and the proceeds from the sale or redemption of, the securi-
35 ties shall be deposited in the fund.

36 (c) EXCESS AMOUNTS.—The balance in the revolving fund in excess of
37 an amount the Secretary of Transportation determines is necessary for the
38 requirements of the fund and for reasonable reserves to maintain the sol-
39 vency of the fund shall be deposited at least annually in the Treasury as
40 miscellaneous receipts.

1 (d) EXPENSES.—The Secretary of Transportation shall deposit annually
2 an amount in the Treasury as miscellaneous receipts to cover the expenses
3 the Government incurs when the Secretary of Transportation uses appro-
4 priated amounts in carrying out this chapter. The deposited amount shall
5 equal an amount determined by multiplying the average monthly balance of
6 appropriated amounts retained in the revolving fund by a percentage that
7 is at least the current average rate payable on marketable obligations of the
8 Government. The Secretary of the Treasury shall determine annually in ad-
9 vance the percentage applied.

10 **§ 44308. Administrative**

11 (a) COMMERCIAL PRACTICES.—The Secretary of Transportation may
12 carry out this chapter consistent with commercial practices of the aviation
13 insurance business.

14 (b) ISSUANCE OF POLICIES AND DISPOSITION OF CLAIMS.—(1) The Sec-
15 retary may issue insurance policies to carry out this chapter. The Secretary
16 may prescribe the forms, amounts insured under the policies, and premiums
17 charged. The Secretary may change an amount of insurance or a premium
18 for an existing policy only with the consent of the insured.

19 (2) For a claim under insurance authorized by this chapter, the Secretary
20 may—

21 (A) settle and pay the claim made for or against the United States
22 Government; and

23 (B) pay the amount of a judgment entered against the Government.

24 (c) UNDERWRITING AGENT.—(1) The Secretary may, and when practical
25 shall, employ an insurance carrier or group of insurance carriers to act as
26 an underwriting agent. The Secretary may use the agent to adjust claims
27 under this chapter, but claims may be paid only when approved by the
28 Secretary.

29 (2) The Secretary may pay reasonable compensation to an underwriting
30 agent for servicing insurance the agent writes for the Secretary. Compensa-
31 tion may include payment for reasonable expenses incurred by the agent but
32 may not include a payment by the agent for stimulation or solicitation of
33 insurance business.

34 (3) Except as provided by this subsection, the Secretary may not pay an
35 insurance broker or other person acting in a similar capacity any considera-
36 tion for arranging insurance when the Secretary directly insures any part
37 of the risk.

38 (d) BUDGET.—The Secretary shall submit annually a budget program for
39 carrying out this chapter as provided for wholly owned Government corpora-
40 tions under chapter 91 of title 31.

1 (e) ACCOUNTS.—The Secretary shall maintain a set of accounts. The
2 Comptroller General shall audit those accounts under chapter 35 of title 31.
3 Notwithstanding chapter 35, the Comptroller General shall allow credit for
4 expenditures under this chapter made consistent with commercial practices
5 in the aviation insurance business when shown to be necessary because of
6 the business activities authorized by this chapter.

7 **§ 44309. Civil actions**

8 (a) DISPUTED LOSSES.—A person may bring a civil action in a district
9 court of the United States against the United States Government when a
10 loss insured under this chapter is in dispute. A civil action involving the
11 same matter (except the action authorized by this subsection) may not be
12 brought against an agent, officer, or employee of the Government carrying
13 out this chapter. To the extent applicable, the procedure in an action
14 brought under section 1346(a)(2) of title 28 applies to an action under this
15 subsection.

16 (b) VENUE AND JOINDER.—(1) A civil action under subsection (a) of this
17 section may be brought in the judicial district for the District of Columbia
18 or in the judicial district in which the plaintiff or the agent of the plaintiff
19 resides if the plaintiff resides in the United States. If the plaintiff does not
20 reside in the United States, the action may be brought in the judicial dis-
21 trict for the District of Columbia or in the judicial district in which the At-
22 torney General agrees to accept service.

23 (2) An interested person may be joined as a party to a civil action
24 brought under subsection (a) of this section initially or on motion of either
25 party to the action.

26 (c) TIME REQUIREMENTS.—When an insurance claim is made under this
27 chapter, the period during which, under section 2401 of title 28, a civil ac-
28 tion must be brought under subsection (a) of this section is suspended until
29 60 days after the Secretary of Transportation denies the claim. The claim
30 is deemed to be administratively denied if the Secretary does not act on the
31 claim not later than 6 months after filing, unless the Secretary makes a dif-
32 ferent agreement with the claimant when there is good cause for an agree-
33 ment.

34 (d) INTERPLEADER.—(1) If the Secretary admits the Government owes
35 money under an insurance claim under this chapter and there is a dispute
36 about the person that is entitled to payment, the Government may bring
37 a civil action of interpleader in a district court of the United States against
38 the persons that may be entitled to payment. The action may be brought
39 in the judicial district for the District of Columbia or in the judicial district
40 in which any party resides.

1 (2) The district court may order a party not residing or found in the judi-
 2 cial district in which the action is brought to appear in a civil action under
 3 this subsection. The order shall be served in a reasonable manner decided
 4 by the district court. If the court decides an unknown person might assert
 5 a claim under the insurance that is the subject of the action, the court may
 6 order service on that person by publication in the Federal Register.

7 (3) Judgment in a civil action under this subsection discharges the Gov-
 8 ernment from further liability to the parties to the action and to all other
 9 persons served by publication under paragraph (2) of this subsection.

10 **§ 44310. Ending effective date**

11 The authority of the Secretary of Transportation to provide insurance
 12 and reinsurance under this chapter is not effective after September 30,
 13 1997.

14 **CHAPTER 445—FACILITIES, PERSONNEL, AND**
 15 **RESEARCH**

Sec.

- 44501. Plans and policy.
- 44502. General facilities and personnel authority.
- 44503. Reducing nonessential expenditures.
- 44504. Improved aircraft, aircraft engines, propellers, and appliances.
- 44505. Systems, procedures, facilities, and devices.
- 44506. Air traffic controllers.
- 44507. Civil aeromedical research.
- 44508. Research advisory committee.
- 44509. Demonstration projects.
- 44510. Airway science curriculum grants.
- 44511. Aviation research grants.
- 44512. Catastrophic failure prevention research grants.
- 44513. Regional centers of air transportation excellence.
- 44514. Flight service stations.
- 44515. Advanced training facilities for maintenance technicians for air carrier aircraft.

16 **§ 44501. Plans and policy**

17 (a) LONG RANGE PLANS AND POLICY REQUIREMENTS.—The Adminis-
 18 trator of the Federal Aviation Administration shall make long range plans
 19 and policy for the orderly development and use of the navigable airspace,
 20 and the orderly development and location of air navigation facilities, that
 21 will best meet the needs of, and serve the interests of, civil aeronautics and
 22 the national defense, except for needs of the armed forces that are peculiar
 23 to air warfare and primarily of military concern.

24 (b) AIRWAY CAPITAL INVESTMENT PLAN.—The Administrator of the
 25 Federal Aviation Administration shall review, revise, and publish a national
 26 airways system plan, known as the Airway Capital Investment Plan, before
 27 the beginning of each fiscal year. The plan shall set forth—

- 28 (1) for a 10-year period, the research, engineering, and development
 29 programs and the facilities and equipment that the Administrator con-
 30 siders necessary for a system of airways, air traffic services, and navi-
 31 gation aids that will—

- 1 (A) meet the forecasted needs of civil aeronautics;
- 2 (B) meet the requirements that the Secretary of Defense estab-
- 3 lishes for the support of the national defense; and
- 4 (C) provide the highest degree of safety in air commerce;
- 5 (2) for the first and 2d years of the plan, detailed annual estimates
- 6 of—
- 7 (A) the number, type, location, and cost of acquiring, operating,
- 8 and maintaining required facilities and services;
- 9 (B) the cost of research, engineering, and development required
- 10 to improve safety, system capacity, and efficiency; and
- 11 (C) personnel levels required for the activities described in
- 12 subclauses (A) and (B) of this clause;
- 13 (3) for the 3d, 4th, and 5th years of the plan, estimates of the total
- 14 cost of each major program for the 3-year period, and additional major
- 15 research programs, acquisition of systems and facilities, and changes
- 16 in personnel levels that may be required to meet long range objectives
- 17 and that may have significant impact on future funding requirements;
- 18 and
- 19 (4) a 10-year investment plan that considers long range objectives
- 20 that the Administrator considers necessary to—
- 21 (A) ensure that safety is given the highest priority in providing
- 22 for a safe and efficient airway system; and
- 23 (B) meet the current and projected growth of aviation and the
- 24 requirements of interstate commerce, the United States Postal
- 25 Service, and the national defense.
- 26 (c) NATIONAL AVIATION RESEARCH PLAN.—(1) The Administrator of
- 27 the Federal Aviation Administration shall prepare and publish annually a
- 28 national aviation research plan and submit the plan to the Committee on
- 29 Commerce, Science, and Transportation of the Senate and the Committee
- 30 on Science, Space, and Technology of the House of Representatives. The
- 31 plan shall be submitted not later than the date of submission of the Presi-
- 32 dent's budget to Congress.
- 33 (2)(A) The plan shall describe, for a 15-year period, the research, engi-
- 34 neering, and development that the Administrator of the Federal Aviation
- 35 Administration considers necessary—
- 36 (i) to ensure the continued capacity, safety, and efficiency of aviation
- 37 in the United States, considering emerging technologies and forecasted
- 38 needs of civil aeronautics; and
- 39 (ii) to provide the highest degree of safety in air travel.
- 40 (B) The plan shall cover all research conducted under sections 40119,
- 41 44504, 44505, 44507, 44511–44513, and 44912 of this title and shall iden-

1 tify complementary and coordinated research efforts that the Administrator
2 of the National Aeronautics and Space Administration conducts with
3 amounts specifically appropriated to the Administration. For projects for
4 which the Administrator of the Federal Aviation Administration anticipates
5 requesting an appropriation, the plan shall include—

6 (i) for the first 2 years of the plan, detailed annual estimates of the
7 schedule, cost, and work-force levels for each research project, including
8 a description of the scope and content of each major contract, grant,
9 or interagency agreement;

10 (ii) for the 3d, 4th, and 5th years of the plan, estimates of the total
11 cost of each major project and any additional major research projects
12 that may be required to meet long-term objectives and that may have
13 significant impact on future appropriations requirements;

14 (iii) for the 6th and subsequent years of the plan, the long-term ob-
15 jectives the Administrator of the Federal Aviation Administration con-
16 siders necessary to ensure that aviation safety will be given the highest
17 priority; and

18 (iv) details of a program to disseminate to the private sector the re-
19 sults of aviation research conducted by the Administrator of the Fed-
20 eral Aviation Administration, including any new technologies developed.

21 (3) Subject to section 40119(b) of this title and regulations prescribed
22 under section 40119(b), the Administrator of the Federal Aviation Adminis-
23 tration shall submit to the committees named in paragraph (1) of this sub-
24 section an annual report on the accomplishments of the research completed
25 during the prior fiscal year. The report shall be submitted with the plan
26 required under paragraph (1) and be organized to allow comparison with
27 the plan in effect for the prior fiscal year.

28 **§ 44502. General facilities and personnel authority**

29 (a) GENERAL AUTHORITY.—(1) The Administrator of the Federal Avia-
30 tion Administration may—

31 (A) acquire, establish, improve, operate, and maintain air navigation
32 facilities; and

33 (B) provide facilities and personnel to regulate and protect air traf-
34 fic.

35 (2) The cost of site preparation work associated with acquiring, establish-
36 ing, or improving an air navigation facility under paragraph (1)(A) of this
37 subsection shall be charged to amounts available for that purpose appro-
38 priated under section 48101(a) of this title. The Secretary of Transporta-
39 tion may make an agreement with an airport owner or sponsor (as defined
40 in section 47102 of this title) so that the owner or sponsor will provide the

1 work and be paid or reimbursed by the Secretary from the appropriated
2 amounts.

3 (3) The Secretary of Transportation may authorize a department, agency,
4 or instrumentality of the United States Government to carry out any duty
5 or power under this subsection with the consent of the head of the depart-
6 ment, agency, or instrumentality.

7 (b) CERTIFICATION OF NECESSITY.—Except for Government money ex-
8 pended under this part or for a military purpose, money may be expended
9 to acquire, establish, construct, operate, repair, alter, or maintain an air
10 navigation facility only if the Administrator of the Federal Aviation Admin-
11 istration certifies in writing that the facility is reasonably necessary for use
12 in air commerce or for the national defense. An interested person may apply
13 for a certificate for a facility to be acquired, established, constructed, oper-
14 ated, repaired, altered, or maintained by or for the person.

15 (c) ENSURING CONFORMITY WITH PLANS AND POLICIES.—(1) To ensure
16 that conformity with plans and policies for, and allocation of, airspace by
17 the Administrator of the Federal Aviation Administration under section
18 40103(b)(1) of this title, a military airport, military landing area, or missile
19 or rocket site may be acquired, established, or constructed, or a runway may
20 be altered substantially, only if the Administrator of the Federal Aviation
21 Administration is given reasonable prior notice so that the Administrator of
22 the Federal Aviation Administration may advise the appropriate committees
23 of Congress and interested departments, agencies, and instrumentalities of
24 the Government on the effect of the acquisition, establishment, construction,
25 or alteration on the use of airspace by aircraft. A disagreement between the
26 Administrator of the Federal Aviation Administration and the Secretary of
27 Defense or the Administrator of the National Aeronautics and Space Ad-
28 ministration may be appealed to the President for a final decision.

29 (2) To ensure conformity, an airport or landing area not involving the
30 expenditure of Government money may be established or constructed, or a
31 runway may be altered substantially, only if the Administrator of the Fed-
32 eral Aviation Administration is given reasonable prior notice so that the Ad-
33 ministrator may provide advice on the effects of the establishment, construc-
34 tion, or alteration on the use of airspace by aircraft.

35 (d) PUBLIC USE AND EMERGENCY ASSISTANCE.—(1) The head of a de-
36 partment, agency, or instrumentality of the Government having jurisdiction
37 over an air navigation facility owned or operated by the Government may
38 provide, under regulations the head of the department, agency, or instru-
39 mentality prescribes, for public use of the facility.

40 (2) The head of a department, agency, or instrumentality of the Govern-
41 ment having jurisdiction over an airport or emergency landing field owned

1 or operated by the Government may provide, under regulations the head of
2 the department, agency, or instrumentality prescribes, for assistance, and
3 the sale of fuel, oil, equipment, and supplies, to an aircraft, but only when
4 necessary, because of an emergency, to allow the aircraft to continue to the
5 nearest airport operated by private enterprise. The head of the department,
6 agency, or instrumentality shall provide for the assistance and sale at the
7 prevailing local fair market value as determined by the head of the depart-
8 ment, agency, or instrumentality. An amount that the head decides is equal
9 to the cost of the assistance provided and the fuel, oil, equipment, and sup-
10 plies sold shall be credited to the appropriation from which the cost was
11 paid. The balance shall be credited to miscellaneous receipts.

12 (e) CONSENT OF CONGRESS.—Congress consents to a State making an
13 agreement, not in conflict with a law of the United States, with another
14 State to develop or operate an airport facility.

15 (f) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.—An airport may
16 transfer, without consideration, to the Administrator of the Federal Aviation
17 Administration an instrument landing system (and associated approach
18 lighting equipment and runway visual range equipment) that conforms to
19 performance specifications of the Administrator if a Government airport aid
20 program, airport development aid program, or airport improvement project
21 grant was used to assist in purchasing the system. The Administrator shall
22 accept the system and operate and maintain it under criteria of the Admin-
23 istrator.

24 **§ 44503. Reducing nonessential expenditures**

25 The Secretary of Transportation shall attempt to reduce the capital, oper-
26 ating, maintenance, and administrative costs of the national airport and air-
27 way system to the maximum extent practicable consistent with the highest
28 degree of aviation safety. At least annually, the Secretary shall consult with
29 and consider the recommendations of users of the system on ways to reduce
30 nonessential expenditures of the United States Government for aviation.
31 The Secretary shall give particular attention to a recommendation that may
32 reduce, with no adverse effect on safety, future personnel requirements and
33 costs to the Government required to be recovered from user charges.

34 **§ 44504. Improved aircraft, aircraft engines, propellers, and** 35 **appliances**

36 (a) DEVELOPMENTAL WORK AND SERVICE TESTING.—The Administrator
37 of the Federal Aviation Administration may conduct or supervise devel-
38 opmental work and service testing to improve aircraft, aircraft engines, pro-
39 pellers, and appliances.

40 (b) RESEARCH.—The Administrator shall conduct or supervise research—

1 (1) to develop technologies and analyze information to predict the ef-
2 fects of aircraft design, maintenance, testing, wear, and fatigue on the
3 life of aircraft and air safety;

4 (2) to develop methods of analyzing and improving aircraft mainte-
5 nance technology and practices, including nondestructive evaluation of
6 aircraft structures;

7 (3) to assess the fire and smoke resistance of aircraft material;

8 (4) to develop improved fire and smoke resistant material for aircraft
9 interiors;

10 (5) to develop and improve fire and smoke containment systems for
11 inflight aircraft fires;

12 (6) to develop advanced aircraft fuels with low flammability and
13 technologies that will contain aircraft fuels to minimize post-crash fire
14 hazards; and

15 (7) to develop technologies and methods to assess the risk of and
16 prevent defects, failures, and malfunctions of products, parts, proc-
17 esses, and articles manufactured for use in aircraft, aircraft engines,
18 propellers, and appliances that could result in a catastrophic failure of
19 an aircraft.

20 (c) AUTHORITY TO BUY ITEMS OFFERING SPECIAL ADVANTAGES.—In
21 carrying out this section, the Administrator, by negotiation or otherwise,
22 may buy or exchange experimental aircraft, aircraft engines, propellers, and
23 appliances that the Administrator decides may offer special advantages to
24 aeronautics.

25 **§ 44505. Systems, procedures, facilities, and devices**

26 (a) GENERAL REQUIREMENTS.—(1) The Administrator of the Federal
27 Aviation Administration shall—

28 (A) develop, alter, test, and evaluate systems, procedures, facilities,
29 and devices, and define their performance characteristics, to meet the
30 needs for safe and efficient navigation and traffic control of civil and
31 military aviation, except for needs of the armed forces that are peculiar
32 to air warfare and primarily of military concern; and

33 (B) select systems, procedures, facilities, and devices that will best
34 serve those needs and promote maximum coordination of air traffic
35 control and air defense systems.

36 (2) The Administrator may make contracts to carry out this subsection
37 without regard to section 3324(a) and (b) of title 31.

38 (3) When a substantial question exists under paragraph (1) of this sub-
39 section about whether a matter is of primary concern to the armed forces,
40 the Administrator shall decide whether the Administrator or the Secretary
41 of the appropriate military department has responsibility. The Adminis-

1 trator shall be given technical information related to each research and de-
 2 velopment project of the armed forces that potentially applies to, or poten-
 3 tially conflicts with, the common system to ensure that potential application
 4 to the common system is considered properly and that potential conflicts
 5 with the system are eliminated.

6 (b) RESEARCH ON HUMAN FACTORS AND SIMULATION MODELS.—The
 7 Administrator shall conduct or supervise research—

8 (1) to develop a better understanding of the relationship between
 9 human factors and aviation accidents and between human factors and
 10 air safety;

11 (2) to enhance air traffic controller, mechanic, and flight crew per-
 12 formance;

13 (3) to develop a human-factor analysis of the hazards associated with
 14 new technologies to be used by air traffic controllers, mechanics, and
 15 flight crews;

16 (4) to identify innovative and effective corrective measures for
 17 human errors that adversely affect air safety; and

18 (5) to develop dynamic simulation models of the air traffic control
 19 system and airport design and operating procedures that will provide
 20 analytical technology—

21 (A) to predict airport and air traffic control safety and capacity
 22 problems;

23 (B) to evaluate planned research projects; and

24 (C) to test proposed revisions in airport and air traffic control
 25 operations programs.

26 (c) RESEARCH ON DEVELOPING AND MAINTAINING A SAFE AND EFFI-
 27 CIENT SYSTEM.—The Administrator shall conduct or supervise research
 28 on—

29 (1) airspace and airport planning and design;

30 (2) airport capacity enhancement techniques;

31 (3) human performance in the air transportation environment;

32 (4) aviation safety and security;

33 (5) the supply of trained air transportation personnel, including pi-
 34 lots and mechanics; and

35 (6) other aviation issues related to developing and maintaining a safe
 36 and efficient air transportation system.

37 **§ 44506. Air traffic controllers**

38 (a) RESEARCH ON EFFECT OF AUTOMATION ON PERFORMANCE.—To de-
 39 velop the means necessary to establish appropriate selection criteria and
 40 training methodologies for the next generation of air traffic controllers, the
 41 Administrator of the Federal Aviation Administration shall conduct research

1 to study the effect of automation on the performance of the next generation
2 of air traffic controllers and the air traffic control system. The research
3 shall include investigating—

4 (1) methods for improving and accelerating future air traffic control-
5 ler training through the application of advanced training techniques, in-
6 cluding the use of simulation technology;

7 (2) the role of automation in the air traffic control system and its
8 physical and psychological effects on air traffic controllers;

9 (3) the attributes and aptitudes needed to function well in a highly
10 automated air traffic control system and the development of appro-
11 priate testing methods for identifying individuals with those attributes
12 and aptitudes;

13 (4) innovative methods for training potential air traffic controllers to
14 enhance the benefits of automation and maximize the effectiveness of
15 the air traffic control system; and

16 (5) new technologies and procedures for exploiting automated com-
17 munication systems, including Mode S Transponders, to improve infor-
18 mation transfers between air traffic controllers and aircraft pilots.

19 (b) RESEARCH ON HUMAN FACTOR ASPECTS OF AUTOMATION.—The Ad-
20 ministrators of the Federal Aviation Administration and National Aero-
21 nautics and Space Administration may make an agreement for the use of
22 the National Aeronautics and Space Administration’s unique human factor
23 facilities and expertise in conducting research activities to study the human
24 factor aspects of the highly automated environment for the next generation
25 of air traffic controllers. The research activities shall include investigating—

26 (1) human perceptual capabilities and the effect of computer-aided
27 decision making on the workload and performance of air traffic control-
28 lers;

29 (2) information management techniques for advanced air traffic con-
30 trol display systems; and

31 (3) air traffic controller workload and performance measures, includ-
32 ing the development of predictive models.

33 (c) COLLEGIATE TRAINING INITIATIVE.—(1) The Administrator of the
34 Federal Aviation Administration may maintain the Collegiate Training Ini-
35 tiative program by making new agreements and continuing existing agree-
36 ments with institutions of higher education (as defined by the Adminis-
37 trator) under which the institutions prepare students for the position of air
38 traffic controller with the Department of Transportation (as defined in sec-
39 tion 2109 of title 5). The Administrator may establish standards for the
40 entry of institutions into the program and for their continued participation.

1 (2)(A) The Administrator of the Federal Aviation Administration may ap-
2 point an individual who has successfully completed a course of training in
3 a program described in paragraph (1) of this subsection to the position of
4 air traffic controller noncompetitively in the excepted service (as defined in
5 section 2103 of title 5). An individual appointed under this paragraph
6 serves at the pleasure of the Administrator, subject to section 7511 of title
7 5. However, an appointment under this paragraph may be converted from
8 one in the excepted service to a career conditional or career appointment
9 in the competitive civil service (as defined in section 2102 of title 5) when
10 the individual achieves full performance level air traffic controller status, as
11 decided by the Administrator.

12 (B) The authority under subparagraph (A) of this paragraph to make ap-
13 pointments in the excepted service expires on October 6, 1997, except that
14 the Administrator of the Federal Aviation Administration may extend the
15 authority for one or more successive one-year periods.

16 (d) STAFFING REPORT.—The Administrator of the Federal Aviation Ad-
17 ministration shall submit annually to the Committee on Public Works and
18 Transportation of the House of Representatives and the Committee on Com-
19 merce, Science, and Transportation of the Senate a report containing—

20 (1) the staffing standards used to determine the number of air traf-
21 fic controllers needed to operate the air traffic control system of the
22 United States;

23 (2) a 3-year projection of the number of controllers needed to be em-
24 ployed to operate the system to meet the standards; and

25 (3) a detailed plan for employing the controllers, including projected
26 budget requests.

27 **§ 44507. Civil aeromedical research**

28 The Civil Aeromedical Institute established by section 106(j) of this title
29 may—

30 (1) conduct civil aeromedical research, including research related
31 to—

32 (A) the protection and survival of aircraft occupants;

33 (B) medical accident investigation and airman medical certifi-
34 cation;

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

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

37 (E) vision and its relationship to human performance and equip-
38 ment design;

39 (F) human factors of flight crews, air traffic controllers, me-
40 chanics, inspectors, airway facility technicians, and other individ-

1 uals involved in operating and maintaining aircraft and air traffic
2 control equipment; and

3 (G) agency work force optimization, including training, equip-
4 ment design, reduction of errors, and identification of candidate
5 tasks for automation;

6 (2) make comments to the Administrator of the Federal Aviation Ad-
7 ministration on human factors aspects of proposed air safety regula-
8 tions;

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

12 (4) advise, assist, and represent the Federal Aviation Administration
13 in the human factors aspects of joint projects between the Administra-
14 tion and the National Aeronautics and Space Administration, other de-
15 partments, agencies, and instrumentalities of the United States Gov-
16 ernment, industry, and governments of foreign countries; and

17 (5) provide medical consultation services to the Administrator about
18 medical certification of airmen.

19 **§ 44508. Research advisory committee**

20 (a) ESTABLISHMENT AND DUTIES.—(1) There is a research advisory
21 committee in the Federal Aviation Administration. The committee shall—

22 (A) provide advice and recommendations to the Administrator of the
23 Federal Aviation Administration about needs, objectives, plans, ap-
24 proaches, content, and accomplishments of the aviation research pro-
25 gram carried out under sections 40119, 44504, 44505, 44507, 44511–
26 44513, and 44912 of this title;

27 (B) assist in ensuring that the research is coordinated with similar
28 research being conducted outside the Administration; and

29 (C) review the operations of the regional centers of air transpor-
30 tation excellence established under section 44513 of this title.

31 (2) The Administrator may establish subordinate committees to provide
32 advice on specific areas of research conducted under sections 40119, 44504,
33 44505, 44507, 44511–44513, and 44912 of this title.

34 (b) MEMBERS, CHAIRMAN, PAY, AND EXPENSES.—(1) The committee is
35 composed of not more than 30 members appointed by the Administrator
36 from among individuals who are not employees of the Administration and
37 who are specially qualified to serve on the committee because of their edu-
38 cation, training, or experience. In appointing members of the committee, the
39 Administrator shall ensure that the regional centers of air transportation
40 excellence, universities, corporations, associations, consumers, and other de-

1 departments, agencies, and instrumentalities of the United States Government
2 are represented.

3 (2) The Administrator shall designate the chairman of the committee.

4 (3) A member of the committee serves without pay. However, the Admin-
5 istrator may allow a member, when attending meetings of the committee or
6 a subordinate committee, expenses as authorized under section 5703 of title
7 5.

8 (c) SUPPORT STAFF, INFORMATION, AND SERVICES.—The Administrator
9 shall provide support staff for the committee. On request of the committee,
10 the Administrator shall provide information, administrative services, and
11 supplies that the Administrator considers necessary for the committee to
12 carry out its duties and powers.

13 (d) NONAPPLICATION.—Section 14 of the Federal Advisory Committee
14 Act (5 App. U.S.C.) does not apply to the committee.

15 (e) USE AND LIMITATION OF AMOUNTS.—(1) Not more than .1 percent
16 of the amounts made available to conduct research under sections 40119,
17 44504, 44505, 44507, 44511–44513, and 44912 of this title may be used
18 by the Administrator to carry out this section.

19 (2) A limitation on amounts available for obligation by or for the commit-
20 tee does not apply to amounts made available to carry out this section.

21 **§ 44509. Demonstration projects**

22 The Secretary of Transportation may carry out under this chapter dem-
23 onstration projects that the Secretary considers necessary for research and
24 development activities under this chapter.

25 **§ 44510. Airway science curriculum grants**

26 (a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation
27 Administration may make competitive grant agreements with institutions of
28 higher education having airway science curricula for the United States Gov-
29 ernment's share of the allowable direct costs of the following categories of
30 items to the extent that the items are in support of airway science curricula:

31 (1) the construction, purchase, or lease with an option to purchase,
32 of buildings and associated facilities.

33 (2) instructional material and equipment.

34 (b) COST GUIDELINES.—The Administrator shall establish guidelines to
35 determine the direct costs allowable under a grant to be made under this
36 section. The Government's share of the allowable cost of a project assisted
37 by a grant under this section may not be more than 65 percent.

38 **§ 44511. Aviation research grants**

39 (a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation
40 Administration may make grants to institutions of higher education and

1 nonprofit research organizations to conduct aviation research in areas the
2 Administrator considers necessary for the long-term growth of civil aviation.

3 (b) APPLICATIONS.—An institution of higher education or nonprofit re-
4 search organization interested in receiving a grant under this section may
5 submit an application to the Administrator. The application must be in the
6 form and contain the information the Administrator requires.

7 (c) SOLICITATION, REVIEW, AND EVALUATION PROCESS.—The Adminis-
8 trator shall establish a solicitation, review, and evaluation process that en-
9 sures—

10 (1) providing grants under this section for proposals having adequate
11 merit and relevancy to the mission of the Administration;

12 (2) a fair geographical distribution of grants under this section; and

13 (3) the inclusion of historically black institutions of higher education
14 and other minority nonprofit research organizations for grant consider-
15 ation under this section.

16 (d) RECORDS.—Each person receiving a grant under this section shall
17 maintain records that the Administrator requires as being necessary to fa-
18 cilitate an effective audit and evaluation of the use of money provided under
19 the grant.

20 (e) ANNUAL REPORT.—The Administrator shall submit an annual report
21 to the Committee on Science, Space, and Technology of the House of Rep-
22 resentatives and the Committee on Commerce, Science, and Transportation
23 of the Senate on carrying out this section.

24 **§ 44512. Catastrophic failure prevention research grants**

25 (a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation
26 Administration may make grants to institutions of higher education and
27 nonprofit research organizations—

28 (1) to conduct aviation research related to the development of tech-
29 nologies and methods to assess the risk of, and prevent, defects, fail-
30 ures, and malfunctions of products, parts, processes, and articles man-
31 ufactured for use in aircraft, aircraft engines, propellers, and appli-
32 ances that could result in a catastrophic failure of an aircraft; and

33 (2) to establish centers of excellence for continuing the research.

34 (b) SOLICITATION, APPLICATION, REVIEW, AND EVALUATION PROCESS.—
35 The Administrator shall establish a solicitation, application, review, and
36 evaluation process that ensures providing grants under this section for pro-
37 posals having adequate merit and relevancy to the research described in sub-
38 section (a) of this section.

39 **§ 44513. Regional centers of air transportation excellence**

40 (a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation
41 Administration may make grants to institutions of higher education to es-

1 tablish and operate regional centers of air transportation excellence. The lo-
2 cations shall be distributed in a geographically fair way.

3 (b) RESPONSIBILITIES.—(1) The responsibilities of each center estab-
4 lished under this section shall include—

5 (A) conducting research on—

6 (i) airspace and airport planning and design;

7 (ii) airport capacity enhancement techniques;

8 (iii) human performance in the air transportation environment;

9 (iv) aviation safety and security;

10 (v) the supply of trained air transportation personnel, including
11 pilots and mechanics; and

12 (vi) other aviation issues related to developing and maintaining
13 a safe and efficient air transportation system; and

14 (B) interpreting, publishing, and disseminating the results of the re-
15 search.

16 (2) In conducting research described in paragraph (1)(A) of this sub-
17 section, each center may make contracts with nonprofit research organiza-
18 tions and other appropriate persons.

19 (c) APPLICATIONS.—An institution of higher education interested in re-
20 ceiving a grant under this section may submit an application to the Admin-
21 istrator. The application must be in the form and contain the information
22 that the Administrator requires by regulation.

23 (d) SELECTION CRITERIA.—The Administrator shall select recipients of
24 grants under this section on the basis of the following criteria:

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

28 (2) the demonstrated research and extension resources available to
29 the applicant to carry out this section.

30 (3) the ability of the applicant to provide leadership in making na-
31 tional and regional contributions to the solution of both long-range and
32 immediate air transportation problems.

33 (4) the extent to which the applicant has an established air transpor-
34 tation program.

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

38 (6) the projects the applicant proposes to carry out under the grant.

39 (e) EXPENDITURE AGREEMENTS.—A grant may be made under this sec-
40 tion in a fiscal year only if the recipient makes an agreement with the Ad-
41 ministrator that the Administrator requires to ensure that the recipient will

1 maintain its total expenditures from all other sources for establishing and
2 operating the center and related research activities at a level at least equal
3 to the average level of those expenditures in the 2 fiscal years of the recipi-
4 ent occurring immediately before November 5, 1990.

5 (f) GOVERNMENT'S SHARE OF COSTS.—The United States Government's
6 share of a grant under this section is 50 percent of the costs of establishing
7 and operating the center and related research activities that the grant recip-
8 ient carries out.

9 (g) ALLOCATING AMOUNTS.—The Administrator shall allocate amounts
10 made available to carry out this section in a geographically fair way.

11 **§44514. Flight service stations**

12 (a) HOURS OF OPERATION.—(1) The Secretary of Transportation may
13 close, or reduce the hours of operation of, a flight service station in an area
14 only if the service provided in the area after the closing or during the hours
15 the station is not in operation is provided by an automated flight service
16 station with at least model 1 equipment.

17 (2) The Secretary shall reopen a flight service station closed after March
18 24, 1987, but before July 15, 1987, as soon as practicable if the service
19 in the area in which the station is located has not been provided since the
20 closing by an automatic flight service station with at least model 1 equip-
21 ment. The hours of operation for the reopened station shall be the same
22 as were the hours of operation for the station on March 25, 1987. After
23 reopening the station, the Secretary may close, or reduce the hours of oper-
24 ation of, the station only as provided in paragraph (1) of this subsection.

25 (b) MANNED AUXILIARY STATIONS.—The Secretary and the Adminis-
26 trator of the Federal Aviation Administration shall establish a system of
27 manned auxiliary flight service stations. The manned auxiliary flight service
28 stations shall supplement the services of the planned consolidation to 61
29 automated flight service stations under the flight service station moderniza-
30 tion program. A manned auxiliary flight service station shall be located in
31 an area of unique weather or operational conditions that are critical to the
32 safety of flight.

33 **§44515. Advanced training facilities for maintenance tech-**
34 **nicians for air carrier aircraft**

35 (a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation
36 Administration may make grants to not more than 4 vocational technical
37 educational institutions to acquire or construct facilities to be used for the
38 advanced training of maintenance technicians for air carrier aircraft.

39 (b) ELIGIBILITY.—The Administrator may make a grant under this sec-
40 tion to a vocational technical educational institution only if the institution
41 has a training curriculum that prepares aircraft maintenance technicians

1 who hold airframe and power plant certificates under subpart D of part 65
 2 of title 14, Code of Federal Regulations, to maintain, without direct super-
 3 vision, air carrier aircraft.

4 (c) LIMITATION.—A vocational technical educational institution may not
 5 receive more than a total of \$5,000,000 in grants under this section.

6 **CHAPTER 447—SAFETY REGULATION**

Sec.

- 44701. General requirements.
- 44702. Issuance of certificates.
- 44703. Airman certificates.
- 44704. Type certificates, production certificates, and airworthiness certificates.
- 44705. Air carrier operating certificates.
- 44706. Airport operating certificates.
- 44707. Examining and rating air agencies.
- 44708. Inspecting and rating air navigation facilities.
- 44709. Amendments, modifications, suspensions, and revocations of certificates.
- 44710. Revocations of airman certificates for controlled substance violations.
- 44711. Prohibitions and exemption.
- 44712. Emergency locator transmitters.
- 44713. Inspection and maintenance.
- 44714. Aviation fuel standards.
- 44715. Controlling aircraft noise and sonic boom.
- 44716. Collision avoidance systems.
- 44717. Aging aircraft.
- 44718. Structures interfering with air commerce.
- 44719. Standards for navigational aids.
- 44720. Meteorological services.
- 44721. Aeronautical maps and charts.
- 44722. Aircraft operations in winter conditions.
- 44723. Annual report.

7 **§ 44701. General requirements**

8 (a) PROMOTING SAFETY.—The Administrator of the Federal Aviation Ad-
 9 ministration shall promote safe flight of civil aircraft in air commerce by
 10 prescribing—

11 (1) minimum standards required in the interest of safety for appli-
 12 ances and for the design, material, construction, quality of work, and
 13 performance of aircraft, aircraft engines, and propellers;

14 (2) regulations and minimum standards in the interest of safety
 15 for—

16 (A) inspecting, servicing, and overhauling aircraft, aircraft en-
 17 gines, propellers, and appliances;

18 (B) equipment and facilities for, and the timing and manner of,
 19 the inspecting, servicing, and overhauling; and

20 (C) a qualified private person, instead of an officer or employee
 21 of the Administration, to examine and report on the inspecting,
 22 servicing, and overhauling;

23 (3) regulations required in the interest of safety for the reserve sup-
 24 ply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel
 25 and oil, including the reserve supply of fuel and oil carried in flight;

1 (4) regulations in the interest of safety for the maximum hours or
2 periods of service of airmen and other employees of air carriers; and

3 (5) regulations and minimum standards for other practices, methods,
4 and procedure the Administrator finds necessary for safety in air com-
5 merce and national security.

6 (b) PRESCRIBING MINIMUM SAFETY STANDARDS.—The Administrator
7 may prescribe minimum safety standards for—

8 (1) an air carrier to whom a certificate is issued under section 44705
9 of this title; and

10 (2) operating an airport serving any passenger operation of air car-
11 rier aircraft designed for at least 31 passenger seats.

12 (c) REDUCING AND ELIMINATING ACCIDENTS.—The Administrator shall
13 carry out this chapter in a way that best tends to reduce or eliminate the
14 possibility or recurrence of accidents in air transportation. However, the Ad-
15 ministrator is not required to give preference either to air transportation or
16 to other air commerce in carrying out this chapter.

17 (d) CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND
18 STANDARDS.—When prescribing a regulation or standard under subsection
19 (a) or (b) of this section or section 44702–44716 of this title, the Adminis-
20 trator shall—

21 (1) consider—

22 (A) the duty of an air carrier to provide service with the highest
23 possible degree of safety in the public interest; and

24 (B) differences between air transportation and other air com-
25 merce; and

26 (2) classify a regulation or standard appropriate to the differences
27 between air transportation and other air commerce.

28 (e) EXEMPTIONS.—The Administrator may grant an exemption from a
29 requirement of a regulation prescribed under subsection (a) or (b) of this
30 section or section 44702–44716 of this title if the Administrator finds the
31 exemption is in the public interest.

32 **§ 44702. Issuance of certificates**

33 (a) GENERAL AUTHORITY AND APPLICATIONS.—The Administrator of
34 the Federal Aviation Administration may issue airman certificates, type cer-
35 tificates, production certificates, airworthiness certificates, air carrier oper-
36 ating certificates, airport operating certificates, air agency certificates, and
37 air navigation facility certificates under this chapter. An application for a
38 certificate must—

39 (1) be under oath when the Administrator requires; and

40 (2) be in the form, contain information, and be filed and served in
41 the way the Administrator prescribes.

1 (b) CONSIDERATIONS.—When issuing a certificate under this chapter, the
2 Administrator shall—

3 (1) consider—

4 (A) the duty of an air carrier to provide service with the highest
5 possible degree of safety in the public interest; and

6 (B) differences between air transportation and other air com-
7 merce; and

8 (2) classify a certificate according to the differences between air
9 transportation and other air commerce.

10 (c) PRIOR CERTIFICATION.—The Administrator may authorize an air-
11 craft, aircraft engine, propeller, or appliance for which a certificate has been
12 issued authorizing the use of the aircraft, aircraft engine, propeller, or ap-
13 pliance in air transportation to be used in air commerce without another
14 certificate being issued.

15 (d) DELEGATION.—(1) Subject to regulations, supervision, and review the
16 Administrator may prescribe, the Administrator may delegate to a qualified
17 private person, or to an employee under the supervision of that person, a
18 matter related to—

19 (A) the examination, testing, and inspection necessary to issue a cer-
20 tificate under this chapter; and

21 (B) issuing the certificate.

22 (2) The Administrator may rescind a delegation under this subsection at
23 any time for any reason the Administrator considers appropriate.

24 (3) A person affected by an action of a private person under this sub-
25 section may apply for reconsideration of the action by the Administrator.
26 On the Administrator's own initiative, the Administrator may reconsider the
27 action of a private person at any time. If the Administrator decides on re-
28 consideration that the action is unreasonable or unwarranted, the Adminis-
29 trator shall change, modify, or reverse the action. If the Administrator de-
30 cides the action is warranted, the Administrator shall affirm the action.

31 **§ 44703. Airman certificates**

32 (a) GENERAL.—The Administrator of the Federal Aviation Administra-
33 tion shall issue an airman certificate to an individual when the Adminis-
34 trator finds, after investigation, that the individual is qualified for, and
35 physically able to perform the duties related to, the position to be authorized
36 by the certificate.

37 (b) CONTENTS.—(1) An airman certificate shall—

38 (A) be numbered and recorded by the Administrator of the Federal
39 Aviation Administration;

40 (B) contain the name, address, and description of the individual to
41 whom the certificate is issued;

1 (C) contain terms the Administrator decides are necessary to ensure
2 safety in air commerce, including terms on the duration of the certifi-
3 cate, periodic or special examinations, and tests of physical fitness;

4 (D) specify the capacity in which the holder of the certificate may
5 serve as an airman with respect to an aircraft; and

6 (E) designate the class the certificate covers.

7 (2) A certificate issued to a pilot serving in scheduled air transportation
8 shall have the designation “airline transport pilot” of the appropriate class.

9 (c) APPEALS.—(1) An individual whose application for the issuance or re-
10 newal of an airman certificate has been denied may appeal the denial to the
11 National Transportation Safety Board, except if the individual holds a cer-
12 tificate that—

13 (A) is suspended at the time of denial; or

14 (B) was revoked within one year from the date of the denial.

15 (2) The Board shall conduct a hearing on the appeal at a place conven-
16 ient to the place of residence or employment of the applicant. The Board
17 is not bound by findings of fact of the Administrator of the Federal Avia-
18 tion Administration but is bound by all validly adopted interpretations of
19 laws and regulations the Administrator carries out unless the Board finds
20 an interpretation is arbitrary, capricious, or otherwise not according to law.
21 At the end of the hearing, the Board shall decide whether the individual
22 meets the applicable regulations and standards. The Administrator is bound
23 by that decision.

24 (d) RESTRICTIONS AND PROHIBITIONS.—The Administrator of the Fed-
25 eral Aviation Administration may—

26 (1) restrict or prohibit issuing an airman certificate to an alien; or

27 (2) make issuing the certificate to an alien dependent on a reciprocal
28 agreement with the government of a foreign country.

29 (e) CONTROLLED SUBSTANCE VIOLATIONS.—The Administrator of the
30 Federal Aviation Administration may not issue an airman certificate to an
31 individual whose certificate is revoked under section 44710 of this title ex-
32 cept—

33 (1) when the Administrator decides that issuing the certificate will
34 facilitate law enforcement efforts; and

35 (2) as provided in section 44710(e)(2) of this title.

36 (f) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal
37 Aviation Administration shall make modifications in the system for issuing
38 airman certificates necessary to make the system more effective in serving
39 the needs of pilots and officials responsible for enforcing laws related to the
40 regulation of controlled substances (as defined in section 102 of the Com-
41 prehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C.

1 802)). The modifications shall ensure positive and verifiable identification
2 of each individual applying for or holding a certificate and shall address at
3 least each of the following deficiencies in, and abuses of, the existing sys-
4 tem:

5 (A) the use of fictitious names and addresses by applicants for those
6 certificates.

7 (B) the use of stolen or fraudulent identification in applying for
8 those certificates.

9 (C) the use by an applicant of a post office box or “mail drop” as
10 a return address to evade identification of the applicant’s address.

11 (D) the use of counterfeit and stolen airman certificates by pilots.

12 (E) the absence of information about physical characteristics of hold-
13 ers of those certificates.

14 (2) The Administrator of the Federal Aviation Administration shall pre-
15 scribe regulations to carry out paragraph (1) of this subsection and provide
16 a written explanation of how the regulations address each of the deficiencies
17 and abuses described in paragraph (1). In prescribing the regulations, the
18 Administrator of the Federal Aviation Administration shall consult with the
19 Administrator of Drug Enforcement, the Commissioner of Customs, other
20 law enforcement officials of the United States Government, representatives
21 of State and local law enforcement officials, representatives of the general
22 aviation aircraft industry, representatives of users of general aviation air-
23 craft, and other interested persons.

24 **§44704. Type certificates, production certificates, and air-**
25 **worthiness certificates**

26 (a) TYPE CERTIFICATES.—(1) The Administrator of the Federal Aviation
27 Administration shall issue a type certificate for an aircraft, aircraft engine,
28 or propeller, or for an appliance specified under paragraph (2)(A) of this
29 subsection when the Administrator finds that the aircraft, aircraft engine,
30 propeller, or appliance is properly designed and manufactured, performs
31 properly, and meets the regulations and minimum standards prescribed
32 under section 44701(a) of this title. On receiving an application for a type
33 certificate, the Administrator shall investigate the application and may con-
34 duct a hearing. The Administrator shall make, or require the applicant to
35 make, tests the Administrator considers necessary in the interest of safety.

36 (2) The Administrator may—

37 (A) specify in regulations those appliances that reasonably require a
38 type certificate in the interest of safety;

39 (B) include in a type certificate terms required in the interest of
40 safety; and

1 (C) record on the certificate a numerical specification of the essential
2 factors related to the performance of the aircraft, aircraft engine, or
3 propeller for which the certificate is issued.

4 (b) PRODUCTION CERTIFICATES.—The Administrator shall issue a pro-
5 duction certificate authorizing the production of a duplicate of an aircraft,
6 aircraft engine, propeller, or appliance for which a type certificate has been
7 issued when the Administrator finds the duplicate will conform to the cer-
8 tificate. On receiving an application, the Administrator shall inspect, and
9 may require testing of, a duplicate to ensure that it conforms to the require-
10 ments of the certificate. The Administrator may include in a production cer-
11 tificate terms required in the interest of safety.

12 (c) AIRWORTHINESS CERTIFICATES.—(1) The registered owner of an air-
13 craft may apply to the Administrator for an airworthiness certificate for the
14 aircraft. The Administrator shall issue an airworthiness certificate when the
15 Administrator finds that the aircraft conforms to its type certificate and,
16 after inspection, is in condition for safe operation. The Administrator shall
17 register each airworthiness certificate and may include appropriate informa-
18 tion in the certificate. The certificate number or other individual designation
19 the Administrator requires shall be displayed on the aircraft. The Adminis-
20 trator may include in an airworthiness certificate terms required in the in-
21 terest of safety.

22 (2) A person applying for the issuance or renewal of an airworthiness cer-
23 tificate for an aircraft for which ownership has not been recorded under sec-
24 tion 44107 or 44110 of this title must submit with the application informa-
25 tion related to the ownership of the aircraft the Administrator decides is
26 necessary to identify each person having a property interest in the aircraft
27 and the kind and extent of the interest.

28 **§ 44705. Air carrier operating certificates**

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

35 (1) contain terms necessary to ensure safety in air transportation;
36 and

37 (2) specify the places to and from which, and the airways of the
38 United States over which, a person may operate as an air carrier.

§ 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 the Administrator requires to have a certificate; and

(3) 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.

(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.

§ 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.

1 **§ 44708. Inspecting and rating air navigation facilities**

2 The Administrator of the Federal Aviation Administration may inspect,
3 classify, and rate an air navigation facility available for the use of civil air-
4 craft on the suitability of the facility for that use.

5 **§ 44709. Amendments, modifications, suspensions, and rev-**
6 **ocations of certificates**

7 (a) REINSPECTION AND REEXAMINATION.—The Administrator of the
8 Federal Aviation Administration may reinspect at any time a civil aircraft,
9 aircraft engine, propeller, appliance, air navigation facility, or air agency,
10 or reexamine an airman holding a certificate issued under section 44703 of
11 this title.

12 (b) ACTIONS OF THE ADMINISTRATOR.—The Administrator may issue an
13 order amending, modifying, suspending, or revoking—

14 (1) any part of a certificate issued under this chapter if—

15 (A) the Administrator decides after conducting a reinspection,
16 reexamination, or other investigation that safety in air commerce
17 or air transportation and the public interest require that action;
18 or

19 (B) the holder of the certificate has violated an aircraft noise
20 or sonic boom standard or regulation prescribed under section
21 44715(a) of this title; and

22 (2) an airman certificate when the holder of the certificate is con-
23 victed of violating section 13(a) of the Fish and Wildlife Act of 1956
24 (16 U.S.C. 742j-1(a)).

25 (c) ADVICE TO CERTIFICATE HOLDERS AND OPPORTUNITY TO AN-
26 SWER.—Before acting under subsection (b) of this section, the Adminis-
27 trator shall advise the holder of the certificate of the charges or other rea-
28 sons on which the Administrator relies for the proposed action. Except in
29 an emergency, the Administrator shall provide the holder an opportunity to
30 answer the charges and be heard why the certificate should not be amended,
31 modified, suspended, or revoked.

32 (d) APPEALS.—(1) A person adversely affected by an order of the Admin-
33 istrator under this section may appeal the order to the National Transporta-
34 tion Safety Board. After notice and an opportunity for a hearing, the
35 Board may amend, modify, or reverse the order when the Board finds—

36 (A) if the order was issued under subsection (b)(1)(A) of this sec-
37 tion, that safety in air commerce or air transportation and the public
38 interest do not require affirmation of the order; or

39 (B) if the order was issued under subsection (b)(1)(B) of this sec-
40 tion—

1 (i) that control or abatement of aircraft noise or sonic boom and
2 the public health and welfare do not require affirmation of the
3 order; or

4 (ii) the order, as it is related to a violation of aircraft noise or
5 sonic boom standards and regulations, is not consistent with safety
6 in air commerce or air transportation.

7 (2) The Board may modify a suspension or revocation of a certificate to
8 imposition of a civil penalty.

9 (3) When conducting a hearing under this subsection, the Board is not
10 bound by findings of fact of the Administrator but is bound by all validly
11 adopted interpretations of laws and regulations the Administrator carries
12 out and of written agency policy guidance available to the public related to
13 sanctions to be imposed under this section unless the Board finds an inter-
14 pretation is arbitrary, capricious, or otherwise not according to law.

15 (e) EFFECTIVENESS OF ORDERS PENDING APPEAL.—When a person files
16 an appeal with the Board under subsection (d) of the section, the order of
17 the Administrator is stayed. However, if the Administrator advises the
18 Board that an emergency exists and safety in air commerce or air transpor-
19 tation requires the order to be effective immediately—

20 (1) the order is effective; and

21 (2) the Board shall make a final disposition of the appeal not later
22 than 60 days after the Administrator so advises the Board.

23 (f) JUDICIAL REVIEW.—A person substantially affected by an order of
24 the Board under this section, or the Administrator when the Administrator
25 decides that an order of the Board under this section will have a significant
26 adverse impact on carrying out this part, may obtain judicial review of the
27 order under section 46110 of this title. The Administrator shall be made
28 a party to the judicial review proceedings. Findings of fact of the Board
29 are conclusive if supported by substantial evidence.

30 **§44710. Revocations of airman certificates for controlled**
31 **substance violations**

32 (a) DEFINITION.—In this section, “controlled substance” has the same
33 meaning given that term in section 102 of the Comprehensive Drug Abuse
34 Prevention and Control Act of 1970 (21 U.S.C. 802).

35 (b) REVOCATION.—(1) The Administrator of the Federal Aviation Admin-
36 istration shall issue an order revoking an airman certificate issued an indi-
37 vidual under section 44703 of this title after the individual is convicted,
38 under a law of the United States or a State related to a controlled sub-
39 stance (except a law related to simple possession of a controlled substance),
40 of an offense punishable by death or imprisonment for more than one year
41 if the Administrator finds that—

1 (A) an aircraft was used to commit, or facilitate the commission of,
2 the offense; and

3 (B) the individual served as an airman, or was on the aircraft, in
4 connection with committing, or facilitating the commission of, the of-
5 fense.

6 (2) The Administrator shall issue an order revoking an airman certificate
7 issued an individual under section 44703 of this title if the Administrator
8 finds that—

9 (A) the individual knowingly carried out an activity punishable,
10 under a law of the United States or a State related to a controlled sub-
11 stance (except a law related to simple possession of a controlled sub-
12 stance), by death or imprisonment for more than one year;

13 (B) an aircraft was used to carry out or facilitate the activity; and

14 (C) the individual served as an airman, or was on the aircraft, in
15 connection with carrying out, or facilitating the carrying out of, the ac-
16 tivity.

17 (3) The Administrator has no authority under paragraph (1) of this sub-
18 section to review whether an airman violated a law of the United States or
19 a State related to a controlled substance.

20 (c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the
21 Administrator revokes a certificate under subsection (b) of this section, the
22 Administrator must—

23 (1) advise the holder of the certificate of the charges or reasons on
24 which the Administrator relies for the proposed revocation; and

25 (2) provide the holder of the certificate an opportunity to answer the
26 charges and be heard why the certificate should not be revoked.

27 (d) APPEALS.—(1) An individual whose certificate is revoked by the Ad-
28 ministrator under subsection (b) of this section may appeal the revocation
29 order to the National Transportation Safety Board. The Board shall affirm
30 or reverse the order after providing notice and an opportunity for a hearing
31 on the record. When conducting the hearing, the Board is not bound by
32 findings of fact of the Administrator but shall be bound by all validly adopt-
33 ed interpretations of laws and regulations the Administrator carries out and
34 of written agency policy guidance available to the public related to sanctions
35 to be imposed under this section unless the Board finds an interpretation
36 is arbitrary, capricious, or otherwise not according to law.

37 (2) When an individual files an appeal with the Board under this sub-
38 section, the order of the Administrator revoking the certificate is stayed.
39 However, if the Administrator advises the Board that safety in air transpor-
40 tation or air commerce requires the immediate effectiveness of the order—

41 (A) the order remains effective; and

1 (B) the Board shall make a final disposition of the appeal not later
2 than 60 days after the Administrator so advises the Board.

3 (3) An individual substantially affected by an order of the Board under
4 this subsection, or the Administrator when the Administrator decides that
5 an order of the Board will have a significant adverse effect on carrying out
6 this part, may obtain judicial review of the order under section 46110 of
7 this title. The Administrator shall be made a party to the judicial review
8 proceedings. Findings of fact of the Board are conclusive if supported by
9 substantial evidence.

10 (e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board
11 may not affirm a revocation of, an airman certificate under subsection
12 (b)(2) of this section on the basis of an activity described in subsection
13 (b)(2)(A) if the holder of the certificate is acquitted of all charges related
14 to a controlled substance in an indictment or information arising from the
15 activity.

16 (2) If the Administrator has revoked an airman certificate under this sec-
17 tion because of an activity described in subsection (b)(2)(A) of this section,
18 the Administrator shall reissue a certificate to the individual if—

19 (A) the individual otherwise satisfies the requirements for a certifi-
20 cate under section 44703 of this title; and

21 (B)(i) the individual subsequently is acquitted of all charges related
22 to a controlled substance in an indictment or information arising from
23 the activity; or

24 (ii) the conviction on which a revocation under subsection (b)(1) of
25 this section is based is reversed.

26 (f) WAIVERS.—The Administrator may waive the requirement of sub-
27 section (b) of this section that an airman certificate of an individual be re-
28 voked if—

29 (1) a law enforcement official of the United States Government or
30 of a State requests a waiver; and

31 (2) the Administrator decides that the waiver will facilitate law en-
32 forcement efforts.

33 **§ 44711. Prohibitions and exemption**

34 (a) PROHIBITIONS.—A person may not—

35 (1) operate a civil aircraft in air commerce without an airworthiness
36 certificate in effect or in violation of a term of the certificate;

37 (2) serve in any capacity as an airman with respect to a civil air-
38 craft, aircraft engine, propeller, or appliance used, or intended for use,
39 in air commerce—

40 (A) without an airman certificate authorizing the airman to
41 serve in the capacity for which the certificate was issued; or

1 (B) in violation of a term of the certificate or a regulation pre-
2 scribed or order issued under section 44701(a) or (b) or 44702-
3 44716 of this title;

4 (3) employ for service related to civil aircraft used in air commerce
5 an airman who does not have an airman certificate authorizing the air-
6 man to serve in the capacity for which the airman is employed;

7 (4) operate as an air carrier without an air carrier operating certifi-
8 cate or in violation of a term of the certificate;

9 (5) operate aircraft in air commerce in violation of a regulation pre-
10 scribed or certificate issued under section 44701(a) or (b) or 44702-
11 44716 of this title;

12 (6) operate a seaplane or other aircraft of United States registry on
13 the high seas in violation of a regulation under section 3 of the Inter-
14 national Navigational Rules Act of 1977 (33 U.S.C. 1602);

15 (7) violate a term of an air agency or production certificate or a reg-
16 ulation prescribed or order issued under section 44701(a) or (b) or
17 44702-44716 of this title related to the holder of the certificate;

18 (8) operate an airport without an airport operating certificate re-
19 quired under section 44706 of this title or in violation of a term of the
20 certificate; or

21 (9) manufacture, deliver, sell, or offer for sale any aviation fuel or
22 additive in violation of a regulation prescribed under section 44714 of
23 this title.

24 (b) EXEMPTION.—On terms the Administrator of the Federal Aviation
25 Administration prescribes as being in the public interest, the Administrator
26 may exempt a foreign aircraft and airmen serving on the aircraft from sub-
27 section (a) of this section. However, an exemption from observing air traffic
28 regulations may not be granted.

29 **§ 44712. Emergency locator transmitters**

30 (a) INSTALLATION.—An emergency locator transmitter must be installed
31 on a fixed-wing powered civil aircraft for use in air commerce.

32 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to—

33 (1) turbojet-powered aircraft;

34 (2) aircraft when used in scheduled flights by scheduled air carriers
35 holding certificates issued by the Secretary of Transportation under
36 subpart II of this part;

37 (3) aircraft when used in training operations conducted entirely with-
38 in a 50 mile radius of the airport from which the training operations
39 begin;

1 (4) aircraft when used in flight operations related to design and test-
2 ing, the manufacture, preparation, and delivery of the aircraft, or the
3 aerial application of a substance for an agricultural purpose;

4 (5) aircraft holding certificates from the Administrator of the Fed-
5 eral Aviation Administration for research and development;

6 (6) aircraft when used for showing compliance with regulations, crew
7 training, exhibition, air racing, or market surveys; and

8 (7) aircraft equipped to carry only one individual.

9 (c) REMOVAL.—The Administrator shall prescribe regulations specifying
10 the conditions under which an aircraft subject to subsection (a) of this sec-
11 tion may operate when its emergency locator transmitter has been removed
12 for inspection, repair, alteration, or replacement.

13 **§ 44713. Inspection and maintenance**

14 (a) GENERAL EQUIPMENT REQUIREMENTS.—An air carrier shall make,
15 or cause to be made, any inspection, repair, or maintenance of equipment
16 used in air transportation as required by this part or regulations prescribed
17 or orders issued by the Administrator of the Federal Aviation Administra-
18 tion under this part. A person operating, inspecting, repairing, or maintain-
19 ing the equipment shall comply with those requirements, regulations, and
20 orders.

21 (b) DUTIES OF INSPECTORS.—The Administrator of the Federal Aviation
22 Administration shall employ inspectors who shall—

23 (1) inspect aircraft, aircraft engines, propellers, and appliances de-
24 signed for use in air transportation, during manufacture and when in
25 use by an air carrier in air transportation, to enable the Administrator
26 to decide whether the aircraft, aircraft engines, propellers, or appli-
27 ances are in safe condition and maintained properly; and

28 (2) advise and cooperate with the air carrier during that inspection
29 and maintenance.

30 (c) UNSAFE AIRCRAFT, ENGINES, PROPELLERS, AND APPLIANCES.—
31 When an inspector decides that an aircraft, aircraft engine, propeller, or ap-
32 pliance is not in condition for safe operation, the inspector shall notify the
33 air carrier in the form and way prescribed by the Administrator of the Fed-
34 eral Aviation Administration. For 5 days after the carrier is notified, the
35 aircraft, engine, propeller, or appliance may not be used in air transpor-
36 tation or in a way that endangers air transportation unless the Adminis-
37 trator or the inspector decides the aircraft, engine, propeller, or appliance
38 is in condition for safe operation.

39 (d) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal
40 Aviation Administration shall make modifications in the system for process-
41 ing forms for major repairs or alterations to fuel tanks and fuel systems

1 of aircraft not used to provide air transportation that are necessary to make
2 the system more effective in serving the needs of users of the system, in-
3 cluding officials responsible for enforcing laws related to the regulation of
4 controlled substances (as defined in section 102 of the Comprehensive Drug
5 Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modifica-
6 tions shall address at least each of the following deficiencies in, and abuses
7 of, the existing system:

8 (A) the lack of a special identification feature to allow the forms to
9 be distinguished easily from other major repair and alteration forms.

10 (B) the excessive period of time required to receive the forms at the
11 Airmen and Aircraft Registry of the Administration.

12 (C) the backlog of forms waiting for processing at the Registry.

13 (D) the lack of ready access by law enforcement officials to informa-
14 tion contained on the forms.

15 (2) The Administrator of the Federal Aviation Administration shall pre-
16 scribe regulations to carry out paragraph (1) of this subsection and provide
17 a written explanation of how the regulations address each of the deficiencies
18 and abuses described in paragraph (1). In prescribing the regulations, the
19 Administrator of the Federal Aviation Administration shall consult with the
20 Administrator of Drug Enforcement, the Commissioner of Customs, other
21 law enforcement officials of the United States Government, representatives
22 of State and local law enforcement officials, representatives of the general
23 aviation aircraft industry, representatives of users of general aviation air-
24 craft, and other interested persons.

25 **§ 44714. Aviation fuel standards**

26 The Administrator of the Federal Aviation Administration shall pre-
27 scribe—

28 (1) standards for the composition or chemical or physical properties
29 of an aircraft fuel or fuel additive to control or eliminate aircraft emis-
30 sions the Administrator of the Environmental Protection Agency de-
31 cides under section 231 of the Clean Air Act (42 U.S.C. 7571) endan-
32 ger the public health or welfare; and

33 (2) regulations providing for carrying out and enforcing those stand-
34 ards.

35 **§ 44715. Controlling aircraft noise and sonic boom**

36 (a) STANDARDS AND REGULATIONS.—(1) To relieve and protect the pub-
37 lic health and welfare from aircraft noise and sonic boom, the Administrator
38 of the Federal Aviation Administration shall prescribe—

39 (A) standards to measure aircraft noise and sonic boom; and

40 (B) regulations to control and abate aircraft noise and sonic boom.

1 (2) The Administrator of the Federal Aviation Administration may pre-
2 scribe standards and regulations under this subsection only after consulting
3 with the Administrator of the Environmental Protection Agency. The stand-
4 ards and regulations shall be applied when issuing, amending, modifying,
5 suspending, or revoking a certificate authorized under this chapter.

6 (3) An original type certificate may be issued under section 44704(a) of
7 this title for an aircraft for which substantial noise abatement can be
8 achieved only after the Administrator of the Federal Aviation Administra-
9 tion prescribes standards and regulations under this section that apply to
10 that aircraft.

11 (b) CONSIDERATIONS AND CONSULTATION.—When prescribing a stand-
12 ard or regulation under this section, the Administrator of the Federal Avia-
13 tion Administration shall—

14 (1) consider relevant information related to aircraft noise and sonic
15 boom;

16 (2) consult with appropriate departments, agencies, and instrumen-
17 talities of the United States Government and State and interstate au-
18 thorities;

19 (3) consider whether the standard or regulation is consistent with
20 the highest degree of safety in air transportation or air commerce in
21 the public interest;

22 (4) consider whether the standard or regulation is economically rea-
23 sonable, technologically practicable, and appropriate for the applicable
24 aircraft, aircraft engine, appliance, or certificate; and

25 (5) consider the extent to which the standard or regulation will carry
26 out the purposes of this section.

27 (c) PROPOSED REGULATIONS OF ADMINISTRATOR OF ENVIRONMENTAL
28 PROTECTION AGENCY.—The Administrator of the Environmental Protection
29 Agency shall submit to the Administrator of the Federal Aviation Adminis-
30 tration proposed regulations to control and abate aircraft noise and sonic
31 boom (including control and abatement through the use of the authority of
32 the Administrator of the Federal Aviation Administration) that the Admin-
33 istrator of the Environmental Protection Agency considers necessary to pro-
34 tect the public health and welfare. The Administrator of the Federal Avia-
35 tion Administration shall consider those proposed regulations and shall pub-
36 lish them in a notice of proposed regulations not later than 30 days after
37 they are received. Not later than 60 days after publication, the Adminis-
38 trator of the Federal Aviation Administration shall begin a hearing at which
39 interested persons are given an opportunity for oral and written presen-
40 tations. Not later than 90 days after the hearing is completed and after con-

1 sulting with the Administrator of the Environmental Protection Agency, the
2 Administrator of the Federal Aviation Administration shall—

3 (1) prescribe regulations as provided by this section—

4 (A) substantially the same as the proposed regulations submit-
5 ted by the Administrator of the Environmental Protection Agency;

6 or

7 (B) that amend the proposed regulations; or

8 (2) publish in the Federal Register—

9 (A) a notice that no regulation is being prescribed in response
10 to the proposed regulations of the Administrator of the Environ-
11 mental Protection Agency;

12 (B) a detailed analysis of, and response to, all information the
13 Administrator of the Environmental Protection Agency submitted
14 with the proposed regulations; and

15 (C) a detailed explanation of why no regulation is being pre-
16 scribed.

17 (d) CONSULTATION AND REPORTS.—(1) If the Administrator of the Envi-
18 ronmental Protection Agency believes that the action of the Administrator
19 of the Federal Aviation Administration under subsection (c)(1)(B) or (2) of
20 this section does not protect the public health and welfare from aircraft
21 noise or sonic boom, consistent with the considerations in subsection (b) of
22 this section, the Administrator of the Environmental Protection Agency
23 shall consult with the Administrator of the Federal Aviation Administration
24 and may request a report on the advisability of prescribing the regulation
25 as originally proposed. The request, including a detailed statement of the
26 information on which the request is based, shall be published in the Federal
27 Register.

28 (2) The Administrator of the Federal Aviation Administration shall re-
29 port to the Administrator of the Environmental Protection Agency within
30 the time, if any, specified in the request. However, the time specified must
31 be at least 90 days after the date of the request. The report shall—

32 (A) be accompanied by a detailed statement of the findings of the
33 Administrator of the Federal Aviation Administration and the reasons
34 for the findings;

35 (B) identify any statement related to an action under subsection (c)
36 of this section filed under section 102(2)(C) of the National Environ-
37 mental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

38 (C) specify whether and where that statement is available for public
39 inspection; and

1 (D) be published in the Federal Register unless the request proposes
2 specific action by the Administrator of the Federal Aviation Adminis-
3 tration and the report indicates that action will be taken.

4 (e) SUPPLEMENTAL REPORTS.—The Administrator of the Environmental
5 Protection Agency may request the Administrator of the Federal Aviation
6 Administration to file a supplemental report if the report under subsection
7 (d) of this section indicates that the proposed regulations under subsection
8 (c) of this section, for which a statement under section 102(2)(C) of the
9 Act (42 U.S.C. 4332(2)(C)) is not required, should not be prescribed. The
10 supplemental report shall be published in the Federal Register within the
11 time the Administrator of the Environmental Protection Agency specifies.
12 However, the time specified must be at least 90 days after the date of the
13 request. The supplemental report shall contain a comparison of the environ-
14 mental effects, including those that cannot be avoided, of the action of the
15 Administrator of the Federal Aviation Administration and the proposed reg-
16 ulations of the Administrator of the Environmental Protection Agency.

17 (f) EXEMPTIONS.—An exemption from a standard or regulation pre-
18 scribed under this section may be granted only if, before granting the ex-
19 emption, the Administrator of the Federal Aviation Administration consults
20 with the Administrator of the Environmental Protection Agency. However,
21 if the Administrator of the Federal Aviation Administration finds that safe-
22 ty in air transportation or air commerce requires an exemption before the
23 Administrator of the Environmental Protection Agency can be consulted,
24 the exemption may be granted. The Administrator of the Federal Aviation
25 Administration shall consult with the Administrator of the Environmental
26 Protection Agency as soon as practicable after the exemption is granted.

27 **§44716. Collision avoidance systems**

28 (a) DEVELOPMENT AND CERTIFICATION.—The Administrator of the Fed-
29 eral Aviation Administration shall—

30 (1) complete the development of the collision avoidance system
31 known as TCAS-II so that TCAS-II can operate under visual and in-
32 strument flight rules and can be upgraded to the performance stand-
33 ards applicable to the collision avoidance system known as TCAS-III;

34 (2) develop and carry out a schedule for developing and certifying
35 TCAS-II that will result in certification not later than June 30, 1989;
36 and

37 (3) submit to Congress monthly reports on the progress being made
38 in developing and certifying TCAS-II.

39 (b) INSTALLATION AND OPERATION.—The Administrator shall require by
40 regulation that, not later than 30 months after the date certification is
41 made under subsection (a)(2) of this section, TCAS-II be installed and op-

1 erated on each civil aircraft that has a maximum passenger capacity of at
2 least 31 seats and is used to provide air transportation of passengers, in-
3 cluding intrastate air transportation of passengers. The Administrator may
4 extend the deadline in this subsection for not more than 2 years if the Ad-
5 ministrator finds the extension is necessary to promote—

6 (1) a safe and orderly transition to the operation of a fleet of civil
7 aircraft described in this subsection equipped with TCAS-II; or

8 (2) other safety objectives.

9 (c) OPERATIONAL EVALUATION.—Not later than December 30, 1990, the
10 Administrator shall establish a one-year program to collect and assess safety
11 and operational information from civil aircraft equipped with TCAS-II for
12 the operational evaluation of TCAS-II. The Administrator shall encourage
13 foreign air carriers that operate civil aircraft equipped with TCAS-II to
14 participate in the program.

15 (d) AMENDING SCHEDULE FOR WINDSHEAR EQUIPMENT.—The Adminis-
16 trator shall consider the feasibility and desirability of amending the schedule
17 for installing airborne low-altitude windshear equipment to make the sched-
18 ule compatible with the schedule for installing TCAS-II.

19 (e) DEADLINE FOR DEVELOPMENT AND CERTIFICATION.—(1) The Ad-
20 ministrator shall complete developing and certifying TCAS-III as soon as
21 possible.

22 (2) Necessary amounts may be appropriated from the Airport and Airway
23 Trust Fund established under section 9502 of the Internal Revenue Code
24 of 1986 (26 U.S.C. 9502) to carry out this subsection.

25 (f) INSTALLING AND USING TRANSPONDERS.—The Administrator shall
26 prescribe regulations requiring that, not later than December 30, 1990, op-
27 erating transponders with automatic altitude reporting capability be in-
28 stalled and used for aircraft operating in designated terminal airspace where
29 radar service is provided for separation of aircraft. The Administrator may
30 provide for access to that airspace (except terminal control areas and air-
31 port radar service areas) by nonequipped aircraft if the Administrator finds
32 the access will not interfere with the normal traffic flow.

33 **§44717. Aging aircraft**

34 (a) INSPECTIONS AND REVIEWS.—The Administrator of the Federal
35 Aviation Administration shall prescribe regulations that ensure the continu-
36 ing airworthiness of aging aircraft. The regulations prescribed under sub-
37 section (a) of this section—

38 (1) at least shall require the Administrator to make inspections, and
39 review the maintenance and other records, of each aircraft an air car-
40 rier uses to provide air transportation that the Administrator decides
41 may be necessary to enable the Administrator to decide whether the

1 aircraft is in safe condition and maintained properly for operation in
2 air transportation;

3 (2) at least shall require an air carrier to demonstrate to the Admin-
4 istrator, as part of the inspection, that maintenance of the aircraft's
5 age-sensitive parts and components has been adequate and timely
6 enough to ensure the highest degree of safety;

7 (3) shall require the air carrier to make available to the Adminis-
8 trator the aircraft and any records about the aircraft that the Adminis-
9 trator requires to carry out a review; and

10 (4) shall establish procedures to be followed in carrying out an in-
11 spection.

12 (b) WHEN AND HOW INSPECTIONS AND REVIEWS SHALL BE CARRIED
13 OUT.—(1) Inspections and reviews required under subsection (a)(1) of this
14 section shall be carried out as part of each heavy maintenance check of the
15 aircraft conducted after the 14th year in which the aircraft has been in
16 service.

17 (2) Inspections under subsection (a)(1) of this section shall be carried out
18 as provided under section 44701(a)(2)(B) and (C) of this title.

19 (c) AIRCRAFT MAINTENANCE SAFETY PROGRAMS.—The Administrator
20 shall establish—

21 (1) a program to verify that air carriers are maintaining their air-
22 craft according to maintenance programs approved by the Adminis-
23 trator;

24 (2) a program—

25 (A) to provide inspectors and engineers of the Administration
26 with training necessary to conduct auditing inspections of aircraft
27 operated by air carriers for corrosion and metal fatigue; and

28 (B) to enhance participation of those inspectors and engineers
29 in those inspections; and

30 (3) a program to ensure that air carriers demonstrate to the Admin-
31 istrator their commitment and technical competence to ensure the air-
32 worthiness of aircraft that the carriers operate.

33 (d) FOREIGN AIR TRANSPORTATION.—(1) The Administrator shall take
34 all possible steps to encourage governments of foreign countries and relevant
35 international organizations to develop standards and requirements for in-
36 spections and reviews that—

37 (A) will ensure the continuing airworthiness of aging aircraft used
38 by foreign air carriers to provide foreign air transportation to and from
39 the United States; and

1 (B) will provide passengers of those foreign air carriers with the
2 same level of safety that will be provided passengers of air carriers by
3 carrying out this section.

4 (2) Not later than September 30, 1994, the Administrator shall report
5 to Congress on carrying out this subsection.

6 **§ 44718. Structures interfering with air commerce**

7 (a) NOTICE.—By regulation or by order when necessary, the Secretary
8 of Transportation shall require a person to give adequate public notice, in
9 the form and way the Secretary prescribes, of the construction, alteration,
10 establishment, or expansion, or the proposed construction, alteration, estab-
11 lishment, or expansion, of a structure or sanitary landfill when the notice
12 will promote—

13 (1) safety in air commerce; and

14 (2) the efficient use and preservation of the navigable airspace and
15 of airport traffic capacity at public-use airports.

16 (b) STUDIES.—(1) Under regulations prescribed by the Secretary, if the
17 Secretary decides that constructing or altering a structure may result in an
18 obstruction of the navigable airspace or an interference with air navigation
19 facilities and equipment or the navigable airspace, the Secretary shall con-
20 duct an aeronautical study to decide the extent of any adverse impact on
21 the safe and efficient use of the airspace, facilities, or equipment. In con-
22 ducting the study, the Secretary shall consider factors relevant to the effi-
23 cient and effective use of the navigable airspace, including—

24 (A) the impact on arrival, departure, and en route procedures for
25 aircraft operating under visual flight rules;

26 (B) the impact on arrival, departure, and en route procedures for
27 aircraft operating under instrument flight rules;

28 (C) the impact on existing public-use airports and aeronautical facili-
29 ties;

30 (D) the impact on planned public-use airports and aeronautical fa-
31 cilities; and

32 (E) the cumulative impact resulting from the proposed construction
33 or alteration of a structure when combined with the impact of other
34 existing or proposed structures.

35 (2) On completing the study, the Secretary shall issue a report disclosing
36 completely the extent of the adverse impact on the safe and efficient use
37 of the navigable airspace that the Secretary finds will result from construct-
38 ing or altering the structure.

39 (c) BROADCAST APPLICATIONS AND TOWER STUDIES.—In carrying out
40 laws related to a broadcast application and conducting an aeronautical
41 study related to broadcast towers, the Administrator of the Federal Aviation

1 Administration and the Federal Communications Commission shall take ac-
2 tion necessary to coordinate efficiently—

3 (1) the receipt and consideration of, and action on, the application;

4 and

5 (2) the completion of any associated aeronautical study.

6 **§ 44719. Standards for navigational aids**

7 The Secretary of Transportation shall prescribe regulations on standards
8 for installing navigational aids, including airport control towers. For each
9 type of facility, the regulations shall consider at a minimum traffic density
10 (number of aircraft operations without consideration of aircraft size), ter-
11 rain and other obstacles to navigation, weather characteristics, passengers
12 served, and potential aircraft operating efficiencies.

13 **§ 44720. Meteorological services**

14 (a) RECOMMENDATIONS.—The Administrator of the Federal Aviation Ad-
15 ministration shall make recommendations to the Secretary of Commerce on
16 providing meteorological services necessary for the safe and efficient move-
17 ment of aircraft in air commerce. In providing the services, the Secretary
18 shall cooperate with the Administrator and give complete consideration to
19 those recommendations.

20 (b) PROMOTING SAFETY AND EFFICIENCY.—To promote safety and effi-
21 ciency in air navigation to the highest possible degree, the Secretary shall—

22 (1) observe, measure, investigate, and study atmospheric phenomena,
23 and maintain meteorological stations and offices, that are necessary or
24 best suited for finding out in advance information about probable
25 weather conditions;

26 (2) provide reports to the Administrator to persons engaged in civil
27 aeronautics that are designated by the Administrator and to other per-
28 sons designated by the Secretary in a way and with a frequency that
29 best will result in safety in, and facilitating, air navigation;

30 (3) cooperate with persons engaged in air commerce in meteorologi-
31 cal services, maintain reciprocal arrangements with those persons in
32 carrying out this clause, and collect and distribute weather reports
33 available from aircraft in flight;

34 (4) maintain and coordinate international exchanges of meteorologi-
35 cal information required for the safety and efficiency of air navigation;

36 (5) in cooperation with other departments, agencies, and instrumen-
37 talities of the United States Government, meteorological services of for-
38 eign countries, and persons engaged in air commerce, participate in de-
39 veloping an international basic meteorological reporting network, in-
40 cluding the establishment, operation, and maintenance of reporting sta-
41 tions on the high seas, in polar regions, and in foreign countries;

1 (6) coordinate meteorological requirements in the United States to
2 maintain standard observations, to promote efficient use of facilities,
3 and to avoid duplication of services unless the duplication tends to pro-
4 mote the safety and efficiency of air navigation; and

5 (7) promote and develop meteorological science and foster and sup-
6 port research projects in meteorology through the use of private and
7 governmental research facilities and provide for publishing the results
8 of the projects unless publication would not be in the public interest.

9 **§ 44721. Aeronautical maps and charts**

10 (a) PUBLICATION.—(1) The Administrator of the Federal Aviation Ad-
11 ministration may arrange for the publication of aeronautical maps and
12 charts necessary for the safe and efficient movement of aircraft in air navi-
13 gation, using the facilities and assistance of departments, agencies, and in-
14 strumentalities of the United States Government as far as practicable.

15 (2) In carrying out paragraph (1) of this subsection, the Administrator
16 shall update and arrange for the publication of clearly defined routes for
17 navigating through a complex terminal airspace area and to and from an
18 airport located in such an area, if the Administrator decides that publication
19 of the routes would promote safety in air navigation. The routes shall be
20 developed in consultation with pilots and other users of affected airports
21 and shall be for the optional use of pilots operating under visual flight rules.

22 (b) INDEMNIFICATION.—The Government shall make an agreement to in-
23 demnify any person that publishes a map or chart for use in aeronautics
24 from any part of a claim arising out of the depiction by the person on the
25 map or chart of a defective or deficient flight procedure or airway if the
26 flight procedure or airway was—

27 (1) prescribed by the Administrator;

28 (2) depicted accurately on the map or chart; and

29 (3) not obviously defective or deficient.

30 **§ 44722. Aircraft operations in winter conditions**

31 The Administrator of the Federal Aviation Administration shall prescribe
32 regulations requiring procedures to improve safety of aircraft operations
33 during winter conditions. In deciding on the procedures to be required, the
34 Administrator shall consider at least aircraft and air traffic control modi-
35 fications, the availability of different types of deicing fluids (considering
36 their efficacy and environmental limitations), the types of deicing equipment
37 available, and the feasibility and desirability of establishing timeframes
38 within which deicing must occur under certain types of inclement weather.

39 **§ 44723. Annual report**

40 Not later than January 1 of each year, the Secretary of Transportation
41 shall submit to Congress a comprehensive report on the safety enforcement

1 activities of the Federal Aviation Administration during the fiscal year end-
2 ing the prior September 30th. The report shall include—

3 (1) a comparison of end-of-year staffing levels by operations, mainte-
4 nance, and avionics inspector categories to staffing goals and a state-
5 ment on how staffing standards were applied to make allocations be-
6 tween air carrier and general aviation operations, maintenance, and
7 avionics inspectors;

8 (2) schedules showing the range of inspector experience by various
9 inspector work force categories, and the number of inspectors in each
10 of the categories who are considered fully qualified;

11 (3) schedules showing the number and percentage of inspectors who
12 have received mandatory training by individual course, and the number
13 of inspectors by work force categories, who have received all mandatory
14 training;

15 (4) a description of the criteria used to set annual work programs,
16 an explanation of how these criteria differ from criteria used in the
17 prior fiscal year and how the annual work programs ensure compliance
18 with appropriate regulations and safe operating practices;

19 (5) a comparison of actual inspections performed during the fiscal
20 year to the annual work programs by field location and, for any field
21 location completing less than 80 percent of its planned number of in-
22 spections, an explanation of why annual work program plans were not
23 met;

24 (6) a statement of the adequacy of Administration internal manage-
25 ment controls available to ensure that field managers comply with Ad-
26 ministration policies and procedures, including those on inspector prior-
27 ities, district office coordination, minimum inspection standards, and
28 inspection followup;

29 (7) the status of efforts made by the Administration to update in-
30 spector guidance documents and regulations to include technological,
31 management, and structural changes taking place in the aviation indus-
32 try, including a listing of the backlog of all proposed regulatory amend-
33 ments;

34 (8) a list of the specific operational measures of effectiveness used
35 to evaluate—

36 (A) the progress in meeting program objectives;

37 (B) the quality of program delivery; and

38 (C) the nature of emerging safety problems;

39 (9) a schedule showing the number of civil penalty cases closed dur-
40 ing the 2 prior fiscal years, including the total initial and final pen-
41 alties imposed, the total number of dollars collected, the range of dollar

1 amounts collected, the average case processing time, and the range of
2 case processing time;

3 (10) a schedule showing the number of enforcement actions taken
4 (except civil penalties) during the 2 prior fiscal years, including the
5 total number of violations cited, and the number of cited violation cases
6 closed by certificate suspensions, certificate revocations, warnings, and
7 no action taken; and

8 (11) schedules showing the safety record of the aviation industry
9 during the fiscal year for air carriers and general aviation, including—

10 (A) the number of inspections performed when deficiencies were
11 identified compared with inspections when no deficiencies were
12 found;

13 (B) the frequency of safety deficiencies for each air carrier; and

14 (C) an analysis based on data of the general status of air car-
15 rier and general aviation compliance with aviation regulations.

16 **CHAPTER 449—SECURITY**

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17 SUBCHAPTER I—REQUIREMENTS

18 **§ 44901. Screening passengers and property**

19 (a) GENERAL REQUIREMENTS.—The Administrator of the Federal Avia-
20 tion Administration shall prescribe regulations requiring screening of all
21 passengers and property that will be carried in a cabin of an aircraft in air
22 transportation or intrastate air transportation. The screening must take
23 place before boarding and be carried out by a weapon-detecting facility or

1 procedure used or operated by an employee or agent of an air carrier, intra-
2 state air carrier, or foreign air carrier.

3 (b) AMENDING REGULATIONS.—Notwithstanding subsection (a) of this
4 section, the Administrator may amend a regulation prescribed under sub-
5 section (a) to require screening only to ensure security against criminal vio-
6 lence and aircraft piracy in air transportation and intrastate air transpor-
7 tation.

8 (c) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Ad-
9 ministrator—

10 (1) may exempt from this section air transportation operations, ex-
11 cept scheduled passenger operations of an air carrier providing air
12 transportation under a certificate issued under section 41102 of this
13 title or a permit issued under section 41302 of this title; and

14 (2) shall advise Congress of a regulation to be prescribed under this
15 section at least 30 days before the effective date of the regulation, un-
16 less the Administrator decides an emergency exists requiring the regu-
17 lation to become effective in fewer than 30 days and notifies Congress
18 of that decision.

19 **§ 44902. Refusal to transport passengers and property**

20 (a) MANDATORY REFUSAL.—The Administrator of the Federal Aviation
21 Administration shall prescribe regulations requiring an air carrier, intra-
22 state air carrier, or foreign air carrier to refuse to transport—

23 (1) a passenger who does not consent to a search under section
24 44901(a) of this title establishing whether the passenger is carrying
25 unlawfully a dangerous weapon, explosive, or other destructive sub-
26 stance; or

27 (2) property of a passenger who does not consent to a search of the
28 property establishing whether the property unlawfully contains a dan-
29 gerous weapon, explosive, or other destructive substance.

30 (b) PERMISSIVE REFUSAL.—Subject to regulations of the Administrator,
31 an air carrier, intrastate air carrier, or foreign air carrier may refuse to
32 transport a passenger or property the carrier decides is, or might be, inimi-
33 cal to safety.

34 (c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry pas-
35 sengers or property in air transportation or intrastate air transportation by
36 an air carrier, intrastate air carrier, or foreign air carrier is deemed to in-
37 clude an agreement that the passenger or property will not be carried if con-
38 sent to search the passenger or property for a purpose referred to in this
39 section is not given.

1 **§ 44903. Air transportation security**

2 (a) DEFINITION.—In this section, “law enforcement personnel” means in-
3 dividuals—

4 (1) authorized to carry and use firearms;

5 (2) vested with the degree of the police power of arrest the Adminis-
6 trator of the Federal Aviation Administration considers necessary to
7 carry out this section; and

8 (3) identifiable by appropriate indicia of authority.

9 (b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Administrator
10 shall prescribe regulations to protect passengers and property on an aircraft
11 operating in air transportation or intrastate air transportation against an
12 act of criminal violence or aircraft piracy. When prescribing a regulation
13 under this subsection, the Administrator shall—

14 (1) consult with the Secretary of Transportation, the Attorney Gen-
15 eral, the heads of other departments, agencies, and instrumentalities of
16 the United States Government, and State and local authorities;

17 (2) consider whether a proposed regulation is consistent with—

18 (A) protecting passengers; and

19 (B) the public interest in promoting air transportation and
20 intrastate air transportation;

21 (3) to the maximum extent practicable, require a uniform procedure
22 for searching and detaining passengers and property to ensure—

23 (A) their safety; and

24 (B) courteous and efficient treatment by an air carrier, an
25 agent or employee of an air carrier, and Government, State, and
26 local law enforcement personnel carrying out this section; and

27 (4) consider the extent to which a proposed regulation will carry out
28 this section.

29 (c) SECURITY PROGRAMS.—(1) The Administrator shall prescribe regula-
30 tions under subsection (b) of this section that require each operator of an
31 airport regularly serving an air carrier holding a certificate issued by the
32 Secretary of Transportation to establish an air transportation security pro-
33 gram that provides a law enforcement presence and capability at each of
34 those airports that is adequate to ensure the safety of passengers. The regu-
35 lations shall authorize the operator to use the services of qualified State,
36 local, and private law enforcement personnel. When the Administrator de-
37 cides, after being notified by an operator in the form the Administrator pre-
38 scribes, that not enough qualified State, local, and private law enforcement
39 personnel are available to carry out subsection (b), the Administrator may
40 authorize the operator to use, on a reimbursable basis, personnel employed
41 by the Administrator, or by another department, agency, or instrumentality

1 of the Government with the consent of the head of the department, agency,
2 or instrumentality, to supplement State, local, and private law enforcement
3 personnel. When deciding whether additional personnel are needed, the Ad-
4 ministrator shall consider the number of passengers boarded at the airport,
5 the extent of anticipated risk of criminal violence or aircraft piracy at the
6 airport or to the air carrier aircraft operations at the airport, and the avail-
7 ability of qualified State or local law enforcement personnel at the airport.

8 (2)(A) The Administrator may approve a security program of an airport
9 operator, or an amendment in an existing program, that incorporates a se-
10 curity program of an airport tenant (except an air carrier separately com-
11 plying with part 108 or 129 of title 14, Code of Federal Regulations) having
12 access to a secured area of the airport, if the program or amendment incor-
13 porates—

14 (i) the measures the tenant will use, within the tenant's leased areas
15 or areas designated for the tenant's exclusive use under an agreement
16 with the airport operator, to carry out the security requirements im-
17 posed by the Administrator on the airport operator under the access
18 control system requirements of section 107.14 of title 14, Code of Fed-
19 eral Regulations, or under other requirements of part 107 of title 14;
20 and

21 (ii) the methods the airport operator will use to monitor and audit
22 the tenant's compliance with the security requirements and provides
23 that the tenant will be required to pay monetary penalties to the air-
24 port operator if the tenant fails to carry out a security requirement
25 under a contractual provision or requirement imposed by the airport
26 operator.

27 (B) If the Administrator approves a program or amendment described in
28 subparagraph (A) of this paragraph, the airport operator may not be found
29 to be in violation of a requirement of this subsection or subsection (b) of
30 this section when the airport operator demonstrates that the tenant or an
31 employee, permittee, or invitee of the tenant is responsible for the violation
32 and that the airport operator has complied with all measures in its security
33 program for securing compliance with its security program by the tenant.

34 (d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE AR-
35 RESTS.—With the approval of the Attorney General and the Secretary of
36 State, the Secretary of Transportation may authorize an individual who car-
37 ries out air transportation security duties—

38 (1) to carry firearms; and

39 (2) to make arrests without warrant for an offense against the Unit-
40 ed States committed in the presence of the individual or for a felony
41 under the laws of the United States, if the individual reasonably be-

1 believes the individual to be arrested has committed or is committing a
2 felony.

3 (e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Ad-
4 ministrator has the exclusive responsibility to direct law enforcement activity
5 related to the safety of passengers on an aircraft involved in an offense
6 under section 46502 of this title from the moment all external doors of the
7 aircraft are closed following boarding until those doors are opened to allow
8 passengers to leave the aircraft. When requested by the Administrator,
9 other departments, agencies, and instrumentalities of the Government shall
10 provide assistance necessary to carry out this subsection.

11 **§ 44904. Domestic air transportation system security**

12 (a) ASSESSING THREATS.—The Administrator of the Federal Aviation
13 Administration and the Director of the Federal Bureau of Investigation
14 jointly shall assess current and potential threats to the domestic air trans-
15 portation system. The assessment shall include consideration of the extent
16 to which there are individuals with the capability and intent to carry out
17 terrorist or related unlawful acts against that system and the ways in which
18 those individuals might carry out those acts. The Administrator and the Di-
19 rector jointly shall decide on and carry out the most effective method for
20 continuous analysis and monitoring of security threats to that system.

21 (b) ASSESSING SECURITY.—In coordination with the Director, the Ad-
22 ministrator shall carry out periodic threat and vulnerability assessments on
23 security at each airport that is part of the domestic air transportation sys-
24 tem. Each assessment shall include consideration of—

25 (1) the adequacy of security procedures related to the handling and
26 transportation of checked baggage and cargo;

27 (2) space requirements for security personnel and equipment;

28 (3) separation of screened and unscreened passengers, baggage, and
29 cargo;

30 (4) separation of the controlled and uncontrolled areas of airport fa-
31 cilities; and

32 (5) coordination of the activities of security personnel of the Admin-
33 istration, the United States Customs Service, the Immigration and
34 Naturalization Service, and air carriers, and of other law enforcement
35 personnel.

36 (c) IMPROVING SECURITY.—The Administrator shall take necessary ac-
37 tions to improve domestic air transportation security by correcting any defi-
38 ciencies in that security discovered in the assessments, analyses, and mon-
39 itoring carried out under this section.

§ 44905. Information about threats to civil aviation

(a) PROVIDING INFORMATION.—Under guidelines the Secretary of Transportation prescribes, an air carrier, airport operator, ticket agent, or individual employed by an air carrier, airport operator, or ticket agent, receiving information (except a communication directed by the United States Government) about a threat to civil aviation shall provide the information promptly to the Secretary.

(b) FLIGHT CANCELLATION.—If a decision is made that a particular threat cannot be addressed in a way adequate to ensure, to the extent feasible, the safety of passengers and crew of a particular flight or series of flights, the Administrator of the Federal Aviation Administration shall cancel the flight or series of flights.

(c) GUIDELINES ON PUBLIC NOTICE.—(1) The President shall develop guidelines for ensuring that public notice is provided in appropriate cases about threats to civil aviation. The guidelines shall identify officials responsible for—

(A) deciding, on a case-by-case basis, if public notice of a threat is in the best interest of the United States and the traveling public;

(B) ensuring that public notice is provided in a timely and effective way, including the use of a toll-free telephone number; and

(C) canceling the departure of a flight or series of flights under subsection (b) of this section.

(2) The guidelines shall provide for consideration of—

(A) the specificity of the threat;

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

(C) the ability to counter the threat effectively;

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

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

(F) the ability of passengers and crew to take steps to reduce the risk to their safety after receiving public notice of a threat; and

(G) other factors the Administrator considers appropriate.

(d) GUIDELINES ON NOTICE TO CREWS.—The Administrator shall develop guidelines for ensuring that notice in appropriate cases of threats to the security of an air carrier flight is provided to the flight crew and cabin crew of that flight.

(e) LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.—Notice of a threat to civil aviation may be provided to selective potential travelers only if the threat applies only to those travelers.

(f) RESTRICTING ACCESS TO INFORMATION.—In cooperation with the departments, agencies, and instrumentalities of the Government that collect,

1 receive, and analyze intelligence information related to aviation security, the
2 Administrator shall develop procedures to minimize the number of individ-
3 uals who have access to information about threats. However, a restriction
4 on access to that information may be imposed only if the restriction does
5 not diminish the ability of the Government to carry out its duties and pow-
6 ers related to aviation security effectively, including providing notice to the
7 public and flight and cabin crews under this section.

8 (g) DISTRIBUTION OF GUIDELINES.—The guidelines developed under this
9 section shall be distributed for use by appropriate officials of the Depart-
10 ment of Transportation, the Department of State, the Department of Jus-
11 tice, and air carriers.

12 **§ 44906. Foreign air carrier security programs**

13 The Administrator of the Federal Aviation Administration shall continue
14 in effect the requirement of section 129.25 of title 14, Code of Federal Reg-
15 ulations, that a foreign air carrier must adopt and use a security program
16 approved by the Administrator. The Administrator may approve a security
17 program of a foreign air carrier under section 129.25 only if the Adminis-
18 trator decides the security program provides passengers of the foreign air
19 carrier a level of protection similar to the level those passengers would re-
20 ceive under the security programs of air carriers serving the same airport.
21 The Administrator shall require a foreign air carrier to use procedures
22 equivalent to those required of air carriers serving the same airport if the
23 Administrator decides that the procedures are necessary to provide a level
24 of protection similar to that provided passengers of the air carriers serving
25 the same airport. The Administrator shall prescribe regulations to carry out
26 this section.

27 **§ 44907. Security standards at foreign airports**

28 (a) ASSESSMENT.—(1) At intervals the Secretary of Transportation con-
29 siders necessary, the Secretary shall assess the effectiveness of the security
30 measures maintained at—

31 (A) a foreign airport—

32 (i) served by an air carrier;

33 (ii) from which a foreign air carrier serves the United States;

34 or

35 (iii) that poses a high risk of introducing danger to inter-
36 national air travel; and

37 (B) other foreign airports the Secretary considers appropriate.

38 (2) The Secretary of Transportation shall conduct an assessment under
39 paragraph (1) of this subsection—

40 (A) in consultation with appropriate aeronautic authorities of the
41 government of a foreign country concerned and each air carrier serving

1 the foreign airport for which the Secretary is conducting the assess-
2 ment;

3 (B) to establish the extent to which a foreign airport effectively
4 maintains and carries out security measures; and

5 (C) by using a standard that will result in an analysis of the security
6 measures at the airport based at least on the standards and appro-
7 priate recommended practices contained in Annex 17 to the Convention
8 on International Civil Aviation in effect on the date of the assessment.

9 (3) Each report to Congress required under section 44938(b) of this title
10 shall contain a summary of the assessments conducted under this sub-
11 section.

12 (b) CONSULTATION.—In carrying out subsection (a) of this section, the
13 Secretary of Transportation shall consult with the Secretary of State—

14 (1) on the terrorist threat that exists in each country; and

15 (2) to establish which foreign airports are not under the de facto
16 control of the government of the foreign country in which they are lo-
17 cated and pose a high risk of introducing danger to international air
18 travel.

19 (c) NOTIFYING FOREIGN AUTHORITIES.—When the Secretary of Trans-
20 portation, after conducting an assessment under subsection (a) of this sec-
21 tion, decides that an airport does not maintain and carry out effective secu-
22 rity measures, the Secretary of Transportation, after advising the Secretary
23 of State, shall notify the appropriate authorities of the government of the
24 foreign country of the decision and recommend the steps necessary to bring
25 the security measures in use at the airport up to the standard used by the
26 Secretary of Transportation in making the assessment.

27 (d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT
28 EFFECTIVE SECURITY MEASURES.—(1) When the Secretary of Transpor-
29 tation decides under this section that an airport does not maintain and
30 carry out effective security measures—

31 (A) the Secretary of Transportation shall—

32 (i) publish the identity of the airport in the Federal Register;

33 (ii) have the identity of the airport posted and displayed promi-
34 nently at all United States airports at which scheduled air carrier
35 operations are provided regularly; and

36 (iii) notify the news media of the identity of the airport;

37 (B) each air carrier and foreign air carrier providing transportation
38 between the United States and the airport shall provide written notice
39 of the decision, on or with the ticket, to each passenger buying a ticket
40 for transportation between the United States and the airport;

1 (C) notwithstanding section 40105(b) of this title, the Secretary of
2 Transportation, after consulting with the appropriate aeronautic au-
3 thorities of the foreign country concerned and each air carrier serving
4 the airport and with the approval of the Secretary of State, may with-
5 hold, revoke, or prescribe conditions on the operating authority of an
6 air carrier or foreign air carrier that uses that airport to provide for-
7 eign air transportation; and

8 (D) the President may prohibit an air carrier or foreign air carrier
9 from providing transportation between the United States and any other
10 foreign airport that is served by aircraft flying to or from the airport
11 with respect to which a decision is made under this section.

12 (2)(A) Paragraph (1) of this subsection becomes effective—

13 (i) 90 days after the government of a foreign country is notified
14 under subsection (c) of this section if the Secretary of Transportation
15 finds that the government has not brought the security measures at the
16 airport up to the standard the Secretary used in making an assessment
17 under subsection (a) of this section; or

18 (ii) immediately on the decision of the Secretary of Transportation
19 under subsection (c) of this section if the Secretary of Transportation
20 decides, after consulting with the Secretary of State, that a condition
21 exists that threatens the safety or security of passengers, aircraft, or
22 crew traveling to or from the airport.

23 (B) The Secretary of Transportation immediately shall notify the Sec-
24 retary of State of a decision under subparagraph (A)(ii) of this paragraph
25 so that the Secretary of State may issue a travel advisory required under
26 section 44908(a) of this title.

27 (3) The Secretary of Transportation promptly shall submit to Congress
28 a report (and classified annex if necessary) on action taken under paragraph
29 (1) or (2) of this subsection, including information on attempts made to ob-
30 tain the cooperation of the government of a foreign country in meeting the
31 standard the Secretary used in assessing the airport under subsection (a)
32 of this section.

33 (4) An action required under paragraph (1)(A) and (B) of this subsection
34 is no longer required only if the Secretary of Transportation, in consultation
35 with the Secretary of State, decides that effective security measures are
36 maintained and carried out at the airport. The Secretary of Transportation
37 shall notify Congress when the action is no longer required to be taken.

38 (e) *SUSPENSIONS.*—Notwithstanding sections 40105(b) and 40106(b) of
39 this title, the Secretary of Transportation, with the approval of the Sec-
40 retary of State and without notice or a hearing, shall suspend the right of
41 an air carrier or foreign air carrier to provide foreign air transportation,

1 and the right of a person to operate aircraft in foreign air commerce, to
2 or from a foreign airport when the Secretary of Transportation decides
3 that—

4 (1) a condition exists that threatens the safety or security of pas-
5 sengers, aircraft, or crew traveling to or from that airport; and

6 (2) the public interest requires an immediate suspension of transpor-
7 tation between the United States and that airport.

8 (f) CONDITION OF CARRIER AUTHORITY.—This section is a condition to
9 authority the Secretary of Transportation grants under this part to an air
10 carrier or foreign air carrier.

11 **§ 44908. Travel advisory and suspension of foreign assist-**
12 **ance**

13 (a) TRAVEL ADVISORIES.—On being notified by the Secretary of Trans-
14 portation that the Secretary of Transportation has decided under section
15 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the
16 safety or security of passengers, aircraft, or crew traveling to or from a for-
17 eign airport that the Secretary of Transportation has decided under section
18 44907 of this title does not maintain and carry out effective security meas-
19 ures, the Secretary of State—

20 (1) immediately shall issue a travel advisory for that airport;

21 (2) shall publish the advisory in the Federal Register; and

22 (3) shall publicize the advisory widely.

23 (b) SUSPENDING ASSISTANCE.—The President shall suspend assistance
24 provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.)
25 or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in
26 which is located an airport with respect to which section 44907(d)(1) of this
27 title becomes effective if the Secretary of State decides the country is a high
28 terrorist threat country. The President may waive this subsection if the
29 President decides, and reports to Congress, that the waiver is required be-
30 cause of national security interests or a humanitarian emergency.

31 (c) ACTIONS NO LONGER REQUIRED.—An action required under this sec-
32 tion is no longer required only if the Secretary of Transportation has made
33 a decision as provided under section 44907(d)(4) of this title. The Secretary
34 shall notify Congress when the action is no longer required to be taken.

35 **§ 44909. Passenger manifests**

36 (a) AIR CARRIER REQUIREMENTS.—(1) Not later than March 16, 1991,
37 the Secretary of Transportation shall require each air carrier to provide a
38 passenger manifest for a flight to an appropriate representative of the Sec-
39 retary of State—

40 (A) not later than one hour after that carrier is notified of an avia-
41 tion disaster outside the United States involving that flight; or

1 (B) if it is not technologically feasible or reasonable to comply with
2 clause (A) of this paragraph, then as expeditiously as possible, but not
3 later than 3 hours after the carrier is so notified.

4 (2) The passenger manifest shall include the following information:

5 (A) the full name of each passenger.

6 (B) the passport number of each passenger, if required for travel.

7 (C) the name and telephone number of a contact for each passenger.

8 (3) In carrying out this subsection, the Secretary of Transportation shall
9 consider the necessity and feasibility of requiring air carriers to collect pas-
10 senger manifest information as a condition for passengers boarding a flight
11 of the carrier.

12 (b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transpor-
13 tation shall consider imposing a requirement on foreign air carriers com-
14 parable to that imposed on air carriers under subsection (a)(1) and (2) of
15 this section.

16 **§ 44910. Agreements on aircraft sabotage, aircraft hijacking,**
17 **and airport security**

18 The Secretary of State shall seek multilateral and bilateral agreement on
19 strengthening enforcement measures and standards for compliance related
20 to aircraft sabotage, aircraft hijacking, and airport security.

21 **§ 44911. Intelligence**

22 (a) DEFINITION.—In this section, “intelligence community” means the in-
23 telligence and intelligence-related activities of the following units of the
24 United States Government:

25 (1) the Department of State.

26 (2) the Department of Defense.

27 (3) the Department of the Treasury.

28 (4) the Department of Energy.

29 (5) the Departments of the Army, Navy, and Air Force.

30 (6) the Central Intelligence Agency.

31 (7) the National Security Agency.

32 (8) the Defense Intelligence Agency.

33 (9) the Federal Bureau of Investigation.

34 (10) the Drug Enforcement Administration.

35 (b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—The head
36 of each unit in the intelligence community shall prescribe policies and proce-
37 dures to ensure that intelligence reports about international terrorism are
38 made available, as appropriate, to the heads of other units in the intel-
39 ligence community, the Secretary of Transportation, and the Administrator
40 of the Federal Aviation Administration.

1 (c) UNIT FOR STRATEGIC PLANNING ON TERRORISM.—The heads of the
2 units in the intelligence community shall consider placing greater emphasis
3 on strategic intelligence efforts by establishing a unit for strategic planning
4 on terrorism.

5 (d) DESIGNATION OF INTELLIGENCE OFFICER.—At the request of the
6 Secretary, the Director of Central Intelligence shall designate at least one
7 intelligence officer of the Central Intelligence Agency to serve in a senior
8 position in the Office of the Secretary.

9 (e) WRITTEN WORKING AGREEMENTS.—The heads of units in the intel-
10 ligence community, the Secretary, and the Administrator shall review and,
11 as appropriate, revise written working agreements between the intelligence
12 community and the Administrator.

13 **§ 44912. Research and development**

14 (a) PROGRAM REQUIREMENT.—(1) The Administrator of the Federal
15 Aviation Administration shall establish and carry out a program to acceler-
16 ate and expand the research, development, and implementation of tech-
17 nologies and procedures to counteract terrorist acts against civil aviation.
18 The program shall provide for developing and having in place, not later than
19 November 16, 1993, new equipment and procedures necessary to meet the
20 technological challenges presented by terrorism. The program shall include
21 research on, and development of, technological improvements and ways to
22 enhance human performance.

23 (2) In designing and carrying out the program established under this sub-
24 section, the Administrator shall—

25 (A) consult and coordinate activities with other departments, agen-
26 cies, and instrumentalities of the United States Government doing
27 similar research;

28 (B) identify departments, agencies, and instrumentalities that would
29 benefit from that research; and

30 (C) seek cost-sharing agreements with those departments, agencies,
31 and instrumentalities.

32 (3) In carrying out the program established under this subsection, the
33 Administrator shall review and consider the annual reports the Secretary of
34 Transportation submits to Congress on transportation security and intel-
35 ligence.

36 (4) The Administrator may—

37 (A) make grants to institutions of higher learning and other appro-
38 priate research facilities with demonstrated ability to carry out research
39 described in paragraph (1) of this subsection, and fix the amounts and
40 terms of the grants; and

1 (B) make cooperative agreements with governmental authorities the
2 Administrator decides are appropriate.

3 (b) REVIEW OF THREATS.—(1) The Administrator shall complete an in-
4 tensive review of threats to civil aviation, with particular focus on—

5 (A) explosive material that presents the most significant threat to
6 civil aircraft;

7 (B) the minimum amounts, configurations, and types of explosive
8 material that can cause, or would reasonably be expected to cause, cat-
9 astrophic damage to commercial aircraft in service and expected to be
10 in service in the 10-year period beginning on November, 16, 1990;

11 (C) the amounts, configurations, and types of explosive material that
12 can be detected reliably by existing, or reasonably anticipated, near-
13 term explosive detection technologies;

14 (D) the feasibility of using various ways to minimize damage caused
15 by explosive material that cannot be detected reliably by existing, or
16 reasonably anticipated, near-term explosive detection technologies;

17 (E) the ability to screen passengers, carry-on baggage, checked bag-
18 gage, and cargo; and

19 (F) the technologies that might be used in the future to attempt to
20 destroy or otherwise threaten commercial aircraft and the way in which
21 those technologies can be countered effectively.

22 (2) The Administrator shall use the results of the review under this sub-
23 section to develop the focus and priorities of the program established under
24 subsection (a) of this section.

25 (c) SCIENTIFIC ADVISORY PANEL.—The Administrator shall establish a
26 scientific advisory panel, as a subcommittee of the Research, Engineering
27 and Development Advisory Committee, to review, comment on, advise on the
28 progress of, and recommend modifications in, the program established under
29 subsection (a) of this section, including the need for long-range research
30 programs to detect and prevent catastrophic damage to commercial aircraft
31 by the next generation of terrorist weapons. The panel shall consist of indi-
32 viduals with scientific and technical expertise in—

33 (1) the development and testing of effective explosive detection sys-
34 tems;

35 (2) aircraft structure and experimentation to decide on the type and
36 minimum weights of explosives that an effective technology must be ca-
37 pable of detecting;

38 (3) technologies involved in minimizing airframe damage to aircraft
39 from explosives; and

40 (4) other scientific and technical areas the Administrator considers
41 appropriate.

§ 44913. Explosive detection

(a) DEPLOYMENT AND PURCHASE OF EQUIPMENT.—(1) A deployment or purchase of explosive detection equipment under section 108.7(b)(8) or 108.20 of title 14, Code of Federal Regulations, or similar regulation is required only if the Administrator of the Federal Aviation Administration certifies that the equipment alone, or as part of an integrated system, can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall base the certification on the results of tests conducted under protocols developed in consultation with expert scientists outside of the Administration. Those tests shall be completed not later than April 16, 1992.

(2) Before completion of the tests described in paragraph (1) of this subsection, but not later than April 16, 1992, the Administrator may require deployment of explosive detection equipment described in paragraph (1) if the Administrator decides that deployment will enhance aviation security significantly. In making that decision, the Administrator shall consider factors such as the ability of the equipment alone, or as part of an integrated system, to detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives of a deployment decision made under this paragraph.

(3) This subsection does not prohibit the Administrator from purchasing or deploying explosive detection equipment described in paragraph (1) of this subsection.

(b) GRANTS.—The Secretary of Transportation may provide grants to continue the Explosive Detection K-9 Team Training Program to detect explosives at airports and on aircraft.

§ 44914. Airport construction guidelines

In consultation with air carriers, airport authorities, and others the Administrator of the Federal Aviation Administration considers appropriate, the Administrator shall develop guidelines for airport design and construction to allow for maximum security enhancement. In developing the guidelines, the Administrator shall consider the results of the assessment carried out under section 44904(a) of this title.

§ 44915. Exemptions

The Administrator of the Federal Aviation Administration may exempt from sections 44901, 44903(a)–(c) and (e), 44906, 44935, and 44936 of this title airports in Alaska served only by air carriers that—

(1) hold certificates issued under section 41102 of this title;

(2) operate aircraft with certificates for a maximum gross takeoff weight of less than 12,500 pounds; and

(3) board passengers, or load property intended to be carried in an aircraft cabin, that will be screened under section 44901 of this title at another airport in Alaska before the passengers board, or the property is loaded on, an aircraft for a place outside Alaska.

SUBCHAPTER II—ADMINISTRATION AND PERSONNEL**§ 44931. Director of Intelligence and Security**

(a) ORGANIZATION.—There is in the Office of the Secretary of Transportation a Director of Intelligence and Security. The Director reports directly to the Secretary.

(b) DUTIES AND POWERS.—The Director shall—

(1) receive, assess, and distribute intelligence information related to long-term transportation security;

(2) develop policies, strategies, and plans for dealing with threats to transportation security;

(3) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(4) serve as the primary liaison of the Secretary to the intelligence and law enforcement communities; and

(5) carry out other duties and powers the Secretary decides are necessary to ensure, to the extent possible, the security of the traveling public.

§ 44932. Assistant Administrator for Civil Aviation Security

(a) ORGANIZATION.—There is an Assistant Administrator for Civil Aviation Security. The Assistant Administrator reports directly to the Administrator of the Federal Aviation Administration and is subject to the authority of the Administrator.

(b) DUTIES AND POWERS.—The Assistant Administrator shall—

(1) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933 of this title;

(2) enforce security-related requirements;

(3) identify the research and development requirements of security-related activities;

- 1 (4) inspect security systems;
- 2 (5) report information to the Director of Intelligence and Security
- 3 that may be necessary to allow the Director to carry out assigned du-
- 4 ties and powers;
- 5 (6) assess threats to civil aviation; and
- 6 (7) carry out other duties and powers the Administrator considers
- 7 appropriate.

8 (c) REVIEW AND DEVELOPMENT OF WAYS TO STRENGTHEN SECU-
9 RITY.—The Assistant Administrator shall review and, as necessary, develop
10 ways to strengthen air transportation security, including ways—

- 11 (1) to strengthen controls over checked baggage in air transpor-
- 12 tation, including ways to ensure baggage reconciliation and inspection
- 13 of items in passenger baggage that could potentially contain explosive
- 14 devices;
- 15 (2) to strengthen control over individuals having access to aircraft;
- 16 (3) to improve testing of security systems;
- 17 (4) to ensure the use of the best available x-ray equipment for air
- 18 transportation security purposes; and
- 19 (5) to strengthen preflight screening of passengers.

20 **§ 44933. Federal Security Managers**

21 (a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Adminis-
22 trator of the Federal Aviation Administration shall establish the position of
23 Federal Security Manager at each airport in the United States at which the
24 Administrator decides a Manager is necessary for air transportation secu-
25 rity. The Administrator shall designate individuals as Managers for, and
26 station those Managers at, those airports. The Administrator may designate
27 a current field employee of the Administration as a Manager. A Manager
28 reports directly to the Assistant Administrator for Civil Aviation Security.
29 The Administrator shall station an individual as Manager at each airport
30 in the United States that the Secretary of Transportation designates as a
31 category X airport.

- 32 (b) DUTIES AND POWERS.—The Manager at each airport shall—
- 33 (1) receive intelligence information related to aviation security;
 - 34 (2) ensure, and assist in, the development of a comprehensive secu-
35 rity plan for the airport that—
 - 36 (A) establishes the responsibilities of each air carrier and air-
37 port operator for air transportation security at the airport; and
 - 38 (B) includes measures to be taken during periods of normal air-
39 port operations and during periods when the Manager decides that
40 there is a need for additional airport security, and identifies the
41 individuals responsible for carrying out those measures;

1 (3) oversee and enforce the carrying out by air carriers and airport
2 operators of United States Government security requirements, includ-
3 ing the security plan under clause (2) of this subsection;

4 (4) serve as the on-site coordinator of the Administrator's response
5 to terrorist incidents and threats at the airport;

6 (5) coordinate the day-to-day Government aviation security activities
7 at the airport;

8 (6) coordinate efforts related to aviation security with local law en-
9 forcement; and

10 (7) coordinate activities with other Managers.

11 (c) LIMITATION.—A Civil Aviation Security Field Officer may not be as-
12 signed security duties and powers at an airport having a Manager.

13 **§ 44934. Foreign Security Liaison Officers**

14 (a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Adminis-
15 trator of the Federal Aviation Administration shall establish the position of
16 Foreign Security Liaison Officer for each airport outside the United States
17 at which the Administrator decides an Officer is necessary for air transpor-
18 tation security. In coordination with the Secretary of State, the Adminis-
19 trator shall designate an Officer for each of those airports. In coordination
20 with the Secretary, the Administrator shall designate an Officer for each of
21 those airports where extraordinary security measures are in place. The Sec-
22 retary shall give high priority to stationing those Officers.

23 (b) DUTIES AND POWERS.—An Officer reports directly to the Assistant
24 Administrator for Civil Aviation Security. The Officer at each airport
25 shall—

26 (1) serve as the liaison of the Assistant Administrator to foreign se-
27 curity authorities (including governments of foreign countries and for-
28 eign airport authorities) in carrying out United States Government se-
29 curity requirements at that airport; and

30 (2) to the extent practicable, carry out duties and powers referred
31 to in section 44933(b) of this title.

32 (c) COORDINATION OF ACTIVITIES.—The activities of each Officer shall
33 be coordinated with the chief of the diplomatic mission of the United States
34 to which the Officer is assigned. Activities of an Officer under this section
35 shall be consistent with the duties and powers of the Secretary and the chief
36 of mission to a foreign country under section 103 of the Omnibus Diplo-
37 matic Security and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section
38 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

39 **§ 44935. Employment standards and training**

40 (a) EMPLOYMENT STANDARDS.—The Administrator of the Federal Avia-
41 tion Administration shall prescribe standards for the employment and con-

1 tinued employment of, and contracting for, air carrier personnel and, as ap-
2 propriate, airport security personnel. The standards shall include—

- 3 (1) minimum training requirements for new employees;
- 4 (2) retraining requirements;
- 5 (3) minimum staffing levels;
- 6 (4) minimum language skills; and
- 7 (5) minimum education levels for employees, when appropriate.

8 (b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers,
9 airport operators, and other interested persons, the Administrator shall re-
10 view issues related to human performance in the aviation security system
11 to maximize that performance. When the review is completed, the Adminis-
12 trator shall recommend guidelines and prescribe appropriate changes in ex-
13 isting procedures to improve that performance.

14 (c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICA-
15 TIONS.—(1) The Administrator—

16 (A) may train individuals employed to carry out a security program
17 under section 44903(c) of this title; and

18 (B) shall prescribe uniform training standards and uniform mini-
19 mum qualifications for individuals eligible for that training.

20 (2) The Administrator may authorize reimbursement for travel, transpor-
21 tation, and subsistence expenses for security training of non-United States
22 Government domestic and foreign individuals whose services will contribute
23 significantly to carrying out civil aviation security programs. To the extent
24 practicable, air travel reimbursed under this paragraph shall be on air car-
25 riers.

26 (d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINA-
27 TORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) The Administrator
28 shall prescribe standards for educating and training—

- 29 (A) ground security coordinators;
- 30 (B) security supervisory personnel; and
- 31 (C) airline pilots as in-flight security coordinators.

32 (2) The standards shall include initial training, retraining, and continuing
33 education requirements and methods. Those requirements and methods shall
34 be used annually to measure the performance of ground security coordina-
35 tors and security supervisory personnel.

36 **§ 44936. Employment investigations and restrictions**

37 (a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1) The Adminis-
38 trator of the Federal Aviation Administration shall require by regulation
39 that an employment investigation, including a criminal history record check,
40 shall be conducted, as the Administrator decides is necessary to ensure air
41 transportation security, of each individual employed in, or applying for, a

1 position in which the individual has unescorted access, or may permit other
2 individuals to have unescorted access, to—

3 (A) aircraft of an air carrier or foreign air carrier; or

4 (B) a secured area of an airport in the United States the Adminis-
5 trator designates that serves an air carrier or foreign air carrier.

6 (2) An air carrier, foreign air carrier, or airport operator that employs,
7 or authorizes or makes a contract for the services of, an individual in a posi-
8 tion described in paragraph (1) of this subsection shall ensure that the in-
9 vestigation the Administrator requires is conducted.

10 (b) PROHIBITED EMPLOYMENT.—(1) Except as provided in paragraph
11 (3) of this subsection, an air carrier, foreign air carrier, or airport operator
12 may not employ, or authorize or make a contract for the services of, an indi-
13 vidual in a position described in subsection (a)(1) of this section if—

14 (A) the investigation of the individual required under this section has
15 not been conducted; or

16 (B) the results of that investigation establish that, in the 10-year pe-
17 riod ending on the date of the investigation, the individual was con-
18 victed of—

19 (i) a crime referred to in section 46306, 46308, 46312, 46314,
20 or 46315 or chapter 465 of this title or section 32 of title 18;

21 (ii) murder;

22 (iii) assault with intent to murder;

23 (iv) espionage;

24 (v) sedition;

25 (vi) treason;

26 (vii) rape;

27 (viii) kidnapping;

28 (ix) unlawful possession, sale, distribution, or manufacture of an
29 explosive or weapon;

30 (x) extortion;

31 (xi) armed robbery;

32 (xii) distribution of, or intent to distribute, a controlled sub-
33 stance; or

34 (xiii) conspiracy to commit any of the acts referred to in clauses
35 (i)–(xii) of this paragraph.

36 (2) The Administrator may specify other factors that are sufficient to
37 prohibit the employment of an individual in a position described in sub-
38 section (a)(1) of this section.

39 (3) An air carrier, foreign air carrier, or airport operator may employ,
40 or authorize or contract for the services of, an individual in a position de-
41 scribed in subsection (a)(1) of this section without carrying out the inves-

1 tigation required under this section, if the Administrator approves a plan
2 to employ the individual that provides alternate security arrangements.

3 (c) FINGERPRINTING AND RECORD CHECK INFORMATION.—(1) If the
4 Administrator requires an identification and criminal history record check,
5 to be conducted by the Attorney General, as part of an investigation under
6 this section, the Administrator shall designate an individual to obtain finger-
7 prints and submit those fingerprints to the Attorney General. The Attorney
8 General may make the results of a check available to an individual the Ad-
9 ministrator designates. Before designating an individual to obtain and sub-
10 mit fingerprints or receive results of a check, the Administrator shall con-
11 sult with the Attorney General.

12 (2) The Administrator shall prescribe regulations on—

13 (A) procedures for taking fingerprints; and

14 (B) requirements for using information received from the Attorney
15 General under paragraph (1) of this subsection—

16 (i) to limit the dissemination of the information; and

17 (ii) to ensure that the information is used only to carry out this
18 section.

19 (3) If an identification and criminal history record check is conducted as
20 part of an investigation of an individual under this section, the individual—

21 (A) shall receive a copy of any record received from the Attorney
22 General; and

23 (B) may complete and correct the information contained in the check
24 before a final employment decision is made based on the check.

25 (d) FEES AND CHARGES.—The Administrator and the Attorney General
26 shall establish reasonable fees and charges to pay expenses incurred in car-
27 rying out this section. The employer of the individual being investigated
28 shall pay the costs of a record check of the individual. Money collected
29 under this section shall be credited to the account in the Treasury from
30 which the expenses were incurred and are available to the Administrator
31 and the Attorney General for those expenses.

32 (e) WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.—This
33 section does not require an investigation or record check when the investiga-
34 tion or record check is prohibited by a law of a foreign country.

35 **§ 44937. Prohibition on transferring duties and powers**

36 Except as specifically provided by law, the Administrator of the Federal
37 Aviation Administration may not transfer a duty or power under section
38 44903(a), (b), (c), or (e), 44906(a)(1) or (b), 44912, 44935, 44936, or
39 44938(b)(3) of this title to another department, agency, or instrumentality
40 of the United States Government.

§ 44938. Reports

(a) TRANSPORTATION SECURITY.—Not later than December 31 of each year, the Secretary of Transportation shall submit to Congress a report on transportation security with recommendations the Secretary considers appropriate. The report shall be prepared in conjunction with the annual report the Administrator of the Federal Aviation Administration submits under subsection (b) of this section, but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

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

(2) an evaluation of deployment of explosive detection devices;

(3) recommendations for research, engineering, and development activities related to transportation security, except research engineering and development activities related to aviation security to the extent those activities are covered by the national aviation research plan required under section 44501(c) of this title;

(4) identification and evaluation of cooperative efforts with other departments, agencies, and instrumentalities of the United States Government;

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

(6) the status of the extent to which the recommendations of the President's Commission on Aviation Security and Terrorism have been carried out and the reasons for any delay in carrying out those recommendations;

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

(8) financial and staffing requirements of the Director;

(9) an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the Administrator related to security; and

(10) appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The Administrator shall submit annually to Congress a report—

(1) on the effectiveness of procedures under section 44901 of this title;

(2) that includes a summary of the assessments conducted under section 44907(a)(1) and (2) of this title; and

1 (3) that includes an assessment of the steps being taken, and the
2 progress being made, in ensuring compliance with section 44906 of this
3 title for each foreign air carrier security program at airports outside
4 the United States—

5 (A) at which the Administrator decides that Foreign Security
6 Liaison Officers are necessary for air transportation security; and

7 (B) for which extraordinary security measures are in place.

8 (c) DOMESTIC AIR TRANSPORTATION SYSTEM SECURITY.—The Adminis-
9 trator shall submit to Congress an annual report for each of the calendar
10 years 1991 and 1992 on the progress being made, and the problems occur-
11 ring, in carrying out section 44904 of this title. The report shall include
12 recommendations for improving domestic air transportation security.

13 **CHAPTER 451—ALCOHOL AND CONTROLLED**
14 **SUBSTANCES TESTING**

Sec.

45101. Definition.

45102. Alcohol and controlled substances testing programs.

45103. Prohibited service.

45104. Testing and laboratory requirements.

45105. Rehabilitation.

45106. Relationship to other laws, regulations, standards, and orders.

15 **§ 45101. Definition**

16 In this chapter, “controlled substance” means any substance under sec-
17 tion 102 of the Comprehensive Drug Abuse Prevention and Control Act of
18 1970 (21 U.S.C. 802) specified by the Administrator of the Federal Avia-
19 tion Administration.

20 **§ 45102. Alcohol and controlled substances testing programs**

21 (a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR
22 CARRIERS.—(1) In the interest of aviation safety, the Administrator of the
23 Federal Aviation Administration shall prescribe regulations not later than
24 October 28, 1992, that establish a program requiring air carriers and for-
25 eign air carriers to conduct preemployment, reasonable suspicion, random,
26 and post-accident testing of airmen, crewmembers, airport security screen-
27 ing contract personnel, and other air carrier employees responsible for
28 safety-sensitive functions (as decided by the Administrator) for the use of
29 alcohol or a controlled substance in violation of law or a United States Gov-
30 ernment regulation.

31 (2) When the Administrator considers it appropriate in the interest of
32 safety, the Administrator may prescribe regulations for conducting periodic
33 recurring testing of airmen, crewmembers, airport security screening con-
34 tract personnel, and other air carrier employees responsible for safety-sen-
35 sitive functions for the use of alcohol or a controlled substance in violation
36 of law or a Government regulation.

1 (b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINIS-
2 TRATION.—(1) The Administrator shall establish a program of
3 preemployment, reasonable suspicion, random, and post-accident testing for
4 the use of alcohol or a controlled substance in violation of law or a Govern-
5 ment regulation for employees of the Administration whose duties include
6 responsibility for safety-sensitive functions.

7 (2) When the Administrator considers it appropriate in the interest of
8 safety, the Administrator may prescribe regulations for conducting periodic
9 recurring testing of employees of the Administration responsible for safety-
10 sensitive functions for use of alcohol or a controlled substance in violation
11 of law or a Government regulation.

12 (c) SANCTIONS.—In prescribing regulations under the programs required
13 by this section, the Administrator shall require, as the Administrator consid-
14 ers appropriate, the suspension or revocation of any certificate issued to an
15 individual referred to in this section, or the disqualification or dismissal of
16 the individual, under this chapter when a test conducted and confirmed
17 under this chapter indicates the individual has used alcohol or a controlled
18 substance in violation of law or a Government regulation.

19 **§ 45103. Prohibited service**

20 (a) USE OF ALCOHOL OR A CONTROLLED SUBSTANCE.—An individual
21 may not use alcohol or a controlled substance after October 28, 1991, in
22 violation of law or a United States Government regulation and serve as an
23 airman, crewmember, airport security screening contract employee, air car-
24 rier employee responsible for safety-sensitive functions (as decided by the
25 Administrator of the Federal Aviation Administration), or employee of the
26 Administration with responsibility for safety-sensitive functions.

27 (b) REHABILITATION REQUIRED TO RESUME SERVICE.—Notwithstand-
28 ing subsection (a) of this section, an individual found to have used alcohol
29 or a controlled substance after October 28, 1991, in violation of law or a
30 Government regulation may serve as an airman, crewmember, airport secu-
31 rity screening contract employee, air carrier employee responsible for safety-
32 sensitive functions (as decided by the Administrator), or employee of the
33 Administration with responsibility for safety-sensitive functions only if the
34 individual completes a rehabilitation program described in section 45105 of
35 this title.

36 (c) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—An individual who
37 served as an airman, crewmember, airport security screening contract em-
38 ployee, air carrier employee responsible for safety-sensitive functions (as de-
39 cided by the Administrator), or employee of the Administration with respon-
40 sibility for safety-sensitive functions and who was found by the Adminis-
41 trator to have used alcohol or a controlled substance after October 28,

1 1991, in violation of law or a Government regulation may not carry out the
2 duties related to air transportation that the individual carried out before the
3 finding of the Administrator if the individual—

4 (1) used the alcohol or controlled substance when on duty;

5 (2) began or completed a rehabilitation program described in section
6 45105 of this title before using the alcohol or controlled substance; or

7 (3) refuses to begin or complete a rehabilitation program described
8 in section 45105 of this title after a finding by the Administrator under
9 this section.

10 **§ 45104. Testing and laboratory requirements**

11 In carrying out section 45102 of this title, the Administrator of the Fed-
12 eral Aviation Administration shall develop requirements that—

13 (1) promote, to the maximum extent practicable, individual privacy
14 in the collection of specimens;

15 (2) for laboratories and testing procedures for controlled substances,
16 incorporate the Department of Health and Human Services scientific
17 and technical guidelines dated April 11, 1988, and any amendments to
18 those guidelines, including mandatory guidelines establishing—

19 (A) comprehensive standards for every aspect of laboratory con-
20 trolled substances testing and laboratory procedures to be applied
21 in carrying out this chapter, including standards requiring the use
22 of the best available technology to ensure the complete reliability
23 and accuracy of controlled substances tests and strict procedures
24 governing the chain of custody of specimens collected for con-
25 trolled substances testing;

26 (B) the minimum list of controlled substances for which individ-
27 uals may be tested; and

28 (C) appropriate standards and procedures for periodic review of
29 laboratories and criteria for certification and revocation of certifi-
30 cation of laboratories to perform controlled substances testing in
31 carrying out this chapter;

32 (3) require that a laboratory involved in controlled substances testing
33 under this chapter have the capability and facility, at the laboratory,
34 of performing screening and confirmation tests;

35 (4) provide that all tests indicating the use of alcohol or a controlled
36 substance in violation of law or a United States Government regulation
37 be confirmed by a scientifically recognized method of testing capable
38 of providing quantitative information about alcohol or a controlled sub-
39 stance;

40 (5) provide that each specimen be subdivided, secured, and labeled
41 in the presence of the tested individual and that a part of the specimen

1 be retained in a secure manner to prevent the possibility of tampering,
2 so that if the individual's confirmation test results are positive the indi-
3 vidual has an opportunity to have the retained part tested by a 2d con-
4 firmation test done independently at another certified laboratory if the
5 individual requests the 2d confirmation test not later than 3 days after
6 being advised of the results of the first confirmation test;

7 (6) ensure appropriate safeguards for testing to detect and quantify
8 alcohol in breath and body fluid samples, including urine and blood,
9 through the development of regulations that may be necessary and in
10 consultation with the Secretary of Health and Human Services;

11 (7) provide for the confidentiality of test results and medical infor-
12 mation (except information about alcohol or a controlled substance) of
13 employees, except that this clause does not prevent the use of test re-
14 sults for the orderly imposition of appropriate sanctions under this
15 chapter; and

16 (8) ensure that employees are selected for tests by nondiscriminatory
17 and impartial methods, so that no employee is harassed by being treat-
18 ed differently from other employees in similar circumstances.

19 **§ 45105. Rehabilitation**

20 (a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR
21 CARRIERS.—The Administrator of the Federal Aviation Administration shall
22 prescribe regulations establishing requirements for rehabilitation programs
23 that at least provide for the identification and opportunity for treatment of
24 employees of air carriers and foreign air carriers referred to in section
25 45102(a)(1) of this title who need assistance in resolving problems with the
26 use of alcohol or a controlled substance in violation of law or a United
27 States Government regulation. Each air carrier and foreign air carrier is en-
28 couraged to make such a program available to all its employees in addition
29 to the employees referred to in section 45102(a)(1)(A). The Administrator
30 shall decide on the circumstances under which employees shall be required
31 to participate in a program. This subsection does not prevent an air carrier
32 or foreign air carrier from establishing a program under this subsection in
33 cooperation with another air carrier or foreign air carrier.

34 (b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINIS-
35 TRATION.—The Administrator shall establish and maintain a rehabilitation
36 program that at least provides for the identification and opportunity for
37 treatment of employees of the Administration whose duties include respon-
38 sibility for safety-sensitive functions who need assistance in resolving prob-
39 lems with the use of alcohol or a controlled substance.

1 **§ 45106. Relationship to other laws, regulations, standards,**
 2 **and orders**

3 (a) EFFECT ON STATE AND LOCAL GOVERNMENT LAWS, REGULATIONS,
 4 STANDARDS, OR ORDERS.—A State or local government may not prescribe,
 5 issue, or continue in effect a law, regulation, standard, or order that is in-
 6 consistent with regulations prescribed under this chapter. However, a regu-
 7 lation prescribed under this chapter does not preempt a State criminal law
 8 that imposes sanctions for reckless conduct leading to loss of life, injury,
 9 or damage to property.

10 (b) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—(1) In pre-
 11 scribing regulations under this chapter, the Administrator of the Federal
 12 Aviation Administration—

13 (A) shall establish only requirements applicable to foreign air car-
 14 riers that are consistent with international obligations of the United
 15 States; and

16 (B) shall consider applicable laws and regulations of foreign coun-
 17 tries.

18 (2) The Secretaries of State and Transportation jointly shall request the
 19 governments of foreign countries that are members of the International Civil
 20 Aviation Organization to strengthen and enforce existing standards to pro-
 21 hibit crewmembers in international civil aviation from using alcohol or a
 22 controlled substance in violation of law or a United States Government reg-
 23 ulation.

24 (c) OTHER REGULATIONS ALLOWED.—This section does not prevent the
 25 Administrator from continuing in effect, amending, or further
 26 supplementing a regulation prescribed before October 28, 1991, governing
 27 the use of alcohol or a controlled substance by airmen, crewmembers, air-
 28 port security screening contract employees, air carrier employees responsible
 29 for safety-sensitive functions (as decided by the Administrator), or employ-
 30 ees of the Administration with responsibility for safety-sensitive functions.

31 **CHAPTER 453—FEES**

Sec.

45301. Authority to impose fees.

45302. Fees involving aircraft not providing air transportation.

45303. Maximum fees for private person services.

32 **§ 45301. Authority to impose fees**

33 (a) GENERAL AUTHORITY.—The Secretary of Transportation may impose
 34 a fee for an approval, test, authorization, certificate, permit, registration,
 35 transfer, or rating related to aviation that has not been approved by Con-
 36 gress only when the fee—

37 (1)(A) was in effect on January 1, 1973; and

1 (B) is not more than the fee in effect on January 1, 1973, adjusted
 2 in proportion to changes in the Consumer Price Index of All Urban
 3 Consumers published by the Secretary of Labor between January 1,
 4 1973, and the date the fee is imposed; or

5 (2) is imposed under section 45302 of this title.

6 (b) NONAPPLICATION.—This section does not apply to a fee for a test,
 7 authorization, certificate, permit, or rating related to an airman or repair
 8 station administered or issued outside the United States.

9 **§ 45302. Fees involving aircraft not providing air transpor-**
 10 **tation**

11 (a) APPLICATION.—This section applies only to aircraft not used to pro-
 12 vide air transportation.

13 (b) GENERAL AUTHORITY AND MAXIMUM FEES.—The Administrator of
 14 the Federal Aviation Administration may impose fees to pay for the costs
 15 of issuing airman certificates to pilots and certificates of registration of air-
 16 craft and processing forms for major repairs and alterations of fuel tanks
 17 and fuel systems of aircraft. The following fees may not be more than the
 18 amounts specified:

19 (1) \$12 for issuing an airman's certificate to a pilot.

20 (2) \$25 for registering an aircraft after the transfer of ownership.

21 (3) \$15 for renewing an aircraft registration.

22 (4) \$7.50 for processing a form for a major repair or alteration of
 23 a fuel tank or fuel system of an aircraft.

24 (c) ADJUSTMENTS.—The Administrator shall adjust the maximum fees
 25 established by subsection (b) of this section for changes in the Consumer
 26 Price Index of All Urban Consumers published by the Secretary of Labor.

27 (d) CREDIT TO ACCOUNT AND AVAILABILITY.—Money collected from fees
 28 imposed under this section shall be credited to the account in the Treasury
 29 from which the Administrator incurs expenses in carrying out chapter 441
 30 and sections 44701–44716 of this title (except sections 44701(c),
 31 44703(f)(2), and 44713(d)(2)). The money is available to the Administrator
 32 to pay expenses for which the fees are collected.

33 **§ 45303. Maximum fees for private person services**

34 The Administrator of the Federal Aviation Administration may establish
 35 maximum fees that private persons may charge for services performed under
 36 a delegation to the person under section 44702(d) of this title.

37 SUBPART IV—ENFORCEMENT AND PENALTIES

38 **CHAPTER 461—INVESTIGATIONS AND PROCEEDINGS**

Sec.

46101. Complaints and investigations.

46102. Proceedings.

46103. Service of notice, process, and actions.

46104. Evidence.

46105. Regulations and orders.
 46106. Enforcement by the Secretary of Transportation and Administrator of the Federal Aviation Administration.
 46107. Enforcement by the Attorney General.
 46108. Enforcement of certificate requirements by interested persons.
 46109. Joinder and intervention.
 46110. Judicial review.

1 **§ 46101. Complaints and investigations**

2 (a) GENERAL.—(1) A person may file a complaint in writing with the
 3 Secretary of Transportation (or the Administrator of the Federal Aviation
 4 Administration with respect to aviation safety duties and powers designated
 5 to be carried out by the Administrator) about a person violating this part
 6 or a requirement prescribed under this part. Except as provided in sub-
 7 section (b) of this section, the Secretary or Administrator shall investigate
 8 the complaint if a reasonable ground appears to the Secretary or Adminis-
 9 trator for the investigation.

10 (2) On the initiative of the Secretary of Transportation or the Adminis-
 11 trator, as appropriate, the Secretary or Administrator may conduct an in-
 12 vestigation, if a reasonable ground appears to the Secretary or Adminis-
 13 trator for the investigation, about—

14 (A) a person violating this part or a requirement prescribed under
 15 this part; or

16 (B) any question that may arise under this part.

17 (3) The Secretary of Transportation or Administrator may dismiss a com-
 18 plaint without a hearing when the Secretary or Administrator is of the opin-
 19 ion that the complaint does not state facts that warrant an investigation
 20 or action.

21 (4) After notice and an opportunity for a hearing and subject to section
 22 40105(b) of this title, the Secretary of Transportation or Administrator
 23 shall issue an order to compel compliance with this part if the Secretary
 24 or Administrator finds in an investigation under this subsection that a per-
 25 son is violating this part.

26 (b) COMPLAINTS AGAINST MEMBERS OF ARMED FORCES.—The Sec-
 27 retary of Transportation or Administrator shall refer a complaint against
 28 a member of the armed forces of the United States performing official du-
 29 ties to the Secretary of the department concerned for action. Not later than
 30 90 days after receiving the complaint, the Secretary of that department
 31 shall inform the Secretary of Transportation or Administrator of the action
 32 taken on the complaint, including any corrective or disciplinary action
 33 taken.

34 **§ 46102. Proceedings**

35 (a) CONDUCTING PROCEEDINGS.—Subject to subchapter II of chapter 5
 36 of title 5, the Secretary of Transportation (or the Administrator of the Fed-
 37 eral Aviation Administration with respect to aviation safety duties and pow-

1 ers designated to be carried out by the Administrator) may conduct proceed-
2 ings in a way conducive to justice and the proper dispatch of business.

3 (b) APPEARANCE.—A person may appear and be heard before the Sec-
4 retary and the Administrator in person or by an attorney. The Secretary
5 may appear and participate as an interested party in a proceeding the Ad-
6 ministrator conducts under section 40113(a) of this title.

7 (c) RECORDING AND PUBLIC ACCESS.—Official action taken by the Sec-
8 retary and Administrator under this part shall be recorded. Proceedings be-
9 fore the Secretary and Administrator shall be open to the public on the re-
10 quest of an interested party unless the Secretary or Administrator decides
11 that secrecy is required because of national defense.

12 (d) CONFLICTS OF INTEREST.—The Secretary, the Administrator, or an
13 officer or employee of the Administration may not participate in a proceed-
14 ing referred to in subsection (a) of this section in which the individual has
15 a pecuniary interest.

16 **§ 46103. Service of notice, process, and actions**

17 (a) DESIGNATING AGENTS.—(1) Each air carrier and foreign air carrier
18 shall designate an agent on whom service of notice and process in a proceed-
19 ing before, and an action of, the Secretary of Transportation (or the Admin-
20 istrator of the Federal Aviation Administration with respect to aviation
21 safety duties and powers designated to be carried out by the Administrator)
22 may be made.

23 (2) The designation—

24 (A) shall be in writing and filed with the Secretary or Administrator;

25 and

26 (B) may be changed in the same way as originally made.

27 (b) SERVICE.—(1) Service may be made—

28 (A) by personal service;

29 (B) on a designated agent; or

30 (C) by certified or registered mail to the person to be served or the
31 designated agent of the person.

32 (2) The date of service made by certified or registered mail is the date
33 of mailing.

34 (c) SERVING AGENTS.—Service on an agent designated under this section
35 shall be made at the office or usual place of residence of the agent. If an
36 air carrier or foreign air carrier does not have a designated agent, service
37 may be made by posting the notice, process, or action in the office of the
38 Secretary or Administrator.

39 **§ 46104. Evidence**

40 (a) GENERAL.—In conducting a hearing or investigation under this part,
41 the Secretary of Transportation (or the Administrator of the Federal Avia-

1 tion Administration with respect to aviation safety duties and powers des-
2 ignated to be carried out by the Administrator) may—

3 (1) subpoena witnesses and records related to a matter involved in the
4 hearing or investigation from any place in the United States to the des-
5 ignated place of the hearing or investigation;

6 (2) administer oaths;

7 (3) examine witnesses; and

8 (4) receive evidence at a place in the United States the Secretary
9 or Administrator designates.

10 (b) COMPLIANCE WITH SUBPENAS.—If a person disobeys a subpoena, the
11 Secretary, the Administrator, or a party to a proceeding before the Sec-
12 retary or Administrator may petition a court of the United States to enforce
13 the subpoena. A judicial proceeding to enforce a subpoena under this section
14 may be brought in the jurisdiction in which the proceeding or investigation
15 is conducted. The court may punish a failure to obey an order of the court
16 to comply with the subpoena as a contempt of court.

17 (c) DEPOSITIONS.—(1) In a proceeding or investigation, the Secretary or
18 Administrator may order a person to give testimony by deposition and to
19 produce records. If a person fails to be deposed or to produce records, the
20 order may be enforced in the same way a subpoena may be enforced under
21 subsection (b) of this section.

22 (2) A deposition may be taken before an individual designated by the Sec-
23 retary or Administrator and having the power to administer oaths.

24 (3) Before taking a deposition, the party or the attorney of the party pro-
25 posing to take the deposition must give reasonable notice in writing to the
26 opposing party or the attorney of record of that party. The notice shall state
27 the name of the witness and the time and place of taking the deposition.

28 (4) The testimony of a person deposed under this subsection shall be
29 under oath. The person taking the deposition shall prepare, or cause to be
30 prepared, a transcript of the testimony taken. The transcript shall be sub-
31 scribed by the deponent. Each deposition shall be filed promptly with the
32 Secretary or Administrator.

33 (5) If the laws of a foreign country allow, the testimony of a witness in
34 that country may be taken by deposition—

35 (A) by a consular officer or an individual commissioned by the Sec-
36 retary or Administrator or agreed on by the parties by written stipula-
37 tion filed with the Secretary or Administrator; or

38 (B) under letters rogatory issued by a court of competent jurisdic-
39 tion at the request of the Secretary or Administrator.

40 (d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EX-
41 PENSES.—A witness summoned before the Secretary or Administrator or

1 whose deposition is taken under this section and the individual taking the
2 deposition are each entitled to the same fee and mileage that the witness
3 and individual would have been paid for those services in a court of the
4 United States. Under regulations of the Secretary or Administrator, the
5 Secretary or Administrator shall pay the necessary expenses incident to exe-
6 cuting, in another country, a commission or letter rogatory issued at the
7 initiative of the Secretary or Administrator.

8 (e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When des-
9 ignated by the Secretary or Administrator, an employee appointed under
10 section 3105 of title 5 may conduct a hearing, subpoena witnesses, admin-
11 ister oaths, examine witnesses, and receive evidence at a place in the United
12 States the Secretary or Administrator designates. On request of a party, the
13 Secretary or Administrator shall hear or receive argument.

14 **§ 46105. Regulations and orders**

15 (a) EFFECTIVENESS OF ORDERS.—Except as provided in this part, a reg-
16 ulation prescribed or order issued by the Secretary of Transportation (or
17 the Administrator of the Federal Aviation Administration with respect to
18 aviation safety duties and powers designated to be carried out by the Ad-
19 ministrator) takes effect within a reasonable time prescribed by the Sec-
20 retary or Administrator. The regulation or order remains in effect under its
21 own terms or until superseded. Except as provided in this part, the Sec-
22 retary or Administrator may amend, modify, or suspend an order in the
23 way, and by giving the notice, the Secretary or Administrator decides.

24 (b) CONTENTS AND SERVICE OF ORDERS.—An order of the Secretary or
25 Administrator shall include the findings of fact on which the order is based
26 and shall be served on the parties to the proceeding and the persons af-
27 fected by the order.

28 (c) EMERGENCIES.—When the Administrator is of the opinion that an
29 emergency exists related to safety in air commerce and requires immediate
30 action, the Administrator, on the initiative of the Administrator or on com-
31 plaint, may prescribe regulations and issue orders immediately to meet the
32 emergency, with or without notice and without regard to this part and sub-
33 chapter II of chapter 5 of title 5. The Administrator shall begin a proceed-
34 ing immediately about an emergency under this subsection and give pref-
35 erence, when practicable, to the proceeding.

36 **§ 46106. Enforcement by the Secretary of Transportation** 37 **and Administrator of the Federal Aviation Admin-** 38 **istration**

39 The Secretary of Transportation (or the Administrator of the Federal
40 Aviation Administration with respect to aviation safety duties and powers
41 designated to be carried out by the Administrator) may bring a civil action

1 against a person in a district court of the United States to enforce this part
2 or a requirement or regulation prescribed, or an order or any term of a cer-
3 tificate or permit issued, under this part. The action may be brought in the
4 judicial district in which the person does business or the violation occurred.

5 **§ 46107. Enforcement by the Attorney General**

6 (a) CIVIL ACTIONS TO ENFORCE SECTION 40106(b).—The Attorney
7 General may bring a civil action in a district court of the United States
8 against a person to enforce section 40106(b) of this title. The action may
9 be brought in the judicial district in which the person does business or the
10 violation occurred.

11 (b) CIVIL ACTIONS TO ENFORCE THIS PART.—(1) On request of the Sec-
12 retary of Transportation (or the Administrator of the Federal Aviation Ad-
13 ministration with respect to aviation safety duties and powers designated to
14 be carried out by the Administrator), the Attorney General may bring a civil
15 action in an appropriate court—

16 (A) to enforce this part or a requirement or regulation prescribed,
17 or an order or any term of a certificate or permit issued, under this
18 part; and

19 (B) to prosecute a person violating this part or a requirement or reg-
20 ulation prescribed, or an order or any term of a certificate or permit
21 issued, under this part.

22 (2) The costs and expenses of a civil action shall be paid out of the appro-
23 priations for the expenses of the courts of the United States.

24 (c) PARTICIPATION OF SECRETARY OR ADMINISTRATOR.—On request of
25 the Attorney General, the Secretary or Administrator, as appropriate, may
26 participate in a civil action under this part.

27 **§ 46108. Enforcement of certificate requirements by inter-**
28 **ested persons**

29 An interested person may bring a civil action in a district court of the
30 United States against a person to enforce section 41101(a)(1) of this title.
31 The action may be brought in the judicial district in which the defendant
32 does business or the violation occurred.

33 **§ 46109. Joinder and intervention**

34 A person interested in or affected by a matter under consideration in a
35 proceeding before the Secretary of Transportation or civil action to enforce
36 this part or a requirement or regulation prescribed, or an order or any term
37 of a certificate or permit issued, under this part may be joined as a party
38 or permitted to intervene in the proceeding or civil action.

39 **§ 46110. Judicial review**

40 (a) FILING AND VENUE.—Except for an order related to a foreign air
41 carrier subject to disapproval by the President under section 41307 or

1 41509(f) of this title, a person disclosing a substantial interest in an order
 2 issued by the Secretary of Transportation (or the Administrator of the Fed-
 3 eral Aviation Administration with respect to aviation safety duties and pow-
 4 ers designated to be carried out by the Administrator) under this part may
 5 apply for review of the order by filing a petition for review in the United
 6 States Court of Appeals for the District of Columbia Circuit or in the court
 7 of appeals of the United States for the circuit in which the person resides
 8 or has its principal place of business. The petition must be filed not later
 9 than 60 days after the order is issued. The court may allow the petition
 10 to be filed after the 60th day only if there are reasonable grounds for not
 11 filing by the 60th day.

12 (b) JUDICIAL PROCEDURES.—When a petition is filed under subsection
 13 (a) of this section, the clerk of the court immediately shall send a copy of
 14 the petition to the Secretary or Administrator, as appropriate. The Sec-
 15 retary or Administrator shall file with the court a record of any proceeding
 16 in which the order was issued, as provided in section 2112 of title 28.

17 (c) AUTHORITY OF COURT.—When the petition is sent to the Secretary
 18 or Administrator, the court has exclusive jurisdiction to affirm, amend,
 19 modify, or set aside any part of the order and may order the Secretary or
 20 Administrator to conduct further proceedings. After reasonable notice to the
 21 Secretary or Administrator, the court may grant interim relief by staying
 22 the order or taking other appropriate action when good cause for its action
 23 exists. Findings of fact by the Secretary or Administrator, if supported by
 24 substantial evidence, are conclusive.

25 (d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order under
 26 this section, the court may consider an objection to an order of the Sec-
 27 retary or Administrator only if the objection was made in the proceeding
 28 conducted by the Secretary or Administrator or if there was a reasonable
 29 ground for not making the objection in the proceeding.

30 (e) SUPREME COURT REVIEW.—A decision by a court under this section
 31 may be reviewed only by the Supreme Court under section 1254 of title 28.

32 **CHAPTER 463—PENALTIES**

Sec.

- 46301. Civil penalties.
- 46302. False information.
- 46303. Carrying a weapon.
- 46304. Liens on aircraft.
- 46305. Actions to recover civil penalties.
- 46306. Registration violations involving aircraft not providing air transportation.
- 46307. Violation of national defense airspace.
- 46308. Interference with air navigation.
- 46309. Concession and price violations.
- 46310. Reporting and recordkeeping violations.
- 46311. Unlawful disclosure of information.
- 46312. Transporting hazardous material.
- 46313. Refusing to appear or produce records.
- 46314. Entering aircraft or airport area in violation of security requirements.

46315. Lighting violations involving transporting controlled substances by aircraft not providing air transportation.

46316. General criminal penalty when specific penalty not provided.

1 **§ 46301. Civil penalties**

2 (a) GENERAL PENALTY.—(1) A person is liable to the United States Gov-
3 ernment for a civil penalty of not more than \$1,000 for violating—

4 (A) chapter 401 (except sections 40103(a) and (d), 40105, 40116,
5 and 40117), chapter 411, section 41301–41306, 41308–41310(a),
6 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–
7 41709, 41711, 41712, or 41731–41742, chapter 419, subchapter II of
8 chapter 421, chapter 441 (except section 44109), or section 44701(a)
9 or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906,
10 44907(d)(1)(B), 44909(a), 44912–44915, 44932–44938, 46302, or
11 46303 of this title;

12 (B) a regulation prescribed or order issued under any provision to
13 which clause (A) of this paragraph applies;

14 (C) any term of a certificate or permit issued under section 41102,
15 41103, or 41302 of this title; or

16 (D) a regulation of the United States Postal Service under this part.

17 (2) A person operating an aircraft for the transportation of passengers
18 or property for compensation (except an airman serving as an airman) is
19 liable to the Government for a civil penalty of not more than \$10,000 for
20 violating—

21 (A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b),
22 40116, and 40117) or section 44701(a) or (b), 44702–44716, 44901,
23 44903(b) or (c), 44905, 44906, 44912–44915, or 44932–44938 of this
24 title; or

25 (B) a regulation prescribed or order issued under any provision to
26 which clause (A) of this paragraph applies.

27 (3) A civil penalty of not more than \$10,000 may be imposed for each
28 violation under paragraph (1) of this subsection related to—

29 (A) the transportation of hazardous material; or

30 (B) the registration or recordation under chapter 441 of this title of
31 an aircraft not used to provide air transportation.

32 (4) A separate violation occurs under this subsection for each day the vio-
33 lation continues or, if applicable, for each flight involving the violation.

34 (b) SMOKE ALARM DEVICE PENALTY.—(1) A passenger may not tamper
35 with, disable, or destroy a smoke alarm device located in a lavatory on an
36 aircraft providing air transportation or intrastate air transportation.

37 (2) An individual violating this subsection is liable to the Government for
38 a civil penalty of not more than \$2,000.

1 (c) PROCEDURAL REQUIREMENTS.—(1) The Secretary of Transportation
2 may impose a civil penalty for the following violations only after notice and
3 an opportunity for a hearing:

4 (A) a violation of subsection (b) of this section or chapter 411, sec-
5 tion 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506,
6 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–
7 41742, chapter 419, or subchapter II of chapter 421 of this title.

8 (B) a violation of a regulation prescribed or order issued under any
9 provision to which clause (A) of this paragraph applies.

10 (C) a violation of any term of a certificate or permit issued under
11 section 41102, 41103, or 41302 of this title.

12 (D) a violation under subsection (a)(1) of this section related to the
13 transportation of hazardous material.

14 (2) The Secretary shall give written notice of the finding of a violation
15 and the civil penalty under paragraph (1) of this subsection.

16 (d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—(1) In this sub-
17 section—

18 (A) “flight engineer” means an individual who holds a flight engi-
19 neer certificate issued under part 63 of title 14, Code of Federal Regu-
20 lations.

21 (B) “mechanic” means an individual who holds a mechanic certifi-
22 cate issued under part 65 of title 14, Code of Federal Regulations.

23 (C) “pilot” means an individual who holds a pilot certificate issued
24 under part 61 of title 14, Code of Federal Regulations.

25 (D) “repairman” means an individual who holds a repairman certifi-
26 cate issued under part 65 of title 14, Code of Federal Regulations.

27 (2) The Administrator of the Federal Aviation Administration may im-
28 pose a civil penalty for a violation of chapter 401 (except sections 40103(a)
29 and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section
30 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c),
31 44905, 44906, 44907(d)(1)(B), 44912–44915, 44932–44938, 46302, or
32 46303 of this title or a regulation prescribed or order issued under any of
33 those provisions. The Administrator shall give written notice of the finding
34 of a violation and the penalty.

35 (3) In a civil action to collect a civil penalty imposed by the Administrator
36 under this subsection, the issues of liability and the amount of the penalty
37 may not be reexamined.

38 (4) Notwithstanding paragraph (2) of this subsection, the district courts
39 of the United States have exclusive jurisdiction of a civil action involving
40 a penalty the Administrator initiates if—

41 (A) the amount in controversy is more than \$50,000;

1 (B) the action is in rem or another action in rem based on the same
2 violation has been brought;

3 (C) the action involves an aircraft subject to a lien that has been
4 seized by the Government; or

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

7 (5)(A) The Administrator may issue an order imposing a penalty under
8 this subsection against an individual acting as a pilot, flight engineer, me-
9 chanic, or repairman only after advising the individual of the charges or any
10 reason the Administrator relied on for the proposed penalty and providing
11 the individual an opportunity to answer the charges and be heard about why
12 the order shall not be issued.

13 (B) An individual acting as a pilot, flight engineer, mechanic, or repair-
14 man may appeal an order imposing a penalty under this subsection to the
15 National Transportation Safety Board. After notice and an opportunity for
16 a hearing on the record, the Board shall affirm, modify, or reverse the
17 order. The Board may modify a civil penalty imposed to a suspension or
18 revocation of a certificate.

19 (C) When conducting a hearing under this paragraph, the Board is not
20 bound by findings of fact of the Administrator but is bound by all validly
21 adopted interpretations of laws and regulations the Administrator carries
22 out and of written agency policy guidance available to the public related to
23 sanctions to be imposed under this section unless the Board finds an inter-
24 pretation is arbitrary, capricious, or otherwise not according to law.

25 (D) When an individual files an appeal with the Board under this para-
26 graph, the order of the Administrator is stayed.

27 (6) An individual substantially affected by an order of the Board under
28 paragraph (5) of this subsection, or the Administrator when the Adminis-
29 trator decides that an order of the Board under paragraph (5) will have a
30 significant adverse impact on carrying out this part, may obtain judicial re-
31 view of the order under section 46110 of this title. The Administrator shall
32 be made a party to the judicial review proceedings. Findings of fact of the
33 Board are conclusive if supported by substantial evidence.

34 (7)(A) The Administrator may impose a penalty on an individual (except
35 an individual acting as a pilot, flight engineer, mechanic, or repairman) only
36 after notice and an opportunity for a hearing on the record.

37 (B) In an appeal from a decision of an administrative law judge as the
38 result of a hearing under subparagraph (A) of this paragraph, the Adminis-
39 trator shall consider only whether—

40 (i) each finding of fact is supported by a preponderance of reliable,
41 probative, and substantial evidence;

1 (ii) each conclusion of law is made according to applicable law, prece-
2 dent, and public policy; and

3 (iii) the judge committed a prejudicial error that supports the ap-
4 peal.

5 (C) Except for good cause, a civil action involving a penalty under this
6 paragraph may not be initiated later than 2 years after the violation occurs.

7 (8) The maximum civil penalty the Administrator or Board may impose
8 under this subsection is \$50,000.

9 (9) This subsection applies only to a violation occurring after August 25,
10 1992.

11 (e) PENALTY CONSIDERATIONS.—In determining the amount of a civil
12 penalty under subsection (a)(3) of this section related to transportation of
13 hazardous material, the Secretary shall consider—

14 (1) the nature, circumstances, extent, and gravity of the violation;

15 (2) with respect to the violator, the degree of culpability, any history
16 of prior violations, the ability to pay, and any effect on the ability to
17 continue doing business; and

18 (3) other matters that justice requires.

19 (f) COMPROMISE AND SETOFF.—(1)(A) The Secretary may compromise
20 the amount of a civil penalty imposed for violating—

21 (i) chapter 401 (except sections 40103(a) and (d), 40105, 40116,
22 and 40117), chapter 441 (except section 44109), or section 44701(a)
23 or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906,
24 44907(d)(1)(B), 44912–44915, or 44932–44938 of this title; or

25 (ii) a regulation prescribed or order issued under any provision to
26 which clause (i) of this subparagraph applies.

27 (B) The Postal Service may compromise the amount of a civil penalty im-
28 posed under subsection (a)(1)(D) of this section.

29 (2) The Government may deduct the amount of a civil penalty imposed
30 or compromised under this subsection from amounts it owes the person lia-
31 ble for the penalty.

32 (g) JUDICIAL REVIEW.—An order of the Secretary imposing a civil pen-
33 alty may be reviewed judicially only under section 46110 of this title.

34 (h) NONAPPLICATION.—(1) This section does not apply to the following
35 when performing official duties:

36 (A) a member of the armed forces of the United States.

37 (B) a civilian employee of the Department of Defense subject to the
38 Uniform Code of Military Justice.

39 (2) The appropriate military authority is responsible for taking necessary
40 disciplinary action and submitting to the Secretary (or the Administrator

1 with respect to aviation safety duties and powers designated to be carried
2 out by the Administrator) a timely report on action taken.

3 **§ 46302. False information**

4 (a) CIVIL PENALTY.—A person that, knowing the information to be false,
5 gives, or causes to be given, under circumstances in which the information
6 reasonably may be believed, false information about an alleged attempt
7 being made or to be made to do an act that would violate section 46502(a),
8 46504, 46505, or 46506 of this title, is liable to the United States Govern-
9 ment for a civil penalty of not more than \$10,000 for each violation.

10 (b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation
11 may compromise the amount of a civil penalty imposed under subsection (a)
12 of this section.

13 (2) The Government may deduct the amount of a civil penalty imposed
14 or compromised under this section from amounts it owes the person liable
15 for the penalty.

16 **§ 46303. Carrying a weapon**

17 (a) CIVIL PENALTY.—An individual who, when on, or attempting to
18 board, an aircraft in, or intended for operation in, air transportation or
19 intrastate air transportation, has on or about the individual or the property
20 of the individual a concealed dangerous weapon that is or would be acces-
21 sible to the individual in flight is liable to the United States Government
22 for a civil penalty of not more than \$10,000 for each violation.

23 (b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation
24 may compromise the amount of a civil penalty imposed under subsection (a)
25 of this section.

26 (2) The Government may deduct the amount of a civil penalty imposed
27 or compromised under this section from amounts it owes the individual lia-
28 ble for the penalty.

29 (c) NONAPPLICATION.—This section does not apply to—

30 (1) a law enforcement officer of a State or political subdivision of
31 a State, or an officer or employee of the Government, authorized to
32 carry arms in an official capacity; or

33 (2) another individual the Administrator of the Federal Aviation Ad-
34 ministration by regulation authorizes to carry arms in an official capac-
35 ity.

36 **§ 46304. Liens on aircraft**

37 (a) AIRCRAFT SUBJECT TO LIENS.—When an aircraft is involved in a
38 violation referred to in section 46301(a)(1)(A)–(C), (2), or (3) of this title
39 and the violation is by the owner of, or individual commanding, the aircraft,
40 the aircraft is subject to a lien for the civil penalty.

1 (b) SEIZURE.—An aircraft subject to a lien under this section may be
2 seized summarily and placed in the custody of a person authorized to take
3 custody of it under regulations of the Secretary of Transportation (or the
4 Administrator of the Federal Aviation Administration with respect to avia-
5 tion safety duties and powers designated to be carried out by the Adminis-
6 trator). A report on the seizure shall be submitted to the Attorney General.
7 The Attorney General promptly shall bring a civil action in rem to enforce
8 the lien or notify the Secretary or Administrator that the action will not
9 be brought.

10 (c) RELEASE.—An aircraft seized under subsection (b) of this section
11 shall be released from custody when—

12 (1) the civil penalty is paid;

13 (2) a compromise amount agreed on is paid;

14 (3) the aircraft is seized under a civil action in rem to enforce the
15 lien;

16 (4) the Attorney General gives notice that a civil action will not be
17 brought under subsection (b) of this section; or

18 (5) a bond (in an amount and with a surety the Secretary or Admin-
19 istrator prescribes), conditioned on payment of the penalty or com-
20 promise, is deposited with the Secretary or Administrator.

21 **§ 46305. Actions to recover civil penalties**

22 A civil penalty under this chapter may be collected by bringing a civil ac-
23 tion against the person subject to the penalty, a civil action in rem against
24 an aircraft subject to a lien for a penalty, or both. The action shall conform
25 as nearly as practicable to a civil action in admiralty, regardless of the place
26 an aircraft in a civil action in rem is seized. However, a party may demand
27 a jury trial of an issue of fact in an action involving a civil penalty under
28 this chapter (except a penalty imposed by the Secretary of Transportation
29 that formerly was imposed by the Civil Aeronautics Board) if the value of
30 the matter in controversy is more than \$20. Issues of fact tried by a jury
31 may be reexamined only under common law rules.

32 **§ 46306. Registration violations involving aircraft not pro-
33 viding air transportation**

34 (a) APPLICATION.—This section applies only to aircraft not used to pro-
35 vide air transportation.

36 (b) GENERAL CRIMINAL PENALTY.—Except as provided by subsection (c)
37 of this section, a person shall be fined under title 18, imprisoned for not
38 more than 3 years, or both, if the person—

39 (1) knowingly and willfully forges or alters a certificate authorized
40 to be issued under this part;

1 (2) knowingly sells, uses, attempts to use, or possesses with the in-
2 tent to use, such a certificate;

3 (3) knowingly and willfully displays or causes to be displayed on an
4 aircraft a mark that is false or misleading about the nationality or reg-
5 istration of the aircraft;

6 (4) obtains a certificate authorized to be issued under this part by
7 knowingly and willfully falsifying or concealing a material fact, making
8 a false, fictitious, or fraudulent statement, or making or using a false
9 document knowing it contains a false, fictitious, or fraudulent state-
10 ment or entry;

11 (5) owns an aircraft eligible for registration under section 44102 of
12 this title and knowingly and willfully operates, attempts to operate, or
13 allows another person to operate the aircraft when—

14 (A) the aircraft is not registered under section 44103 of this
15 title or the certificate of registration is suspended or revoked; or

16 (B) the owner knows or has reason to know that the other per-
17 son does not have proper authorization to operate or navigate the
18 aircraft without registration for a period of time after transfer of
19 ownership;

20 (6) knowingly and willfully operates or attempts to operate an air-
21 craft eligible for registration under section 44102 of this title knowing
22 that—

23 (A) the aircraft is not registered under section 44103 of this
24 title;

25 (B) the certificate of registration is suspended or revoked; or

26 (C) the person does not have proper authorization to operate or
27 navigate the aircraft without registration for a period of time after
28 transfer of ownership;

29 (7) knowingly and willfully serves or attempts to serve in any capac-
30 ity as an airman without an airman's certificate authorizing the indi-
31 vidual to serve in that capacity;

32 (8) knowingly and willfully employs for service or uses in any capac-
33 ity as an airman an individual who does not have an airman's certifi-
34 cate authorizing the individual to serve in that capacity; or

35 (9) operates an aircraft with a fuel tank or fuel system that has been
36 installed or modified knowing that the tank, system, installation, or
37 modification does not comply with regulations and requirements of the
38 Administrator of the Federal Aviation Administration.

39 (c) CONTROLLED SUBSTANCE CRIMINAL PENALTY.—(1) In this sub-
40 section, "controlled substance" has the same meaning given that term in

1 section 102 of the Comprehensive Drug Abuse Prevention and Control Act
2 of 1970 (21 U.S.C. 802).

3 (2) A person violating subsection (b) of this section shall be fined under
4 title 18, imprisoned for not more than 5 years, or both, if the violation is
5 related to transporting a controlled substance by aircraft or aiding or facili-
6 tating a controlled substance violation and the transporting, aiding, or facili-
7 tating—

8 (A) is punishable by death or imprisonment of more than one year
9 under a law of the United States or a State; or

10 (B) provided is related to an act punishable by death or imprison-
11 ment for more than one year under a law of the United States or a
12 State related to a controlled substance (except a law related to simple
13 possession of a controlled substance).

14 (3) A term of imprisonment imposed under paragraph (2) of this sub-
15 section shall be served in addition to, and not concurrently with, any other
16 term of imprisonment imposed on the individual.

17 (d) SEIZURE AND FORFEITURE.—(1) The Administrator of Drug En-
18 forcement or the Commissioner of Customs may seize and forfeit under the
19 customs laws an aircraft whose use is related to a violation of subsection
20 (b) of this section, or to aid or facilitate a violation, regardless of whether
21 a person is charged with the violation.

22 (2) An aircraft's use is presumed to have been related to a violation of,
23 or to aid or facilitate a violation of—

24 (A) subsection (b)(1) of this section if the aircraft certificate of reg-
25 istration has been forged or altered;

26 (B) subsection (b)(3) of this section if there is an external display
27 of false or misleading registration numbers or country of registration;

28 (C) subsection (b)(4) of this section if—

29 (i) the aircraft is registered to a false or fictitious person; or

30 (ii) the application form used to obtain the aircraft certificate
31 of registration contains a material false statement;

32 (D) subsection (b)(5) of this section if the aircraft was operated
33 when it was not registered under section 44103 of this title; or

34 (E) subsection (b)(9) of this section if the aircraft has a fuel tank
35 or fuel system that was installed or altered—

36 (i) in violation of a regulation or requirement of the Adminis-
37 trator of the Federal Aviation Administration; or

38 (ii) if a certificate required to be issued for the installation or
39 alteration is not carried on the aircraft.

40 (3) The Administrator of the Federal Aviation Administration, the Ad-
41 ministrator of Drug Enforcement, and the Commissioner shall agree to a

1 memorandum of understanding to establish procedures to carry out this
2 subsection.

3 (e) RELATIONSHIP TO STATE LAWS.—This part does not prevent a State
4 from establishing a criminal penalty, including providing for forfeiture and
5 seizure of aircraft, for a person that—

6 (1) knowingly and willfully forges or alters an aircraft certificate of
7 registration;

8 (2) knowingly sells, uses, attempts to use, or possesses with the in-
9 tent to use, a fraudulent aircraft certificate of registration;

10 (3) knowingly and willfully displays or causes to be displayed on an
11 aircraft a mark that is false or misleading about the nationality or reg-
12 istration of the aircraft; or

13 (4) obtains an aircraft certificate of registration from the Adminis-
14 trator of the Federal Aviation Administration by—

15 (A) knowingly and willfully falsifying or concealing a material
16 fact;

17 (B) making a false, fictitious, or fraudulent statement; or

18 (C) making or using a false document knowing it contains a
19 false, fictitious, or fraudulent statement or entry.

20 **§ 46307. Violation of national defense airspace**

21 A person that knowingly or willfully violates section 40103(b)(3) of this
22 title or a regulation prescribed or order issued under section 40103(b)(3)
23 shall be fined under title 18, imprisoned for not more than one year, or
24 both.

25 **§ 46308. Interference with air navigation**

26 A person shall be fined under title 18, imprisoned for not more than 5
27 years, or both, if the person—

28 (1) with intent to interfere with air navigation in the United States,
29 exhibits in the United States a light or signal at a place or in a way
30 likely to be mistaken for a true light or signal established under this
31 part or for a true light or signal used at an air navigation facility;

32 (2) after a warning from the Administrator of the Federal Aviation
33 Administration, continues to maintain a misleading light or signal; or

34 (3) knowingly interferes with the operation of a true light or signal.

35 **§ 46309. Concession and price violations**

36 (a) CRIMINAL PENALTY FOR OFFERING, GRANTING, GIVING, OR HELP-
37 ING TO OBTAIN CONCESSIONS AND LOWER PRICES.—An air carrier, for-
38 eign air carrier, ticket agent, or officer, agent, or employee of an air carrier,
39 foreign air carrier, or ticket agent shall be fined under title 18 if the air
40 carrier, foreign air carrier, ticket agent, officer, agent, or employee—

1 (1) knowingly and willfully offers, grants, or gives, or causes to be
2 offered, granted, or given, a rebate or other concession in violation of
3 this part; or

4 (2) by any means knowingly and willfully assists, or willingly allows,
5 a person to obtain transportation or services subject to this part at less
6 than the price lawfully in effect.

7 (b) CRIMINAL PENALTY FOR RECEIVING REBATES, PRIVILEGES, AND FA-
8 CILITIES.—A person shall be fined under title 18 if the person by any
9 means—

10 (1) knowingly and willfully solicits, accepts, or receives a rebate of
11 a part of a price lawfully in effect for the foreign air transportation
12 of property, or a service related to the foreign air transportation; or

13 (2) knowingly solicits, accepts, or receives a privilege or facility relat-
14 ed to a matter the Secretary of Transportation requires be specified in
15 a currently effective tariff applicable to the foreign air transportation
16 of property.

17 **§ 46310. Reporting and recordkeeping violations**

18 (a) GENERAL CRIMINAL PENALTY.—An air carrier or an officer, agent,
19 or employee of an air carrier shall be fined under title 18 for intentionally—

20 (1) failing to make a report or keep a record under this part;

21 (2) falsifying, mutilating, or altering a report or record under this
22 part; or

23 (3) filing a false report or record under this part.

24 (b) SAFETY REGULATION CRIMINAL PENALTY.—An air carrier or an offi-
25 cer, agent, or employee of an air carrier shall be fined under title 18, im-
26 prisoned for not more than 5 years, or both, for intentionally falsifying or
27 concealing a material fact, or inducing reliance on a false statement of ma-
28 terial fact, in a report or record under section 44701(a) or (b) or 44702-
29 44716 of this title.

30 **§ 46311. Unlawful disclosure of information**

31 (a) CRIMINAL PENALTY.—The Secretary of Transportation, the Adminis-
32 trator of the Federal Aviation Administration with respect to aviation safety
33 duties and powers designated to be carried out by the Administrator, or an
34 officer or employee of the Secretary or Administrator shall be fined under
35 title 18, imprisoned for not more than 2 years, or both, if the Secretary,
36 Administrator, officer, or employee knowingly and willfully discloses infor-
37 mation that—

38 (1) the Secretary, Administrator, officer, or employee acquires when
39 inspecting the records of an air carrier; or

40 (2) is withheld from public disclosure under section 40115 of this
41 title.

1 (b) NONAPPLICATION.—Subsection (a) of this section does not apply if—

2 (1) the officer or employee is directed by the Secretary or Adminis-
3 trator to disclose information that the Secretary or Administrator had
4 ordered withheld; or

5 (2) the Secretary, Administrator, officer, or employee is directed by
6 a court of competent jurisdiction to disclose the information.

7 (c) WITHHOLDING INFORMATION FROM CONGRESS.—This section does
8 not authorize the Secretary or Administrator to withhold information from
9 a committee of Congress authorized to have the information.

10 **§ 46312. Transporting hazardous material**

11 A person shall be fined under title 18, imprisoned for not more than 5
12 years, or both, if the person, in violation of a regulation or requirement re-
13 lated to the transportation of hazardous material prescribed by the Sec-
14 retary of Transportation under this part—

15 (1) willfully delivers, or causes to be delivered, property containing
16 hazardous material to an air carrier or to an operator of a civil aircraft
17 for transportation in air commerce; or

18 (2) recklessly causes the transportation in air commerce of the prop-
19 erty.

20 **§ 46313. Refusing to appear or produce records**

21 A person not obeying a subpoena or requirement of the Secretary of
22 Transportation (or the Administrator of the Federal Aviation Administra-
23 tion with respect to aviation safety duties and powers designated to be car-
24 ried out by the Administrator) to appear and testify or produce records
25 shall be fined under title 18, imprisoned for not more than one year, or
26 both.

27 **§ 46314. Entering aircraft or airport area in violation of se-**
28 **curity requirements**

29 (a) PROHIBITION.—A person may not knowingly and willfully enter, in
30 violation of security requirements prescribed under section 44901, 44903(b)
31 or (c), or 44906 of this title, an aircraft or an airport area that serves an
32 air carrier or foreign air carrier.

33 (b) CRIMINAL PENALTY.—(1) A person violating subsection (a) of this
34 section shall be fined under title 18, imprisoned for not more than one year,
35 or both.

36 (2) A person violating subsection (a) of this section with intent to com-
37 mit, in the aircraft or airport area, a felony under a law of the United
38 States or a State shall be fined under title 18, imprisoned for not more than
39 10 years, or both.

1 **§46315. Lighting violations involving transporting con-**
 2 **trolled substances by aircraft not providing air**
 3 **transportation**

4 (a) APPLICATION.—This section applies only to aircraft not used to pro-
 5 vide air transportation.

6 (b) CRIMINAL PENALTY.—A person shall be fined under title 18, impris-
 7 oned for not more than 5 years, or both, if—

8 (1) the person knowingly and willfully operates an aircraft in viola-
 9 tion of a regulation or requirement of the Administrator of the Federal
 10 Aviation Administration related to the display of navigation or anti-
 11 collision lights;

12 (2) the person is knowingly transporting a controlled substance by
 13 aircraft or aiding or facilitating a controlled substance offense; and

14 (3) the transporting, aiding, or facilitating—

15 (A) is punishable by death or imprisonment for more than one
 16 year under a law of the United States or a State; or

17 (B) is provided in connection with an act punishable by death
 18 or imprisonment for more than one year under a law of the United
 19 States or a State related to a controlled substance (except a law
 20 related to simple possession of a controlled substance).

21 **§46316. General criminal penalty when specific penalty not**
 22 **provided**

23 (a) CRIMINAL PENALTY.—Except as provided by subsection (b) of this
 24 section, when another criminal penalty is not provided under this chapter,
 25 a person that knowingly and willfully violates this part, a regulation pre-
 26 scribed or order issued by the Secretary of Transportation (or the Adminis-
 27 trator of the Federal Aviation Administration with respect to aviation safety
 28 duties and powers designated to be carried out by the Administrator) under
 29 this part, or any term of a certificate or permit issued under section 41102,
 30 41103, or 41302 of this title shall be fined under title 18. A separate viola-
 31 tion occurs for each day the violation continues.

32 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to
 33 chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117),
 34 chapter 441 (except section 44109), chapter 445, and sections 44701(a) and
 35 (b), 44702–44716, 44901, 44903(b) and (c), 44905, 44906, 44912–44915,
 36 and 44932–44938 of this title.

37 **CHAPTER 465—SPECIAL AIRCRAFT JURISDICTION OF**
 38 **THE UNITED STATES**

Sec.

46501. Definitions.

46502. Aircraft piracy.

46503. Death penalty sentencing procedure for aircraft piracy.

46504. Interference with flight crew members and attendants.

46505. Carrying a weapon or explosive on an aircraft.
46506. Application of certain criminal laws to acts on aircraft.
46507. False information and threats.

1 **§ 46501. Definitions**

2 In this chapter—

3 (1) “aircraft in flight” means an aircraft from the moment all exter-
4 nal doors are closed following boarding—

5 (A) through the moment when one external door is opened to
6 allow passengers to leave the aircraft; or

7 (B) until, if a forced landing, competent authorities take over
8 responsibility for the aircraft and individuals and property on the
9 aircraft.

10 (2) “special aircraft jurisdiction of the United States” includes any
11 of the following aircraft in flight:

12 (A) a civil aircraft of the United States.

13 (B) an aircraft of the armed forces of the United States.

14 (C) another aircraft in the United States.

15 (D) another aircraft outside the United States—

16 (i) that has its next scheduled destination or last place of
17 departure in the United States, if the aircraft next lands in
18 the United States;

19 (ii) on which an individual commits an offense (as defined
20 in the Convention for the Suppression of Unlawful Seizure of
21 Aircraft) if the aircraft lands in the United States with the
22 individual still on the aircraft; or

23 (iii) against which an individual commits an offense (as de-
24 fined in subsection (d) or (e) of article I, section I of the Con-
25 vention for the Suppression of Unlawful Acts against the
26 Safety of Civil Aviation) if the aircraft lands in the United
27 States with the individual still on the aircraft.

28 (E) any other aircraft leased without crew to a lessee whose
29 principal place of business is in the United States or, if the lessee
30 does not have a principal place of business, whose permanent resi-
31 dence is in the United States.

32 (3) an individual commits an offense (as defined in the Convention
33 for the Suppression of Unlawful Seizure of Aircraft) when the individ-
34 ual, when on an aircraft in flight—

35 (A) by any form of intimidation, unlawfully seizes, exercises
36 control of, or attempts to seize or exercise control of, the aircraft;
37 or

38 (B) is an accomplice of an individual referred to in subclause
39 (A) of this clause.

1 **§ 46502. Aircraft piracy**

2 (a) IN SPECIAL AIRCRAFT JURISDICTION.—(1) In this subsection—

3 (A) “aircraft piracy” means seizing or exercising control of an air-
4 craft in the special aircraft jurisdiction of the United States by force,
5 violence, threat of force or violence, or any form of intimidation, and
6 with wrongful intent.

7 (B) an attempt to commit aircraft piracy is in the special aircraft
8 jurisdiction of the United States although the aircraft is not in flight
9 at the time of the attempt if the aircraft would have been in the special
10 aircraft jurisdiction of the United States had the aircraft piracy been
11 completed.

12 (2) An individual committing or attempting to commit aircraft piracy—

13 (A) shall be imprisoned for at least 20 years; or

14 (B) if the death of another individual results from the commission
15 or attempt, shall be put to death or imprisoned for life.

16 (b) OUTSIDE SPECIAL AIRCRAFT JURISDICTION.—(1) An individual com-
17 mitting an offense (as defined in the Convention for the Suppression of Un-
18 lawful Seizure of Aircraft) on an aircraft in flight outside the special air-
19 craft jurisdiction of the United States and later found in the United
20 States—

21 (A) shall be imprisoned for at least 20 years; or

22 (B) if the death of another individual results from the commission
23 or attempt, shall be put to death or imprisoned for life.

24 (2) This subsection applies only if the place of takeoff or landing of the
25 aircraft on which the individual commits the offense is located outside the
26 territory of the country of registration of the aircraft.

27 **§ 46503. Death penalty sentencing procedure for aircraft pi-**
28 **racy**

29 (a) GOVERNMENT STIPULATIONS.—An individual convicted of violating
30 section 46502 of this title may not be sentenced to death if the United
31 States Government stipulates that at least one of the mitigating factors
32 specified in subsection (c)(1) of this section exists or none of the aggravat-
33 ing factors specified in subsection (c)(2) of this section exists. If the Gov-
34 ernment does not stipulate, the judge presiding at the trial or accepting the
35 guilty plea of the individual shall hold a separate hearing to decide on the
36 punishment to be imposed.

37 (b) PUNISHMENT HEARINGS.—(1) The hearing under this section shall
38 be conducted—

39 (A) before the jury that found the defendant guilty;

40 (B) before a jury impaneled for the hearing when—

41 (i) the defendant was convicted by a guilty plea;

1 (ii) the defendant was convicted by a judge without a jury; or
2 (iii) the jury finding the defendant guilty was discharged by the
3 judge for good cause; or

4 (C) before the judge, on motion of the defendant and with the ap-
5 proval of the judge and the Government.

6 (2) At the hearing, the judge shall disclose to the defendant or counsel
7 for the defendant all material contained in any presentence report, except
8 material the judge decides is required to be withheld to protect human life
9 or national security. Presentence information withheld from the defendant
10 may not be considered in deciding whether the factors specified in sub-
11 section (c) of this section exist.

12 (3) Information relevant to the mitigating factors specified in subsection
13 (c)(1) of this section may be presented by the Government or the defendant
14 without regard to the rules governing the admissibility of evidence at crimi-
15 nal trials. The burden of establishing the existence of a mitigating factor
16 specified in subsection (c)(1) is on the defendant.

17 (4) Information relevant to the aggravating factors specified in subsection
18 (c)(2) of this section is admissible only under rules governing the admissibil-
19 ity of evidence at criminal trials. The burden of establishing the existence
20 of an aggravating factor specified in subsection (c)(2) is on the Government.

21 (5) The Government and the defendant may rebut information presented
22 at the hearing. They shall be given an opportunity to present arguments on
23 the adequacy of the information to establish the existence of the factors
24 specified in subsection (c) of this section.

25 (c) MITIGATING AND AGGRAVATING FACTORS.—(1) The judge may not
26 impose the death penalty on a defendant if the jury or, if there is no jury,
27 the judge finds under this section that at the time of the violation of section
28 46502 of this title—

29 (A) the defendant was not yet 18 years of age;

30 (B) the capacity of the defendant to appreciate the wrongfulness of
31 the defendant's conduct or to conform the defendant's conduct to the
32 requirements of law was impaired significantly, but the capacity was
33 not impaired sufficiently to be a defense to prosecution;

34 (C) the defendant was under unusual and substantial duress, but the
35 duress was not sufficient to be a defense to prosecution;

36 (D) the defendant was a principal (as defined in section 2(a) of title
37 18) in a violation committed by another individual, but the participa-
38 tion of the defendant was relatively minor, although not sufficiently
39 minor to be a defense to prosecution; or

1 (E) the defendant reasonably could not have foreseen that the con-
2 duct of the defendant in the violation would cause or create a grave
3 risk of causing death to another individual.

4 (2) If none of the factors specified in paragraph (1) of this subsection
5 exists, the judge shall impose the death penalty on the defendant if the jury
6 or, if there is no jury, the judge finds under this section that—

7 (A) the death of another individual resulted from the violation after
8 the defendant had seized or exercised control of the aircraft; or

9 (B) the death of another individual resulted from the violation and—

10 (i) the defendant has been convicted of another United States
11 or State offense (committed before or at the time of the violation)
12 for which punishment of life imprisonment or death could be
13 imposed;

14 (ii) the defendant has been convicted of at least 2 United States
15 or State offenses with a penalty of more than one year of impris-
16 onment (committed on different occasions before the time of the
17 violation) that involved inflicting serious bodily injury on another
18 individual;

19 (iii) in committing the violation, the defendant knowingly cre-
20 ated a grave risk of death to an individual in addition to the indi-
21 vidual whose death resulted from the violation; or

22 (iv) the defendant committed the violation in an especially hei-
23 nous, cruel, or depraved manner.

24 (d) DEATH PENALTY REQUIREMENTS.—(1) If the jury or, if there is no
25 jury, the judge finds by a preponderance of the information that none of
26 the mitigating factors specified in subsection (c)(1) of this section exists and
27 that at least one of the aggravating factors specified in subsection (c)(2)
28 of this section exists, the judge shall impose the death penalty on the de-
29 fendant. If the jury or judge finds that at least one of the mitigating factors
30 specified in subsection (c)(1) exists, or that none of the aggravating factors
31 specified in subsection (c)(2) exists, the judge may not impose the death
32 penalty on the defendant but shall impose another penalty provided for the
33 defendant's violation of section 46502 of this title.

34 (2) The jury or, if there is no jury, the judge shall return a special verdict
35 containing findings on whether each of the factors specified in subsection
36 (c) of this section exists.

37 **§ 46504. Interference with flight crew members and attend-**
38 **ants**

39 An individual on an aircraft in the special aircraft jurisdiction of the
40 United States who, by assaulting or intimidating a flight crew member or
41 flight attendant of the aircraft, interferes with the performance of the duties

1 of the member or attendant or lessens the ability of the member or attend-
2 ant to perform those duties, shall be fined under title 18, imprisoned for
3 not more than 20 years, or both. However, if a dangerous weapon is used
4 in assaulting or intimidating the member or attendant, the individual shall
5 be imprisoned for any term of years or for life.

6 **§ 46505. Carrying a weapon or explosive on an aircraft**

7 (a) DEFINITION.—In this section, “loaded firearm” means a starter gun
8 or a weapon designed or converted to expel a projectile through an explosive,
9 that has a cartridge, a detonator, or powder in the chamber, magazine, cyl-
10 inder, or clip.

11 (b) GENERAL CRIMINAL PENALTY.—An individual shall be fined under
12 title 18, imprisoned for not more than one year, or both, if the individual—

13 (1) when on, or attempting to get on, an aircraft in, or intended for
14 operation in, air transportation or intrastate air transportation, has on
15 or about the individual or the property of the individual a concealed
16 dangerous weapon that is or would be accessible to the individual in
17 flight;

18 (2) has placed, attempted to place, or attempted to have placed a
19 loaded firearm on that aircraft in property not accessible to passengers
20 in flight; or

21 (3) has on or about the individual, or has placed, attempted to place,
22 or attempted to have placed on that aircraft, an explosive or incendiary
23 device.

24 (c) CRIMINAL PENALTY INVOLVING DISREGARD FOR HUMAN LIFE.—An
25 individual who willfully and without regard for the safety of human life, or
26 with reckless disregard for the safety of human life, violates subsection (b)
27 of this section, shall be fined under title 18, imprisoned for not more than
28 5 years, or both.

29 (d) NONAPPLICATION.—Subsection (b)(1) of this section does not apply
30 to—

31 (1) a law enforcement officer of a State or political subdivision of
32 a State, or an officer or employee of the United States Government,
33 authorized to carry arms in an official capacity;

34 (2) another individual the Administrator of the Federal Aviation Ad-
35 ministration by regulation authorizes to carry a dangerous weapon in
36 air transportation or intrastate air transportation; or

37 (3) an individual transporting a weapon (except a loaded firearm) in
38 baggage not accessible to a passenger in flight if the air carrier was
39 informed of the presence of the weapon.

1 **§ 46506. Application of certain criminal laws to acts on air-**
 2 **craft**

3 An individual on an aircraft in the special aircraft jurisdiction of the
 4 United States who commits an act that—

5 (1) if committed in the special maritime and territorial jurisdiction
 6 of the United States (as defined in section 7 of title 18) would violate
 7 section 113, 114, 661, 662, 1111, 1112, 1113, or 2111 or chapter
 8 109A of title 18, shall be fined under title 18, imprisoned under that
 9 section or chapter, or both; or

10 (2) if committed in the District of Columbia would violate section 9
 11 of the Act of July 29, 1892 (D.C. Code §22-1112), shall be fined
 12 under title 18, imprisoned under section 9 of the Act, or both.

13 **§ 46507. False information and threats**

14 An individual shall be fined under title 18, imprisoned for not more than
 15 5 years, or both, if the individual—

16 (1) knowing the information to be false, willfully and maliciously or
 17 with reckless disregard for the safety of human life, gives, or causes
 18 to be given, under circumstances in which the information reasonably
 19 may be believed, false information about an alleged attempt being made
 20 or to be made to do an act that would violate section 46502(a), 46504,
 21 46505, or 46506 of this title; or

22 (2)(A) threatens to violate section 46502(a), 46504, 46505, or
 23 46506 of this title, or causes a threat to violate any of those sections
 24 to be made; and

25 (B) has the apparent determination and will to carry out the threat.

26 **PART B—AIRPORT DEVELOPMENT AND NOISE**

27 **CHAPTER 471—AIRPORT DEVELOPMENT**

SUBCHAPTER I—AIRPORT IMPROVEMENT

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SUBCHAPTER I—AIRPORT IMPROVEMENT

§ 47101. Policies

(a) GENERAL.—It is the policy of the United States—

(1) that the safe operation of the airport and airway system is the highest aviation priority;

(2) that aviation facilities be constructed and operated to minimize current and projected noise impact on nearby communities;

(3) to give special emphasis to developing reliever airports;

(4) that appropriate provisions should be made to make the development and enhancement of cargo hub airports easier;

(5) to encourage the development of transportation systems that use various modes of transportation in a way that will serve the States and local communities efficiently and effectively;

(6) that airport development projects under this subchapter provide for the protection and enhancement of natural resources and the quality of the environment of the United States;

(7) that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease;

(8) to ensure that nonaviation usage of the navigable airspace be accommodated but not allowed to decrease the safety and capacity of the airspace and airport system;

(9) that artificial restrictions on airport capacity—

(A) are not in the public interest;

(B) should be imposed to alleviate air traffic delays only after other reasonably available and less burdensome alternatives have been tried; and

(C) should not discriminate unjustly between categories and classes of aircraft; and

(10) that special emphasis should be placed on converting appropriate former military air bases to civil use and identifying and improving additional joint-use facilities.

1 (b) NATIONAL TRANSPORTATION POLICY.—(1) It is a goal of the United
2 States to develop a national intermodal transportation system that trans-
3 ports passengers and property in an efficient manner. The future economic
4 direction of the United States depends on its ability to confront directly the
5 enormous challenges of the global economy, declining productivity growth,
6 energy vulnerability, air pollution, and the need to rebuild the infrastructure
7 of the United States.

8 (2) United States leadership in the world economy, the expanding wealth
9 of the United States, the competitiveness of the industry of the United
10 States, the standard of living, and the quality of life are at stake.

11 (3) A national intermodal transportation system is a coordinated, flexible
12 network of diverse but complementary forms of transportation that trans-
13 ports passengers and property in the most efficient manner. By reducing
14 transportation costs, these intermodal systems will enhance the ability of the
15 industry of the United States to compete in the global marketplace.

16 (4) All forms of transportation, including aviation and other transpor-
17 tation systems of the future, will be full partners in the effort to reduce
18 energy consumption and air pollution while promoting economic develop-
19 ment.

20 (5) An intermodal transportation system consists of transportation hubs
21 that connect different forms of appropriate transportation and provides
22 users with the most efficient means of transportation and with access to
23 commercial centers, business locations, population centers, and the vast
24 rural areas of the United States, as well as providing links to other forms
25 of transportation and to intercity connections.

26 (6) Intermodality and flexibility are paramount issues in the process of
27 developing an integrated system that will obtain the optimum yield of Unit-
28 ed States resources.

29 (7) The United States transportation infrastructure must be reshaped to
30 provide the economic underpinnings for the United States to compete in the
31 21st century global economy. The United States can no longer rely on the
32 sheer size of its economy to dominate international economic rivals and
33 must recognize fully that its economy is no longer a separate entity but is
34 part of the global marketplace. The future economic prosperity of the Unit-
35 ed States depends on its ability to compete in an international marketplace
36 that is teeming with competitors but in which a full one-quarter of the eco-
37 nomic activity of the United States takes place.

38 (8) The United States must make a national commitment to rebuild its
39 infrastructure through development of a national intermodal transportation
40 system. The United States must provide the foundation for its industries
41 to improve productivity and their ability to compete in the global economy

1 with a system that will transport passengers and property in an efficient
2 manner.

3 (c) CAPACITY EXPANSION AND NOISE ABATEMENT.—It is in the public
4 interest to recognize the effects of airport capacity expansion projects on
5 aircraft noise. Efforts to increase capacity through any means can have an
6 impact on surrounding communities. Noncompatible land uses around air-
7 ports must be reduced and efforts to mitigate noise must be given a high
8 priority.

9 (d) CONSISTENCY WITH AIR COMMERCE AND SAFETY POLICIES.—Each
10 airport and airway program should be carried out consistently with section
11 40101(a), (b), (d), and (f) of this title to foster competition, prevent unfair
12 methods of competition in air transportation, maintain essential air trans-
13 portation, and prevent unjust and discriminatory practices, including as the
14 practices may be applied between categories and classes of aircraft.

15 (e) ADEQUACY OF NAVIGATION AIDS AND AIRPORT FACILITIES.—This
16 subchapter should be carried out to provide adequate navigation aids and
17 airport facilities for places at which scheduled commercial air service is pro-
18 vided. The facilities provided may include—

19 (1) reliever airports; and

20 (2) heliports designated by the Secretary of Transportation to relieve
21 congestion at commercial service airports by diverting aircraft pas-
22 sengers from fixed-wing aircraft to helicopter carriers.

23 (f) MAXIMUM USE OF SAFETY FACILITIES.—This subchapter should be
24 carried out consistently with a comprehensive airspace system plan, giving
25 highest priority to commercial service airports, to maximize the use of safety
26 facilities, including installing, operating, and maintaining, to the extent pos-
27 sible with available money and considering other safety needs—

28 (1) electronic or visual vertical guidance on each runway;

29 (2) grooving or friction treatment of each primary and secondary
30 runway;

31 (3) distance-to-go signs for each primary and secondary runway;

32 (4) a precision approach system, a vertical visual guidance system,
33 and a full approach light system for each primary runway;

34 (5) a nonprecision instrument approach for each secondary runway;

35 (6) runway end identifier lights on each runway that does not have
36 an approach light system;

37 (7) a surface movement radar system at each category III airport;

38 (8) a taxiway lighting and sign system;

39 (9) runway edge lighting and marking; and

40 (10) radar approach coverage for each airport terminal area.

1 (g) COOPERATION.—To carry out the policy of subsection (a)(5) of this
 2 section, the Secretary of Transportation shall cooperate with State and local
 3 officials in developing airport plans and programs that are based on overall
 4 transportation needs. The airport plans and programs shall be developed in
 5 coordination with other transportation planning and considering comprehen-
 6 sive long-range land-use plans and overall social, economic, environmental,
 7 system performance, and energy conservation objectives. The process of de-
 8 veloping airport plans and programs shall be continuing, cooperative, and
 9 comprehensive to the degree appropriate to the complexity of the transpor-
 10 tation problems.

11 (h) CONSULTATION.—To carry out the policy of subsection (a)(6) of this
 12 section, the Secretary of Transportation shall consult with the Secretary of
 13 the Interior and the Administrator of the Environmental Protection Agency
 14 about any project included in a project grant application involving the loca-
 15 tion of an airport or runway, or a major runway extension, that may have
 16 a significant effect on—

- 17 (1) natural resources, including fish and wildlife;
- 18 (2) natural, scenic, and recreation assets;
- 19 (3) water and air quality; or
- 20 (4) another factor affecting the environment.

21 **§ 47102. Definitions**

22 In this subchapter—

- 23 (1) “air carrier airport” means a public airport regularly served by—
 - 24 (A) an air carrier certificated by the Secretary of Transpor-
 25 tation under section 41102 of this title (except a charter air car-
 26 rier); or
 - 27 (B) at least one air carrier—
 - 28 (i) operating under an exemption from section 41101(a)(1)
 29 of this title that the Secretary grants; and
 - 30 (ii) having at least 2,500 passenger boardings at the air-
 31 port during the prior calendar year.
- 32 (2) “airport”—
 - 33 (A) means—
 - 34 (i) an area of land or water used or intended to be used
 35 for the landing and taking off of aircraft;
 - 36 (ii) an appurtenant area used or intended to be used for
 37 airport buildings or other airport facilities or rights of way;
 38 and
 - 39 (iii) airport buildings and facilities located in any of those
 40 areas; and
 - 41 (B) includes a heliport.

1 (3) “airport development” means the following activities, if under-
2 taken by the sponsor, owner, or operator of a public-use airport:

3 (A) constructing, repairing, or improving a public-use airport,
4 including—

5 (i) removing, lowering, relocating, marking, and lighting an
6 airport hazard; and

7 (ii) preparing a plan or specification, including carrying out
8 a field investigation.

9 (B) acquiring for, or installing at, a public-use airport—

10 (i) a navigation aid or another aid (including a precision
11 approach system) used by aircraft for landing at or taking off
12 from the airport, including preparing the site as required by
13 the acquisition or installation;

14 (ii) safety or security equipment the Secretary requires by
15 regulation for, or approves as contributing significantly to,
16 the safety or security of individuals and property at the air-
17 port;

18 (iii) equipment to remove snow, to measure runway surface
19 friction, or for aviation-related weather reporting;

20 (iv) firefighting and rescue equipment at an airport that
21 serves scheduled passenger operations of air carrier aircraft
22 designed for more than 20 passenger seats;

23 (v) aircraft deicing equipment and structures (except air-
24 craft deicing fluids and storage facilities for the equipment
25 and fluids); and

26 (vi) interactive training systems.

27 (C) acquiring an interest in land or airspace, including land for
28 future airport development, that is needed—

29 (i) to carry out airport development described in subclause
30 (A) or (B) of this clause; or

31 (ii) to remove or mitigate an existing airport hazard or pre-
32 vent or limit the creation of a new airport hazard.

33 (D) acquiring land for, or constructing, a burn area training
34 structure on or off the airport to provide live fire drill training for
35 aircraft rescue and firefighting personnel required to receive the
36 training under regulations the Secretary prescribes, including
37 basic equipment and minimum structures to support the training
38 under standards the Administrator of the Federal Aviation Admin-
39 istration prescribes.

40 (E) relocating after December 31, 1991, an air traffic control
41 tower and any navigational aid (including radar) if the relocation

1 is necessary to carry out a project approved by the Secretary
2 under this subchapter.

3 (F) constructing, reconstructing, repairing, or improving an air-
4 port, or purchasing capital equipment for an airport, if paid for
5 by a grant under this subchapter and necessary for compliance
6 with the responsibilities of the operator or owner of the airport
7 under the Americans with Disabilities Act of 1990 (42 U.S.C.
8 12101 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and
9 the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.),
10 except constructing or purchasing capital equipment that would
11 benefit primarily a revenue-producing area of the airport used by
12 a nonaeronautical business.

13 (G) acquiring land for, or work necessary to construct, a pad
14 suitable for deicing aircraft before takeoff at a commercial service
15 airport, including constructing or reconstructing paved areas,
16 drainage collection structures, treatment and discharge systems,
17 appropriate lighting, paved access for deicing vehicles and aircraft,
18 but not including acquiring aircraft deicing fluids or constructing
19 or reconstructing storage facilities for aircraft deicing equipment
20 or fluids.

21 (4) “airport hazard” means a structure or object of natural growth
22 located on or near a public-use airport, or a use of land near the air-
23 port, that obstructs or otherwise is hazardous to the landing or taking
24 off of aircraft at or from the airport.

25 (5) “airport planning” means planning as defined by regulations the
26 Secretary prescribes and includes integrated airport system planning.

27 (6) “amount made available under section 48103 of this title” means
28 the amount authorized for grants under section 48103 of this title as
29 reduced by any law enacted after September 3, 1982.

30 (7) “commercial service airport” means a public airport in a State
31 that the Secretary determines has at least 2,500 passenger boardings
32 each year and is receiving scheduled passenger aircraft service.

33 (8) “integrated airport system planning” means developing for plan-
34 ning purposes information and guidance to decide the extent, kind, lo-
35 cation, and timing of airport development needed in a specific area to
36 establish a viable, balanced, and integrated system of public-use air-
37 ports, including—

38 (A) identifying system needs;

39 (B) developing an estimate of systemwide development costs;

1 (C) conducting studies, surveys, and other planning actions, in-
2 cluding those related to airport access, needed to decide which
3 aeronautical needs should be met by a system of airports; and

4 (D) standards prescribed by a State, except standards for safety
5 of approaches, for airport development at nonprimary public-use
6 airports.

7 (9) “landed weight” means the weight of aircraft transporting only
8 cargo in intrastate, interstate, and foreign air transportation, as the
9 Secretary determines under regulations the Secretary prescribes.

10 (10) “passenger boardings”—

11 (A) means revenue passenger boardings on an aircraft in service
12 in air commerce as the Secretary determines under regulations the
13 Secretary prescribes; and

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

17 (11) “primary airport” means a commercial service airport the Sec-
18 retary determines to have more than 10,000 passenger boardings each
19 year.

20 (12) “project” means a project, separate projects included in one
21 project grant application, or all projects to be undertaken at an airport
22 in a fiscal year, to achieve airport development or airport planning.

23 (13) “project cost” means a cost involved in carrying out a project.

24 (14) “project grant” means a grant of money the Secretary makes
25 to a sponsor to carry out at least one project.

26 (15) “public agency” means—

27 (A) a State or political subdivision of a State;

28 (B) a tax-supported organization; or

29 (C) an Indian tribe or pueblo.

30 (16) “public airport” means an airport used or intended to be used
31 for public purposes—

32 (A) that is under the control of a public agency; and

33 (B) of which the area used or intended to be used for the land-
34 ing, taking off, or surface maneuvering of aircraft is publicly
35 owned.

36 (17) “public-use airport” means—

37 (A) a public airport; or

38 (B) a privately-owned airport used or intended to be used for
39 public purposes that is—

40 (i) a reliever airport; or

1 (ii) determined by the Secretary to have at least 2,500 pas-
2 senger boardings each year and to receive scheduled pas-
3 senger aircraft service.

4 (18) “reliever airport” means an airport the Secretary designates to
5 relieve congestion at a commercial service airport and to provide more
6 general aviation access to the overall community.

7 (19) “sponsor” means—

8 (A) a public agency that submits to the Secretary under this
9 subchapter an application for financial assistance; and

10 (B) a private owner of a public-use airport that submits to the
11 Secretary under this subchapter an application for financial assist-
12 ance for the airport.

13 (20) “State” means a State of the United States, the District of Co-
14 lumbia, Puerto Rico, the Virgin Islands, American Samoa, the North-
15 ern Mariana Islands, the Trust Territory of the Pacific Islands, and
16 Guam.

17 **§ 47103. National plan of integrated airport systems**

18 (a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—The Secretary of
19 Transportation shall maintain the plan for developing public-use airports in
20 the United States, named “the national plan of integrated airport systems”.
21 The plan shall include the kind and estimated cost of eligible airport devel-
22 opment the Secretary of Transportation considers necessary to provide a
23 safe, efficient, and integrated system of public-use airports adequate to an-
24 ticipate and meet the needs of civil aeronautics, to meet the national defense
25 requirements of the Secretary of Defense, and to meet identified needs of
26 the United States Postal Service. Airport development included in the plan
27 may not be limited to meeting the needs of any particular classes or cat-
28 egories of public-use airports. In maintaining the plan, the Secretary of
29 Transportation shall consider the needs of each segment of civil aviation and
30 the relationship of each airport to—

31 (1) the rest of the transportation system in the particular area;

32 (2) forecasted technological developments in aeronautics; and

33 (3) forecasted developments in other modes of intercity transpor-
34 tation.

35 (b) SPECIFIC REQUIREMENTS.—In maintaining the plan, the Secretary of
36 Transportation shall—

37 (1) to the extent possible and as appropriate, consult with depart-
38 ments, agencies, and instrumentalities of the United States Govern-
39 ment, with public agencies, and with the aviation community;

40 (2) consider tall structures that reduce safety or airport capacity;
41 and

1 (3) make every reasonable effort to address the needs of air cargo
2 operations, Short Takeoff and Landing/Very Short Takeoff and Land-
3 ing aircraft operations, and rotary wing aircraft operations.

4 (c) AVAILABILITY OF DOMESTIC MILITARY AIRPORTS AND AIRPORT FA-
5 CILITIES.—To the extent possible, the Secretary of Defense shall make do-
6 mestic military airports and airport facilities available for civil use. In advis-
7 ing the Secretary of Transportation under subsection (a) of this section, the
8 Secretary of Defense shall indicate the extent to which domestic military
9 airports and airport facilities are available for civil use.

10 (d) PUBLICATION.—The Secretary of Transportation shall publish the
11 status of the plan every 2 years.

12 **§ 47104. Project grant authority**

13 (a) GENERAL AUTHORITY.—To maintain a safe and efficient nationwide
14 system of public-use airports that meets the present and future needs of
15 civil aeronautics, the Secretary of Transportation may make project grants
16 under this subchapter from the Airport and Airway Trust Fund.

17 (b) INCURRING OBLIGATIONS.—The Secretary may incur obligations to
18 make grants from amounts made available under section 48103 of this title
19 as soon as the amounts are apportioned under section 47114(c) and (d)(2)
20 of this title.

21 (c) EXPIRATION OF AUTHORITY.—After September 30, 1993, the Sec-
22 retary may not incur obligations under subsection (b) of this section, except
23 for obligations of amounts remaining available after that date under section
24 47117(b) of this title.

25 **§ 47105. Project grant applications**

26 (a) SUBMISSION AND CONSULTATION.—(1) An application for a project
27 grant under this subchapter may be submitted to the Secretary of Transpor-
28 tation by—

29 (A) a sponsor; or

30 (B) a State, as the only sponsor, for an airport development project
31 benefitting at least 2 airports in the State or for airport planning for
32 similar projects for at least 2 airports in the State if—

33 (i) the sponsor of each airport gives written consent that the
34 State be the applicant;

35 (ii) the Secretary is satisfied there is administrative merit and
36 aeronautical benefit in the State being the sponsor; and

37 (iii) an acceptable agreement exists that ensures that the State
38 will comply with appropriate grant conditions and other assur-
39 ances the Secretary requires.

1 (2) Before deciding to undertake an airport development project at an
2 airport under this subchapter, a sponsor shall consult with the airport users
3 that will be affected by the project.

4 (3) This subsection does not authorize a public agency that is subject to
5 the laws of a State to apply for a project grant in violation of a law of the
6 State.

7 (b) CONTENTS AND FORM.—An application for a project grant under this
8 subchapter—

9 (1) shall describe the project proposed to be undertaken;

10 (2) may propose a project only for a public-use airport included in
11 the current national plan of integrated airport systems;

12 (3) may propose airport development only if the development com-
13 plies with standards the Secretary prescribes or approves, including
14 standards for site location, airport layout, site preparation, paving,
15 lighting, and safety of approaches; and

16 (4) shall be in the form and contain other information the Secretary
17 prescribes.

18 (c) STATE STANDARDS FOR AIRPORT DEVELOPMENT.—The Secretary
19 may approve standards (except standards for safety of approaches) that a
20 State prescribes for airport development at nonprimary public-use airports
21 in the State. On approval under this subsection, a State's standards apply
22 to the nonprimary public-use airports in the State instead of the comparable
23 standards prescribed by the Secretary under subsection (b)(3) of this sec-
24 tion. The Secretary, or the State with the approval of the Secretary, may
25 revise standards approved under this subsection.

26 (d) CERTIFICATION OF COMPLIANCE.—The Secretary may require a
27 sponsor to certify that the sponsor will comply with this subchapter in car-
28 rying out the project. The Secretary may rescind the acceptance of a certifi-
29 cation at any time. This subsection does not affect an obligation or respon-
30 sibility of the Secretary under another law of the United States.

31 (e) NOTIFICATION.—The sponsor of an airport for which an amount is
32 apportioned under section 47114(c) of this title shall notify the Secretary
33 of the fiscal year in which the sponsor intends to submit a project grant
34 application for the apportioned amount. The notification shall be given by
35 the time and contain the information the Secretary prescribes.

36 **§47106. Project grant application approval conditioned on**
37 **satisfaction of project requirements**

38 (a) PROJECT GRANT APPLICATION APPROVAL.—The Secretary of Trans-
39 portation may approve an application under this subchapter for a project
40 grant only if the Secretary is satisfied that—

1 (1) the project is consistent with plans (existing at the time the
2 project is approved) of public agencies authorized by the State in which
3 the airport is located to plan for the development of the area surround-
4 ing the airport;

5 (2) the project will contribute to carrying out this subchapter;

6 (3) enough money is available to pay the project costs that will not
7 be paid by the United States Government under this subchapter;

8 (4) the project will be completed without unreasonable delay; and

9 (5) the sponsor has authority to carry out the project as proposed.

10 (b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION AP-
11 PROVAL.—The Secretary may approve an application under this subchapter
12 for an airport development project grant for an airport only if the Secretary
13 is satisfied that—

14 (1) the sponsor, a public agency, or the Government holds good title
15 to the areas of the airport used or intended to be used for the landing,
16 taking off, or surface maneuvering of aircraft, or that good title will
17 be acquired;

18 (2) the interests of the community in or near which the project may
19 be located have been given fair consideration; and

20 (3) the application provides touchdown zone and centerline runway
21 lighting, high intensity runway lighting, or land necessary for installing
22 approach light systems that the Secretary, considering the category of
23 the airport and the kind and volume of traffic using it, decides is nec-
24 essary for safe and efficient use of the airport by aircraft.

25 (c) ENVIRONMENTAL REQUIREMENTS.—(1) The Secretary may approve
26 an application under this subchapter for an airport development project in-
27 volving the location of an airport or runway or a major runway extension—

28 (A) only if the sponsor certifies to the Secretary that—

29 (i) an opportunity for a public hearing was given to consider the
30 economic, social, and environmental effects of the location and the
31 location's consistency with the objectives of any planning that the
32 community has carried out; and

33 (ii) the airport management board has voting representation
34 from the communities in which the project is located or has ad-
35 vised the communities that they have the right to petition the Sec-
36 retary about a proposed project;

37 (B) only if the chief executive officer of the State in which the
38 project will be located certifies in writing to the Secretary that there
39 is reasonable assurance that the project will be located, designed, con-
40 structed, and operated in compliance with applicable air and water
41 quality standards, except that the Administrator of the Environmental

1 Protection Agency shall make the certification instead of the chief executive officer if—

2
3 (i) the State has not approved any applicable State or local
4 standards; and

5 (ii) the Administrator has prescribed applicable standards; and

6 (C) if the application is found to have a significant adverse effect
7 on natural resources, including fish and wildlife, natural, scenic, and
8 recreation assets, water and air quality, or another factor affecting the
9 environment, only after finding that no possible and prudent alternative
10 to the project exists and that every reasonable step has been taken to
11 minimize the adverse effect.

12 (2) The Secretary may approve an application under this subchapter for
13 an airport development project that does not involve the location of an airport
14 or runway, or a major runway extension, at an existing airport without
15 requiring an environmental impact statement related to noise for the project
16 if—

17 (A) completing the project would allow operations at the airport involving
18 aircraft complying with the noise standards prescribed for
19 “stage 2” aircraft in section 36.1 of title 14, Code of Federal Regulations,
20 to replace existing operations involving aircraft that do not comply
21 with those standards; and

22 (B) the project meets the other requirements under this subchapter.

23 (3) At the Secretary’s request, the sponsor shall give the Secretary a copy
24 of the transcript of any hearing held under paragraph (1)(A) of this subsection.
25

26 (4)(A) Notice of certification or of refusal to certify under paragraph
27 (1)(B) of this subsection shall be provided to the Secretary not later than
28 60 days after the Secretary receives the application.

29 (B) The Secretary shall condition approval of the application on compliance
30 with the applicable standards during construction and operation.

31 (5) The Secretary may make a finding under paragraph (1)(C) of this
32 subsection only after completely reviewing the matter. The review and finding
33 must be a matter of public record.

34 (d) GENERAL AVIATION AIRPORT PROJECT GRANT APPLICATION APPROVAL.—(1) In this subsection, “general aviation airport” means a public
35 airport that is not an air carrier airport.
36

37 (2) The Secretary may approve an application under this subchapter for
38 an airport development project included in a project grant application involving
39 the construction or extension of a runway at a general aviation airport
40 located on both sides of a boundary line separating 2 counties within
41 a State only if, before the application is submitted to the Secretary, the

1 project is approved by the governing body of each village incorporated under
 2 the laws of the State and located entirely within 5 miles of the nearest
 3 boundary of the airport.

4 (e) WITHHOLDING APPROVAL.—(1) The Secretary may withhold approval
 5 of an application under this subchapter for amounts apportioned under sec-
 6 tion 47114(c) and (e) of this title for violating an assurance or requirement
 7 of this subchapter only if—

8 (A) the Secretary provides the sponsor an opportunity for a hearing;
 9 and

10 (B) not later than 180 days after the later of the date of the applica-
 11 tion or the date the Secretary discovers the noncompliance, the Sec-
 12 retary finds that a violation has occurred.

13 (2) The 180-day period may be extended by—

14 (A) agreement between the Secretary and the sponsor; or

15 (B) the hearing officer if the officer decides an extension is necessary
 16 because the sponsor did not follow the schedule the officer established.

17 (3) A person adversely affected by an order of the Secretary withholding
 18 approval may obtain review of the order by filing a petition in the United
 19 States Court of Appeals for the District of Columbia Circuit or in the court
 20 of appeals of the United States for the circuit in which the project is lo-
 21 cated. The action must be brought not later than 60 days after the order
 22 is served on the petitioner.

23 **§47107. Project grant application approval conditioned on**
 24 **assurances about airport operations**

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

29 (1) the airport will be available for public use on reasonable condi-
 30 tions and without unjust discrimination;

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

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

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

37 (i) tenants and nontenants; and

38 (ii) signatory and nonsignatory carriers;

39 (3) the airport operator will not withhold unreasonably the classifica-
 40 tion or status of tenant or signatory from an air carrier that assumes

1 obligations substantially similar to those already imposed on air car-
2 riers of that classification or status;

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

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

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

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

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

19 (7) the airport and facilities on or connected with the airport will
20 be operated and maintained suitably, with consideration given to cli-
21 matic and flood conditions;

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

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

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

33 (11) each of the airport's facilities developed with financial assist-
34 ance from the United States Government and each of the airport's fa-
35 cilities usable for the landing and taking off of aircraft always will be
36 available without charge for use by Government aircraft in common
37 with other aircraft, except that if the use is substantial, the Govern-
38 ment may be charged a reasonable share, proportionate to the use, of
39 the cost of operating and maintaining the facility used;

40 (12) the airport owner or operator will provide, without charge to the
41 Government, property interests of the sponsor in land or water areas

1 or buildings that the Secretary decides are desirable for, and that will
2 be used for, constructing at Government expense, facilities for carrying
3 out activities related to air traffic control or navigation;

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

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

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

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

16 (15) the airport owner or operator will submit any annual or special
17 airport financial and operations reports to the Secretary that the Sec-
18 retary reasonably requests;

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

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

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

24 (C) the owner or operator will not make or allow any alteration
25 in the airport or any of its facilities if the alteration does not com-
26 ply with the plan the Secretary approves, and the Secretary is of
27 the opinion that the alteration may affect adversely the safety,
28 utility, or efficiency of the airport; and

29 (D) when an alteration in the airport or its facility is made that
30 does not conform to the approved plan and that the Secretary de-
31 cides adversely affects the safety, utility, or efficiency of any prop-
32 erty on or off the airport that is owned, leased, or financed by the
33 Government, the owner or operator, if requested by the Secretary,
34 will—

35 (i) eliminate the adverse effect in a way the Secretary ap-
36 proves; or

37 (ii) bear all cost of relocating the property or its replace-
38 ment to a site acceptable to the Secretary and of restoring
39 the property or its replacement to the level of safety, utility,
40 efficiency, and cost of operation that existed before the alter-
41 ation was made;

1 (17) each contract and subcontract for program management, con-
2 struction management, planning studies, feasibility studies, architec-
3 tural services, preliminary engineering, design, engineering, surveying,
4 mapping, and related services will be awarded in the same way that
5 a contract for architectural and engineering services is negotiated
6 under title IX of the Federal Property and Administrative Services Act
7 of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based
8 requirement prescribed for or by the sponsor; and

9 (18) the airport and each airport record will be available for inspec-
10 tion by the Secretary on reasonable request, and a report of the airport
11 budget will be available to the public at reasonable times and places.

12 (b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of
13 Transportation may approve a project grant application under this sub-
14 chapter for an airport development project only if the Secretary receives
15 written assurances, satisfactory to the Secretary, that local taxes on aviation
16 fuel (except taxes in effect on December 30, 1987) and the revenues gen-
17 erated by a public airport will be expended for the capital or operating costs
18 of—

19 (A) the airport;

20 (B) the local airport system; or

21 (C) other local facilities owned or operated by the airport owner or
22 operator and directly and substantially related to the air transportation
23 of passengers or property.

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

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

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

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

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

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

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

12 (A) if the land was or will be acquired for a noise compatibility pur-
13 pose—

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

17 (ii) the disposition will be subject to retaining or reserving an
18 interest in the land necessary to ensure that the land will be used
19 in a way that is compatible with noise levels associated with oper-
20 ating the airport; and

21 (iii) the part of the proceeds from disposing of the land that is
22 proportional to the Government's share of the cost of acquiring
23 the land will be paid to the Secretary for deposit in the Airport
24 and Airway Trust Fund established under section 9502 of the In-
25 ternal Revenue Code of 1986 (26 U.S.C. 9502) or, as the Sec-
26 retary prescribes, reinvested in an approved noise compatibility
27 project; or

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

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

34 (ii) the disposition will be subject to retaining or reserving an
35 interest in the land necessary to ensure that the land will be used
36 in a way that is compatible with noise levels associated with oper-
37 ating the airport; and

38 (iii) the part of the proceeds from disposing of the land that is
39 proportional to the Government's share of the cost of acquiring
40 the land will be reinvested, on application to the Secretary, in an-
41 other eligible airport development project the Secretary approves

1 under this subchapter or paid to the Secretary for deposit in the
2 Fund if another eligible project does not exist.

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

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

13 (e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS
14 CONCERNS.—(1) The Secretary of Transportation may approve a project
15 grant application under this subchapter for an airport development project
16 only if the Secretary receives written assurances, satisfactory to the Sec-
17 retary, that the airport owner or operator will take necessary action to en-
18 sure, to the maximum extent practicable, that at least 10 percent of all
19 businesses at the airport selling consumer products or providing consumer
20 services to the public are small business concerns (as defined by regulations
21 of the Secretary) owned and controlled by a socially and economically dis-
22 advantaged individual (as defined in section 47113(a) of this title).

23 (2) An airport owner or operator may meet the percentage goal of para-
24 graph (1) of this subsection by including any business operated through a
25 management contract or subcontract. The dollar amount of a management
26 contract or subcontract with a disadvantaged business enterprise shall be
27 added to the total participation by disadvantaged business enterprises in
28 airport concessions and to the base from which the airport's percentage goal
29 is calculated. The dollar amount of a management contract or subcontract
30 with a non-disadvantaged business enterprise and the gross revenue of busi-
31 ness activities to which the management contract or subcontract pertains
32 may not be added to this base.

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

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

5 (B) An airport owner or operator may require a car rental firm to meet
6 a requirement under paragraph (1) of this subsection by purchasing or leas-
7 ing goods or services from a disadvantaged business enterprise. If an owner
8 or operator requires such a purchase or lease, a car rental firm shall be per-
9 mitted to meet the requirement by including purchases or leases of vehicles
10 from any vendor that qualifies as a small business concern owned and con-
11 trolled by a socially and economically disadvantaged individual.

12 (C) This subsection does not require a car rental firm to change its cor-
13 porate structure to provide for direct ownership arrangements to meet the
14 requirements of this subsection.

15 (5) This subsection does not preempt—

16 (A) a State or local law, regulation, or policy enacted by the govern-
17 ing body of an airport owner or operator; or

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

21 (6) An airport owner or operator may provide opportunities for a small
22 business concern owned and controlled by a socially and economically dis-
23 advantaged individual to participate through direct contractual agreement
24 with that concern.

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

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

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

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

36 (2) subsection (c)(2)(B)(iii) of this section is available to the Sec-
37 retary—

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

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

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

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

9 (A) shall prescribe requirements for sponsors that the Secretary con-
10 siders necessary; and

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

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

15 (h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDI-
16 TIONAL ASSURANCES.—Before modifying an assurance required of a person
17 receiving a grant under this subchapter and in effect after December 29,
18 1987, or to require compliance with an additional assurance from the per-
19 son, the Secretary of Transportation must—

20 (1) publish notice of the proposed modification in the Federal Reg-
21 ister; and

22 (2) provide an opportunity for comment on the proposal.

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

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

33 (A) “duty-free merchandise” and “duty-free sales enterprise” have
34 the same meanings given those terms in section 555(b)(8) of the Tariff
35 Act of 1930 (19 U.S.C. 1555(b)(8)).

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

38 (2) Notwithstanding subsection (b)(1) of this section, Hawaii may use,
39 for a project for construction or reconstruction of a highway on a Federal-
40 aid system that is not more than 10 miles by road from an airport and that
41 will facilitate access to the airport, revenue from the sales at off-airport lo-

1 cations in Hawaii of duty-free merchandise under a contract between Ha-
2 waii and a duty-free sales enterprise. However, the revenue resulting during
3 a Hawaiian fiscal year may be used only if the amount of the revenue, plus
4 amounts Hawaii receives in the fiscal year from all other sources for costs
5 Hawaii incurs for operating all airports it operates and for debt service re-
6 lated to capital projects for the airports (including interest and amortization
7 of principal costs), is more than 150 percent of the projected costs for the
8 fiscal year.

9 (3)(A) Revenue from sales referred to in paragraph (2) of this subsection
10 in a Hawaiian fiscal year that Hawaii may use may not be more than the
11 amount that is greater than 150 percent as determined under paragraph
12 (2).

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

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

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

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

34 (7)(A) This subsection applies only to revenue from sales referred to in
35 paragraph (2) of this subsection from May 5, 1990, through December 30,
36 1994, and to amounts in the Airport Revenue Fund of Hawaii that are at-
37 tributable to revenue before May 4, 1990, on sales referred to in paragraph
38 (2).

39 (B) Revenue from sales referred to in paragraph (2) of this subsection
40 from May 5, 1990, through December 30, 1994, may be used under para-

1 graph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year be-
2 beginning after December 31, 1994.

3 **§ 47108. Project grant agreements**

4 (a) OFFER AND ACCEPTANCE.—On approving a project grant application
5 under this subchapter, the Secretary of Transportation shall offer the spon-
6 sor a grant to pay the United States Government's share of the project
7 costs allowable under section 47110 of this title. The Secretary may impose
8 terms on the offer that the Secretary considers necessary to carry out this
9 subchapter and regulations prescribed under this subchapter. An offer shall
10 state the obligations to be assumed by the sponsor and the maximum
11 amount the Government will pay for the project from the amounts author-
12 ized under chapter 481 of this title (except sections 48102(e), 48106,
13 48107, and 48110). At the request of the sponsor, an offer of a grant for
14 a project that will not be completed in one fiscal year shall provide for the
15 obligation of amounts apportioned or to be apportioned to a sponsor under
16 section 47114(c) of this title for the fiscal years necessary to pay the Gov-
17 ernment's share of the cost of the project. An offer that is accepted in writ-
18 ing by the sponsor is an agreement binding on the Government and the
19 sponsor. The Government may pay or be obligated to pay a project cost only
20 after a grant agreement for the project is signed.

21 (b) INCREASING GOVERNMENT'S SHARE UNDER THIS SUBCHAPTER OR
22 CHAPTER 475.—(1) When an offer has been accepted in writing, the
23 amount stated in the offer as the maximum amount the Government will
24 pay may be increased only as provided in paragraphs (2) and (3) of this
25 subsection.

26 (2)(A) For a project receiving assistance under a grant approved under
27 the Airport and Airway Improvement Act of 1982 before October 1, 1987,
28 the amount may be increased by not more than—

29 (i) 10 percent for an airport development project, except a project
30 for acquiring an interest in land; and

31 (ii) 50 percent of the total increase in allowable project costs attrib-
32 utable to acquiring an interest in land, based on current creditable ap-
33 praisals.

34 (B) An increase under subparagraph (A) of this paragraph may be paid
35 only from amounts the Government recovers from other grants made under
36 this subchapter.

37 (3) For a project receiving assistance under a grant approved under the
38 Act, this subchapter, or chapter 475 of this title after September 30, 1987,
39 the amount may be increased—

40 (A) for an airport development project, by not more than 15 percent;
41 and

1 (B) for a grant after September 30, 1992, to acquire an interest in
2 land for an airport (except a primary airport), by not more than the
3 greater of the following, based on current creditable appraisals or a
4 court award in a condemnation proceeding:

5 (i) 15 percent; or

6 (ii) 25 percent of the total increase in allowable project costs
7 attributable to acquiring an interest in land.

8 (c) INCREASING GOVERNMENT'S SHARE UNDER AIRPORT AND AIRWAY
9 DEVELOPMENT ACT OF 1970.—For a project receiving assistance under a
10 grant made under the Airport and Airway Development Act of 1970, the
11 maximum amount the Government will pay may be increased by not more
12 than 10 percent. An increase under this subsection may be paid only from
13 amounts the Government recovers from other grants made under the Act.

14 (d) CHANGING WORKSCOPE.—With the consent of the sponsor, the Sec-
15 retary may amend a grant agreement made under this subchapter to change
16 the workscope of a project financed under the grant if the amendment does
17 not result in an increase in the maximum amount the Government may pay
18 under subsection (b) of this section.

19 **§ 47109. United States Government's share of project costs**

20 (a) GENERAL.—Except as provided in subsections (b) and (c) of this sec-
21 tion, the United States Government's share of allowable project costs is—

22 (1) 75 percent for a project at a primary airport having at least .25
23 percent of the total number of passenger boardings each year at all
24 commercial service airports; and

25 (2) 90 percent for a project at any other airport.

26 (b) INCREASED GOVERNMENT SHARE.—If, under subsection (a) of this
27 section, the Government's share of allowable costs of a project in a State
28 containing unappropriated and unreserved public lands and nontaxable In-
29 dian lands (individual and tribal) of more than 5 percent of the total area
30 of all lands in the State, is less than the share applied on June 30, 1975,
31 under section 17(b) of the Airport and Airway Development Act of 1970,
32 the Government's share under subsection (a) of this section shall be in-
33 creased by the lesser of—

34 (1) 25 percent;

35 (2) one-half of the percentage that the area of unappropriated and
36 unreserved public lands and nontaxable Indian lands in the State is of
37 the total area of the State; or

38 (3) the percentage necessary to increase the Government's share to
39 the percentage that applied on June 30, 1975, under section 17(b) of
40 the Act.

1 (c) LIMITATION.—Notwithstanding subsections (a) and (b) of this section,
2 the Government's share of project costs allowable under section 47110(d)
3 of this title may not be more than 75 percent, except that the Government's
4 share shall be 85 percent for a project at a commercial service airport that
5 does not have more than .05 percent of the total annual passenger
6 boardings in the United States.

7 **§ 47110. Allowable project costs**

8 (a) GENERAL AUTHORITY.—Except as provided in section 47111 of this
9 title, the United States Government may pay or be obligated to pay, from
10 amounts appropriated to carry out this subchapter, a cost incurred in carry-
11 ing out a project under this subchapter only if the Secretary of Transpor-
12 tation decides the cost is allowable.

13 (b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

14 (1) if the cost necessarily is incurred in carrying out the project in
15 compliance with the grant agreement made for the project under this
16 subchapter, including any cost a sponsor incurs related to an audit the
17 Secretary requires under section 47121(b) or (d) of this title;

18 (2) if the cost is incurred—

19 (A) after the grant agreement is executed and is for airport de-
20 velopment or airport planning carried out after the grant agree-
21 ment is executed; or

22 (B) after June 1, 1989, by the airport operator (regardless of
23 when the grant agreement is executed) as part of a Government-
24 approved noise compatibility program (including project formula-
25 tion costs) and is consistent with all applicable statutory and ad-
26 ministrative requirements;

27 (3) to the extent the cost is reasonable in amount;

28 (4) if the cost is not incurred in a project for airport development
29 or airport planning for which other Government assistance has been
30 granted; and

31 (5) if the total costs allowed for the project are not more than the
32 amount stated in the grant agreement as the maximum the Govern-
33 ment will pay (except as provided in section 47108(b) of this title).

34 (c) CERTAIN PRIOR COSTS AS ALLOWABLE COSTS.—The Secretary may
35 decide that a project cost under subsection (b)(2)(A) of this section incurred
36 after May 13, 1946, and before the date the grant agreement is executed
37 is allowable if it is—

38 (1) necessarily incurred in formulating an airport development
39 project, including costs incurred for field surveys, plans and specifica-
40 tions, property interests in land or airspace, and administration or

1 other incidental items that would not have been incurred except for the
2 project; or

3 (2) necessarily and directly incurred in developing the work scope of
4 an airport planning project.

5 (d) TERMINAL DEVELOPMENT COSTS.—(1) The Secretary may decide
6 that the cost of terminal development (including multi-modal terminal devel-
7 opment) in a nonrevenue-producing public-use area of a commercial service
8 airport is allowable for an airport development project at the airport—

9 (A) if the sponsor certifies that the airport, on the date the grant
10 application is submitted to the Secretary, has—

11 (i) all the safety equipment required for certification of the air-
12 port under section 44706 of this title;

13 (ii) all the security equipment required by regulation; and

14 (iii) provided for access, to the area of the airport for pas-
15 sengers for boarding or exiting aircraft, to those passengers board-
16 ing or exiting aircraft, except air carrier aircraft;

17 (B) if the cost is directly related to moving passengers and baggage
18 in air commerce within the airport, including vehicles for moving pas-
19 sengers between terminal facilities and between terminal facilities and
20 aircraft; and

21 (C) under terms necessary to protect the interests of the Govern-
22 ment.

23 (2) In making a decision under paragraph (1) of this subsection, the Sec-
24 retary may approve as allowable costs the expenses of terminal development
25 in a revenue-producing area and construction, reconstruction, repair, and
26 improvement in a nonrevenue-producing parking lot if—

27 (A) the airport does not have more than .05 percent of the total an-
28 nual passenger boardings in the United States; and

29 (B) the sponsor certifies that any needed airport development project
30 affecting safety, security, or capacity will not be deferred because of
31 the Secretary's approval.

32 (e) LETTERS OF INTENT.—(1) The Secretary may issue a letter of intent
33 to the sponsor stating an intention to obligate from future budget authority
34 an amount, not more than the Government's share of allowable project
35 costs, for an airport development project (including costs of formulating the
36 project) at a primary or reliever airport. The letter shall establish a schedule
37 under which the Secretary will reimburse the sponsor for the Government's
38 share of allowable project costs, as amounts become available, if the spon-
39 sor, after the Secretary issues the letter, carries out the project without re-
40 ceiving amounts under this subchapter.

41 (2) Paragraph (1) of this subsection applies to a project—

1 (A) about which the sponsor notifies the Secretary, before the project
2 begins, of the sponsor's intent to carry out the project;

3 (B) that will comply with all statutory and administrative require-
4 ments that would apply to the project if it were carried out with
5 amounts made available under this subchapter; and

6 (C) the Secretary decides will enhance system-wide airport capacity
7 significantly and meets the criteria of section 47115(d) of this title.

8 (3) A letter of intent issued under paragraph (1) of this subsection is not
9 an obligation of the Government under section 1501 of title 31, and the let-
10 ter is not deemed to be an administrative commitment for financing. An ob-
11 ligation or administrative commitment may be made only as amounts are
12 provided in authorization and appropriation laws.

13 (4) The total estimated amount of future Government obligations covered
14 by all outstanding letters of intent under paragraph (1) of this subsection
15 may not be more than the amount authorized to carry out section 48103
16 of this title, less an amount reasonably estimated by the Secretary to be
17 needed for grants under section 48103 that are not covered by a letter.

18 (5) A letter of intent issued under paragraph (1) of this subsection may
19 not condition the obligation of amounts on the imposition of a passenger
20 facility fee.

21 (f) NONALLOWABLE COSTS.—Except as provided in subsection (d) of this
22 section and section 47118(f) of this title, a cost is not an allowable airport
23 development project cost if it is for—

24 (1) constructing a public parking facility for passenger automobiles;

25 (2) constructing, altering, or repairing part of an airport building,
26 except to the extent the building will be used for facilities or activities
27 directly related to the safety of individuals at the airport;

28 (3) decorative landscaping; or

29 (4) providing or installing sculpture or art works.

30 **§47111. Payments under project grant agreements**

31 (a) GENERAL AUTHORITY.—After making a project grant agreement
32 under this subchapter and consulting with the sponsor, the Secretary of
33 Transportation may decide when and in what amounts payments under the
34 agreement will be made. Payments totaling not more than 90 percent of the
35 United States Government's share of the project's estimated allowable costs
36 may be made before the project is completed if the sponsor certifies to the
37 Secretary that the total amount expended from the advance payments at
38 any time will not be more than the cost of the airport development work
39 completed on the project at that time.

40 (b) RECOVERING PAYMENTS.—If the Secretary determines that the total
41 amount of payments made under a grant agreement under this subchapter

1 is more than the Government's share of the total allowable project costs,
2 the Government may recover the excess amount. If the Secretary finds that
3 a project for which an advance payment was made has not been completed
4 within a reasonable time, the Government may recover any part of the ad-
5 vance payment for which the Government received no benefit.

6 (c) PAYMENT DEPOSITS.—A payment under a project grant agreement
7 under this subchapter may be made only to an official or depository des-
8 ignated by the sponsor and authorized by law to receive public money.

9 (d) WITHHOLDING PAYMENTS.—(1) The Secretary may withhold a pay-
10 ment under a grant agreement under this subchapter for more than 180
11 days after the payment is due only if the Secretary—

12 (A) notifies the sponsor and provides an opportunity for a hearing;

13 and

14 (B) finds that the sponsor has violated the agreement.

15 (2) The 180-day period may be extended by—

16 (A) agreement of the Secretary and the sponsor; or

17 (B) the hearing officer if the officer decides an extension is necessary
18 because the sponsor did not follow the schedule the officer established.

19 (3) A person adversely affected by an order of the Secretary withholding
20 a payment may apply for review of the order by filing a petition in the Unit-
21 ed States Court of Appeals for the District of Columbia Circuit or in the
22 court of appeals of the United States for the circuit in which the project
23 is located. The petition must be filed not later than 60 days after the order
24 is served on the petitioner.

25 **§ 47112. Carrying out airport development projects**

26 (a) CONSTRUCTION WORK.—The Secretary of Transportation may in-
27 spect and approve construction work for an airport development project car-
28 ried out under a grant agreement under this subchapter. The construction
29 work must be carried out in compliance with regulations the Secretary pre-
30 scribes. The regulations shall require the sponsor to make necessary cost
31 and progress reports on the project. The regulations may amend or modify
32 a contract related to the project only if the contract was made with actual
33 notice of the regulations.

34 (b) PREVAILING WAGES.—A contract for more than \$2,000 involving
35 labor for an airport development project carried out under a grant agree-
36 ment under this subchapter must require contractors to pay labor minimum
37 wage rates as determined by the Secretary of Labor under the Act of March
38 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). The
39 minimum rates must be included in the bids for the work and in the invita-
40 tion for those bids.

41 (c) VETERANS' PREFERENCE.—(1) In this subsection—

1 (A) “disabled veteran” has the same meaning given that term in sec-
2 tion 2108 of title 5.

3 (B) “Vietnam-era veteran” means an individual who served on active
4 duty (as defined in section 101 of title 38) in the armed forces for
5 more than 180 consecutive days, any part of which occurred after Au-
6 gust 4, 1964, and before May 8, 1975, and who was separated from
7 the armed forces under honorable conditions.

8 (2) A contract involving labor for carrying out an airport development
9 project under a grant agreement under this subchapter must require that
10 preference in the employment of labor (except in executive, administrative,
11 and supervisory positions) be given to Vietnam-era veterans and disabled
12 veterans when they are available and qualified for the employment.

13 **§ 47113. Minority and disadvantaged business participation**

14 (a) DEFINITIONS.—In this section—

15 (1) “small business concern”—

16 (A) has the same meaning given that term in section 3 of the
17 Small Business Act (15 U.S.C. 632); but

18 (B) does not include a concern, or group of concerns controlled
19 by the same socially and economically disadvantaged individual,
20 that has average annual gross receipts over the prior 3 fiscal years
21 of more than \$16,015,000, as adjusted by the Secretary of Trans-
22 portation for inflation.

23 (2) “socially and economically disadvantaged individual” has the
24 same meaning given that term in section 8(c) of the Act (15 U.S.C.
25 637(c)) and relevant subcontracting regulations prescribed under sec-
26 tion 8(c), except that women are presumed to be socially and economi-
27 cally disadvantaged.

28 (b) GENERAL REQUIREMENT.—Except to the extent the Secretary de-
29 cides otherwise, at least 10 percent of amounts available in a fiscal year
30 under section 48103 of this title shall be expended with small business con-
31 cerns owned and controlled by socially and economically disadvantaged indi-
32 viduals.

33 (c) UNIFORM CRITERIA.—The Secretary shall establish minimum uniform
34 criteria for State governments and airport sponsors to use in certifying
35 whether a small business concern qualifies under this section. The criteria
36 shall include on-site visits, personal interviews, licenses, analyses of stock
37 ownership and bonding capacity, listings of equipment and work completed,
38 resumes of principal owners, financial capacity, and type of work preferred.

39 (d) SURVEYS AND LISTS.—Each State or airport sponsor annually shall
40 survey and compile a list of small business concerns referred to in sub-
41 section (b) of this section and the location of each concern in the State.

§47114. Apportionments

(a) DEFINITION.—In this section, “amount subject to apportionment” means the amount newly made available under section 48103 of this title for a fiscal year.

(b) APPORTIONMENT DATE.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) AMOUNTS APPORTIONED TO SPONSORS.—(1)(A) The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

(i) \$7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;

(ii) \$5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;

(iii) \$2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year; and

(iv) \$.65 for each additional passenger boarding at the airport during the prior calendar year.

(B) Not less than \$400,000 nor more than \$22,000,000 may be apportioned under subparagraph (A) of this paragraph to an airport sponsor for a primary airport for each fiscal year.

(2)(A) The Secretary shall apportion to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds for each fiscal year an amount equal to 3.5 percent of the amount subject to apportionment each year, allocated among those airports in the proportion that the total annual landed weight of those aircraft landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports. However, not more than 8 percent of the amount apportioned under this paragraph may be apportioned for any one airport.

(B) Landed weight under subparagraph (A) of this paragraph is the landed weight of aircraft landing at each of those airports and all those airports during the prior calendar year.

(3) The total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for a fiscal year. If this paragraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 44 percent limit is achieved.

(d) AMOUNTS APPORTIONED TO STATES.—(1) In this subsection—

1 (A) “area” includes land and water.

2 (B) “population” means the population stated in the latest decennial
3 census of the United States.

4 (2) The Secretary shall apportion to the States 12 percent of the amount
5 subject to apportionment for each fiscal year as follows:

6 (A) one percent of the apportioned amount to Guam, American
7 Samoa, the Northern Mariana Islands, the Trust Territory of the Pa-
8 cific Islands, and the Virgin Islands.

9 (B) except as provided in paragraph (3) of this subsection, 49.5 per-
10 cent of the apportioned amount for airports, except primary airports
11 and airports described in section 47117(e)(1)(C) of this title, in States
12 not named in clause (A) of this paragraph in the proportion that the
13 population of each of those States bears to the total population of all
14 of those States.

15 (C) except as provided in paragraph (3) of this subsection, 49.5 per-
16 cent of the apportioned amount for airports, except primary airports
17 and airports described in section 47117(e)(1)(C) of this title, in States
18 not named in clause (A) of this paragraph in the proportion that the
19 area of each of those States bears to the total area of all of those
20 States.

21 (3) An amount apportioned under paragraph (2) of this subsection for
22 an airport in—

23 (A) Alaska may be made available by the Secretary for a public air-
24 port described in section 47117(e)(1)(C)(ii) of this title to which sec-
25 tion 15(a)(3)(A)(II) of the Airport and Airway Development Act of
26 1970 applied during the fiscal year that ended September 30, 1981;
27 and

28 (B) Puerto Rico may be made available by the Secretary for a pri-
29 mary airport and an airport described in section 47117(e)(1)(C) of this
30 title.

31 (e) ALTERNATIVE APPORTIONMENT FOR ALASKA.—(1) Instead of appor-
32 tioning amounts for airports in Alaska under subsections (c) and (d) of this
33 section, the Secretary may apportion amounts for those airports in the way
34 in which amounts were apportioned in the fiscal year ending September 30,
35 1980, under section 15(a) of the Act. However, in apportioning amounts for
36 a fiscal year under this subsection, the Secretary shall apportion—

37 (A) for each primary airport at least as much as would be appor-
38 tioned for the airport under subsection (c)(1) of this section; and

39 (B) a total amount at least equal to the minimum amount required
40 to be apportioned to airports in Alaska in the fiscal year ending Sep-
41 tember 30, 1980, under section 15(a)(3)(A) of the Act.

1 (2) This subsection does not prohibit the Secretary from making project
2 grants for airports in Alaska from the discretionary fund under section
3 47115 of this title.

4 (3) Airports referred to in this subsection include those public airports
5 that received scheduled service as of September 3, 1982, but were not ap-
6 portioned amounts in the fiscal year ending September 30, 1980, under sec-
7 tion 15(a) of the Act because the airports were not under the control of
8 a State or local public agency.

9 (f) REDUCING APPORTIONMENTS.—An amount that would be apportioned
10 under this section (except subsection (c)(2)) in a fiscal year to the sponsor
11 of an airport having at least .25 percent of the total number of boardings
12 each year in the United States and for which a fee is imposed in the fiscal
13 year under section 40117 of this title shall be reduced by an amount equal
14 to 50 percent of the projected revenues from the fee in the fiscal year but
15 not by more than 50 percent of the amount that otherwise would be appor-
16 tioned under this section.

17 **§47115. Discretionary fund**

18 (a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transpor-
19 tation has a discretionary fund. The fund consists of—

20 (1) amounts subject to apportionment for a fiscal year that are not
21 apportioned under section 47114(c)–(e) of this title; and

22 (2) 25 percent of amounts not apportioned under section 47114 of
23 this title because of section 47114(f).

24 (b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section
25 and section 47117(e) of this title, the fund is available for making grants
26 for any purpose for which amounts are made available under section 48103
27 of this title that the Secretary considers most appropriate to carry out this
28 subchapter. However, 50 percent of amounts not apportioned under section
29 47114 of this title because of section 47114(f) and added to the fund is
30 available for making grants for projects at small hub airports (as defined
31 in section 41731 of this title).

32 (c) MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.—
33 At least 75 percent of the amount in the fund and distributed by the Sec-
34 retary in a fiscal year shall be used for making grants—

35 (1) to preserve and enhance capacity, safety, and security at primary
36 and reliever airports; and

37 (2) to carry out airport noise compatibility planning and programs
38 at primary and reliever airports.

39 (d) CONSIDERATIONS.—In selecting a project for a grant to preserve and
40 enhance capacity as described in subsection (c)(1) of this section, the Sec-
41 retary shall consider—

1 (1) the effect the project will have on the overall national air trans-
2 portation system capacity;

3 (2) the project benefit and cost; and

4 (3) the financial commitment from non-United States Government
5 sources to preserve or enhance airport capacity.

6 (e) WAIVING PERCENTAGE REQUIREMENT.—If the Secretary decides the
7 Secretary cannot comply with the percentage requirement of subsection (c)
8 of this section in a fiscal year because there are insufficient qualified grant
9 applications to meet that percentage, the amount the Secretary determines
10 will not be distributed as required by subsection (c) is available for obliga-
11 tion during the fiscal year without regard to the requirement.

12 **§ 47116. Small airport fund**

13 (a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transpor-
14 tation has a small airport fund. The fund consists of 75 percent of amounts
15 not apportioned under section 47114 of this title because of section
16 47114(f).

17 (b) DISTRIBUTION OF AMOUNTS.—The Secretary may distribute amounts
18 in the fund in each fiscal year for any purpose for which amounts are made
19 available under section 48103 of this title as follows:

20 (1) one-third for grants to sponsors of public-use airports (except
21 commercial service airports).

22 (2) two-thirds for grants to sponsors of each commercial service air-
23 port that each year has less than .05 percent of the total boardings
24 in the United States in that year.

25 (c) AUTHORITY TO RECEIVE GRANT NOT DEPENDENT ON PARTICIPA-
26 TION IN BLOCK GRANT PILOT PROGRAM.—An airport in a State participat-
27 ing in the State block grant pilot program under section 47128 of this title
28 may receive a grant under this section to the same extent the airport may
29 receive a grant if the State were not participating in the program.

30 **§ 47117. Use of apportioned amounts**

31 (a) GRANT PURPOSE.—Except as provided in this section, an amount ap-
32 portioned under section 47114(c)(1) or (d)(2) of this title is available for
33 making grants for any purpose for which amounts are made available under
34 section 48103 of this title.

35 (b) PERIOD OF AVAILABILITY.—An amount apportioned under section
36 47114 of this title is available to be obligated for grants under the appor-
37 tionment only during the fiscal year for which the amount was apportioned
38 and the 2 fiscal years immediately after that year. If the amount is not obli-
39 gated under the apportionment within that time, it shall be added to the
40 discretionary fund.

1 (c) PRIMARY AIRPORTS.—(1) An amount apportioned to a sponsor of a
2 primary airport under section 47114(c)(1) of this title is available for grants
3 for any public-use airport of the sponsor included in the national plan of
4 integrated airport systems.

5 (2) A sponsor of a primary airport may make an agreement with the Sec-
6 retary of Transportation waiving any part of the amount apportioned for
7 the airport under section 47114(c)(1) of this title if the Secretary makes
8 the waived amount available for a grant for another public-use airport in
9 the same State or geographical area as the primary airport.

10 (d) STATE USE.—An amount apportioned to a State under—

11 (1) section 47114(d)(2)(A) of this title is available for grants for air-
12 ports located in the State; and

13 (2) section 47114(d)(2)(B) or (C) of this title is available for grants
14 for airports described in section 47114(d)(2)(B) or (C) and located in
15 the State.

16 (e) SPECIAL APPORTIONMENT CATEGORIES.—(1) The Secretary shall use
17 amounts made available under section 48103 of this title for each fiscal year
18 as follows:

19 (A) at least 10 percent for grants for reliever airports.

20 (B) at least 12.5 percent for grants for airport noise compatibility
21 planning under section 47505(a)(2) of this title and for carrying out
22 noise compatibility programs under section 47504(c)(1) of this title.

23 (C) at least 2.5 percent for grants for—

24 (i) nonprimary commercial service airports; and

25 (ii) public airports (except commercial service airports) that
26 were eligible for United States Government assistance from
27 amounts apportioned under section 15(a)(3) of the Airport and
28 Airway Development Act of 1970, and to which section
29 15(a)(3)(A)(I) or (II) of the Act applied during the fiscal year
30 that ended September 30, 1981.

31 (D) at least .5 percent for integrated airport system planning grants
32 to planning agencies designated by the Secretary and authorized by the
33 laws of a State or political subdivision of a State to do planning for
34 an area of the State or subdivision in which a grant under this chapter
35 is to be used.

36 (E) at least 2.25 percent for the fiscal year ending September 30,
37 1993, and at least 2.5 percent for each of the fiscal years ending Sep-
38 tember 30, 1994, and 1995, to sponsors of current or former military
39 airports designated by the Secretary under section 47118(a) of this
40 title for grants for developing current and former military airports to
41 improve the capacity of the national air transportation system.

1 (2) A grant from the amount apportioned under section 47114(e) of this
2 title may not be included as part of the 2.5 percent required to be used
3 for grants under paragraph (1)(C) of this subsection.

4 (3) If the Secretary decides that an amount required to be used for
5 grants under paragraph (1) of this subsection cannot be used for a fiscal
6 year because there are insufficient qualified grant applications, the amount
7 the Secretary determines cannot be used is available during the fiscal year
8 for grants for other airports or for other purposes for which amounts are
9 authorized for grants under section 48103 of this title.

10 (f) LIMITATION FOR COMMERCIAL SERVICE AIRPORT IN ALASKA.—The
11 Secretary may not make a grant for a commercial service airport in Alaska
12 of more than 110 percent of the amount apportioned for the airport for a
13 fiscal year under section 47114(e) of this title.

14 (g) DISCRETIONARY USE OF APPORTIONMENTS.—(1) Subject to para-
15 graph (2) of this subsection, if the Secretary finds, based on the notices the
16 Secretary receives under section 47105(e) of this title or otherwise, that an
17 amount apportioned under section 47114 of this title will not be used for
18 grants during a fiscal year, the Secretary may use an equal amount for
19 grants during that fiscal year for any of the purposes for which amounts
20 are authorized for grants under section 48103 of this title.

21 (2) The Secretary may make a grant under paragraph (1) of this sub-
22 section only if the Secretary decides that—

23 (A) the total amount used for grants for the fiscal year under section
24 48103 of this title will not be more than the amount made available
25 under section 48103 for that fiscal year; and

26 (B) the amounts authorized for grants under section 48103 of this
27 title for later fiscal years are sufficient for grants of the apportioned
28 amounts that were not used for grants under the apportionment during
29 the fiscal year and that remain available under subsection (b) of this
30 section.

31 (h) LIMITING AUTHORITY OF SECRETARY.—The authority of the Sec-
32 retary to make grants during a fiscal year from amounts that were appor-
33 tioned for a prior fiscal year and remain available for approved airport de-
34 velopment project grants under subsection (b) of this section may be im-
35 paired only by a law enacted after September 3, 1982, that expressly limits
36 that authority.

37 **§ 47118. Designating current and former military airports**

38 (a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall
39 designate not more than 12 current or former military airports for which
40 grants may be made under section 47117(e)(1)(E) of this title.

1 (b) SURVEY.—Not later than September 30, 1991, the Secretary shall
2 complete a survey of current and former military airports to identify which
3 airports have the greatest potential to improve the capacity of the national
4 air transportation system. The survey shall identify the capital development
5 needs of those airports to make them part of the system and which of those
6 qualify for grants under section 47104 of this title.

7 (c) CONSIDERATIONS.—In carrying out this section, the Secretary shall
8 consider only current or former military airports that, when at least partly
9 converted to civilian commercial or reliever airports as part of the national
10 air transportation system, will enhance airport and air traffic control system
11 capacity in major metropolitan areas and reduce current and projected
12 flight delays.

13 (d) GRANTS.—Grants under section 47117(e)(1)(E) of this title may be
14 made for an airport designated under subsection (a) of this section for the
15 5 fiscal years following the designation. If an airport does not have a level
16 of passengers getting on aircraft during that 5-year period that qualifies the
17 airport as a small hub airport (as defined on January 1, 1990) or reliever
18 airport, the Secretary may redesignate the airport for grants for additional
19 fiscal years that the Secretary decides.

20 (e) TERMINAL BUILDING FACILITIES.—Notwithstanding section 47109(c)
21 of this title, not more than \$5,000,000 for each airport from amounts the
22 Secretary distributes under section 47115 of this title for a fiscal year is
23 available to the sponsor of a current or former military airport the Sec-
24 retary designates under this section to construct, improve, or repair a termi-
25 nal building facility, including terminal gates used for revenue passengers
26 getting on or off aircraft. A gate constructed, improved, or repaired under
27 this subsection—

28 (1) may not be leased for more than 10 years; and

29 (2) is not subject to majority in interest clauses.

30 (f) PARKING LOTS, FUEL FARMS, AND UTILITIES.—Not more than a
31 total of \$4,000,000 for each airport from amounts the Secretary distributes
32 under section 47115 of this title for the fiscal years ending September 30,
33 1993–1995, is available to the sponsor of a current or former military air-
34 port the Secretary designates under this section to construct, improve, or
35 repair airport surface parking lots, fuel farms, and utilities.

36 **§ 47119. Terminal development costs**

37 (a) REPAYING BORROWED MONEY.—An amount apportioned under sec-
38 tion 47114 of this title and made available to the sponsor of an air carrier
39 airport at which terminal development was carried out after June 30, 1970,
40 and before July 12, 1976, is available to repay immediately money borrowed
41 and used to pay the costs for terminal development at the airport, if those

1 costs would be allowable project costs under section 47110(d) of this title
 2 if they had been incurred after September 3, 1982. An amount is available
 3 for a grant under this subsection—

4 (1) only if—

5 (A) the sponsor submits the certification required under section
 6 47110(d) of this title;

7 (B) the Secretary of Transportation decides that using the
 8 amount to repay the borrowed money will not defer an airport de-
 9 velopment project outside the terminal area at that airport; and

10 (C) amounts available for airport development under this sub-
 11 chapter will not be used for additional terminal development
 12 projects at the airport for at least 3 years beginning on the date
 13 the grant is used to repay the borrowed money; and

14 (2) subject to the limitations in subsection (b)(1) and (2) of this sec-
 15 tion.

16 (b) AVAILABILITY OF AMOUNTS.—In a fiscal year, the Secretary may
 17 make available—

18 (1) to a sponsor of a primary airport, any part of amounts appor-
 19 tioned to the sponsor for the fiscal year under section 47114(c)(1) of
 20 this title to pay project costs allowable under section 47110(d) of this
 21 title;

22 (2) to a sponsor of a nonprimary commercial service airport, not
 23 more than \$200,000 of the amount that may be distributed for the fis-
 24 cal year from the discretionary fund to pay project costs allowable
 25 under section 47110(d) of this title; or

26 (3) not more than \$25,000,000 to pay project costs allowable for the
 27 fiscal year under section 47110(d) of this title for projects at commer-
 28 cial service airports that were not eligible for assistance for terminal
 29 development during the fiscal year ending September 30, 1980, under
 30 section 20(b) of the Airport and Airway Development Act of 1970.

31 **§47120. Grant priority**

32 In making a grant under this subchapter, the Secretary of Transportation
 33 may give priority to a project that is consistent with an integrated airport
 34 system plan.

35 **§47121. Records and audits**

36 (a) RECORDS.—A sponsor shall keep the records the Secretary of Trans-
 37 portation requires. The Secretary may require records—

38 (1) that disclose—

39 (A) the amount and disposition by the sponsor of the proceeds
 40 of the grant;

1 (B) the total cost of the plan or program for which the grant
2 is given or used; and

3 (C) the amounts and kinds of costs of the plan or program pro-
4 vided by other sources; and

5 (2) that make it easier to carry out an audit.

6 (b) AUDITS AND EXAMINATIONS.—The Secretary and the Comptroller
7 General may audit and examine records of a sponsor that are related to a
8 grant made under this subchapter.

9 (c) AUTHORITY OF COMPTROLLER GENERAL.—When an independent
10 audit is made of the accounts of a sponsor under this subchapter related
11 to the disposition of the proceeds of the grant or related to the plan or pro-
12 gram for which the grant was given or used, the sponsor shall submit a cer-
13 tified copy of the audit to the Comptroller General not more than 6 months
14 after the end of the fiscal year for which the audit was made. Not later
15 than April 15 of each year, the Comptroller General shall report to Con-
16 gress describing the results of each audit conducted or reviewed by the
17 Comptroller General under this section during the prior fiscal year. The
18 Comptroller General shall prescribe regulations necessary to carry out this
19 subsection.

20 (d) AUDIT REQUIREMENT.—The Secretary may require a sponsor to con-
21 duct an appropriate audit as a condition for receiving a grant under this
22 subchapter.

23 (e) ANNUAL REVIEW.—The Secretary shall review annually the record-
24 keeping and reporting requirements under this subchapter to ensure that
25 they are the minimum necessary to carry out this subchapter.

26 (f) WITHHOLDING INFORMATION FROM CONGRESS.—This section does
27 not authorize the Secretary or the Comptroller General to withhold informa-
28 tion from a committee of Congress authorized to have the information.

29 **§ 47122. Administrative**

30 (a) GENERAL.—The Secretary of Transportation may take action the
31 Secretary considers necessary to carry out this subchapter, including con-
32 ducting investigations and public hearings, prescribing regulations and pro-
33 cedures, and issuing orders.

34 (b) CONDUCTING INVESTIGATIONS AND PUBLIC HEARINGS.—In conduct-
35 ing an investigation or public hearing under this subchapter, the Secretary
36 has the same authority the Secretary has under section 46104 of this title.
37 An action of the Secretary in exercising that authority is governed by the
38 procedures specified in section 46104 and shall be enforced as provided in
39 section 46104.

1 **§ 47123. Nondiscrimination**

2 The Secretary of Transportation shall take affirmative action to ensure
3 that an individual is not excluded because of race, creed, color, national ori-
4 gin, or sex from participating in an activity carried out with money received
5 under a grant under this subchapter. The Secretary shall prescribe regula-
6 tions necessary to carry out this section. The regulations shall be similar
7 to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C.
8 2000d et seq.). This section is in addition to title VI of the Act.

9 **§ 47124. Agreements for State and local operation of airport**
10 **facilities**

11 (a) GOVERNMENT RELIEF FROM LIABILITY.—The Secretary of Trans-
12 portation shall ensure that an agreement under this subchapter with a State
13 or a political subdivision of a State to allow the State or subdivision to oper-
14 ate an airport facility in the State or subdivision relieves the United States
15 Government from any liability arising out of, or related to, acts or omissions
16 of employees of the State or subdivision in operating the airport facility.

17 (b) AIR TRAFFIC CONTROL CONTRACT PROGRAM.—(1) The Secretary
18 shall continue the low activity (Visual Flight Rules) level I air traffic control
19 tower contract program established under subsection (a) of this section for
20 towers existing on December 30, 1987, and extend the program to other
21 towers as practicable.

22 (2) The Secretary may make a contract, on a sole source basis, with a
23 State or a political subdivision of a State to allow the State or subdivision
24 to operate an airport traffic control tower classified as a level I (Visual
25 Flight Rules) tower if the Secretary decides that the State or subdivision
26 has the capability to comply with the requirements of this paragraph. The
27 contract shall require that the State or subdivision comply with applicable
28 safety regulations in operating the facility and with applicable competition
29 requirements in making a subcontract to perform work to carry out the con-
30 tract.

31 **§ 47125. Conveyances of United States Government land**

32 (a) CONVEYANCES TO PUBLIC AGENCIES.—Except as provided in sub-
33 section (b) of this section, the Secretary of Transportation shall request the
34 head of the department, agency, or instrumentality of the United States
35 Government owning or controlling land or airspace to convey a property in-
36 terest in the land or airspace to the public agency sponsoring the project
37 or owning or controlling the airport when necessary to carry out a project
38 under this subchapter at a public airport, to operate a public airport, or
39 for the future development of an airport under the national plan of inte-
40 grated airport systems. The head of the department, agency, or instrumen-
41 tality shall decide whether the requested conveyance is consistent with the

1 needs of the department, agency, or instrumentality and shall notify the
2 Secretary of that decision not later than 4 months after receiving the re-
3 quest. If the head of the department, agency, or instrumentality decides
4 that the requested conveyance is consistent with its needs, the head of the
5 department, agency, or instrumentality, with the approval of the Attorney
6 General and without cost to the Government, shall make the conveyance.
7 A conveyance may be made only on the condition that the property interest
8 conveyed reverts to the Government, at the option of the Secretary, to the
9 extent it is not developed for an airport purpose or used consistently with
10 the conveyance.

11 (b) NONAPPLICATION.—Except as specifically provided by law, subsection
12 (a) of this section does not apply to land or airspace owned or controlled
13 by the Government within—

14 (1) a national park, national monument, national recreation area, or
15 similar area under the administration of the National Park Service;

16 (2) a unit of the National Wildlife Refuge System or similar area
17 under the jurisdiction of the United States Fish and Wildlife Service;
18 or

19 (3) a national forest or Indian reservation.

20 **§ 47126. Criminal penalties for false statements**

21 A person (including an officer, agent, or employee of the United States
22 Government or a public agency) shall be fined under title 18, imprisoned
23 for not more than 5 years, or both, if the person, with intent to defraud
24 the Government, knowingly makes—

25 (1) a false statement about the kind, quantity, quality, or cost of the
26 material used or to be used, or the quantity, quality, or cost of work
27 performed or to be performed, in connection with the submission of a
28 plan, map, specification, contract, or estimate of project cost for a
29 project included in a grant application submitted to the Secretary of
30 Transportation for approval under this subchapter;

31 (2) a false statement or claim for work or material for a project in-
32 cluded in a grant application approved by the Secretary under this sub-
33 chapter; or

34 (3) a false statement in a report or certification required under this
35 subchapter.

36 **§ 47127. Ground transportation demonstration projects**

37 (a) GENERAL AUTHORITY.—To improve the airport and airway system of
38 the United States consistent with regional airport system plans financed
39 under section 13(b) of the Airport and Airway Development Act of 1970,
40 the Secretary of Transportation may carry out ground transportation dem-
41 onstration projects to improve ground access to air carrier airport terminals.

1 The Secretary may carry out a demonstration project independently or by
2 grant or contract, including an agreement with another department, agency,
3 or instrumentality of the United States Government.

4 (b) PRIORITY.—In carrying out this section, the Secretary shall give pri-
5 ority to a demonstration project that—

6 (1) affects an airport in an area with an operating regional rapid
7 transit system with existing facilities reasonably near the airport;

8 (2) includes connection of the airport terminal to that system;

9 (3) is consistent with and supports a regional airport system plan
10 adopted by the planning agency for the region and submitted to the
11 Secretary; and

12 (4) improves access to air transportation for individuals residing or
13 working in the region by encouraging the optimal balance of use of air-
14 ports in the region.

15 **§ 47128. State block grant pilot program**

16 (a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall
17 prescribe regulations to carry out a State block grant pilot program. The
18 regulations shall provide that the Secretary may designate not more than
19 7 qualified States to assume administrative responsibility for all airport
20 grant amounts available under this subchapter, except for amounts des-
21 ignated for use at primary airports.

22 (b) APPLICATIONS AND SELECTION.—(1) A State wishing to participate
23 in the program must submit an application to the Secretary. The Secretary
24 shall select a State on the basis of its application only after—

25 (A) deciding the State has an organization capable of effectively ad-
26 ministering a block grant made under this section;

27 (B) deciding the State uses a satisfactory airport system planning
28 process;

29 (C) deciding the State uses a programming process acceptable to the
30 Secretary;

31 (D) finding that the State has agreed to comply with United States
32 Government standard requirements for administering the block grant;
33 and

34 (E) finding that the State has agreed to provide the Secretary with
35 program information the Secretary requires.

36 (2) For the fiscal years ending September 30, 1993–1996, the States se-
37 lected shall include Illinois, Missouri, and North Carolina.

38 (c) SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.—Before de-
39 ciding whether a planning process is satisfactory or a programming process
40 is acceptable under subsection (b)(2) or (3) of this section, the Secretary
41 shall ensure that the process provides for meeting critical safety and secu-

1 rity needs and that the programming process ensures that the needs of the
 2 national airport system will be addressed in deciding which projects will re-
 3 ceive money from the Government.

4 (d) ENDING EFFECTIVE DATE AND REPORT.—This section is effective
 5 only through September 30, 1996.

6 **§ 47129. Annual report**

7 Not later than April 1 of each year, the Secretary of Transportation shall
 8 submit to Congress a report on activities carried out under this subchapter
 9 during the prior fiscal year. The report shall include—

- 10 (1) a detailed statement of airport development completed;
- 11 (2) the status of each project undertaken;
- 12 (3) the allocation of appropriations; and
- 13 (4) an itemized statement of expenditures and receipts.

14 SUBCHAPTER II—SURPLUS PROPERTY FOR PUBLIC AIRPORTS

15 **§ 47151. Authority to transfer an interest in surplus prop-**
 16 **erty**

17 (a) GENERAL AUTHORITY.—Subject to sections 47152 and 47153 of this
 18 title, a department, agency, or instrumentality of the executive branch of
 19 the United States Government or a wholly owned Government corporation
 20 may give a State, political subdivision of a State, or tax-supported organiza-
 21 tion any interest in surplus property—

- 22 (1) that the Secretary of Transportation decides is—
 - 23 (A) desirable for developing, improving, operating, or maintain-
 - 24 ing a public airport (as defined in section 47102 of this title);
 - 25 (B) reasonably necessary to fulfill the immediate and foresee-
 - 26 able future requirements for developing, improving, operating, or
 - 27 maintaining a public airport; or
 - 28 (C) needed for developing sources of revenue from nonaviation
 - 29 businesses at a public airport; and
- 30 (2) if the Administrator of General Services approves the gift and
 31 decides the interest is not best suited for industrial use.

32 (b) ENSURING COMPLIANCE.—Only the Secretary may ensure compliance
 33 with an instrument giving an interest in surplus property under this sub-
 34 chapter. The Secretary may amend the instrument to correct the instrument
 35 or to make the gift comply with law.

36 (c) DISPOSING OF INTERESTS NOT GIVEN UNDER THIS SUBCHAPTER.—
 37 An interest in surplus property that could be used at a public airport but
 38 that is not given under this subchapter shall be disposed of under other ap-
 39 plicable law.

1 **§ 47152. Terms of gifts**

2 Except as provided in section 47153 of this title, the following terms
3 apply to a gift of an interest in surplus property under this subchapter:

4 (1) A State, political subdivision of a State, or tax-supported organi-
5 zation receiving the interest may use, lease, salvage, or dispose of the
6 interest for other than airport purposes only after the Secretary of
7 Transportation gives written consent that the interest can be used,
8 leased, salvaged, or disposed of without materially and adversely affect-
9 ing the development, improvement, operation, or maintenance of the
10 airport at which the property is located.

11 (2) The interest shall be used and maintained for public use and
12 benefit without unreasonable discrimination.

13 (3) A right may not be vested in a person, excluding others in the
14 same class from using the airport at which the property is located—

15 (A) to conduct an aeronautical activity requiring the operation
16 of aircraft; or

17 (B) to engage in selling or supplying aircraft, aircraft acces-
18 sories, equipment, or supplies (except gasoline and oil), or aircraft
19 services necessary to operate aircraft (including maintaining and
20 repairing aircraft, aircraft engines, propellers, and appliances).

21 (4) The State, political subdivision, or tax-supported organization ac-
22 cepting the interest shall clear and protect the aerial approaches to the
23 airport by mitigating existing, and preventing future, airport hazards.

24 (5) During a national emergency declared by the President or Con-
25 gress, the United States Government is entitled to use, control, or pos-
26 sess, without charge, any part of the public airport at which the prop-
27 erty is located. However, the Government shall—

28 (A) pay the entire cost of maintaining the part of the airport
29 it exclusively uses, controls, or possesses during the emergency;

30 (B) contribute a reasonable share, consistent with the Govern-
31 ment's use, of the cost of maintaining the property it uses
32 nonexclusively, or over which the Government has nonexclusive
33 control or possession, during the emergency; and

34 (C) pay a fair rental for use, control, or possession of improve-
35 ments to the airport made without Government assistance.

36 (6) The Government is entitled to the nonexclusive use, without
37 charge, of the landing area of an airport at which the property is lo-
38 cated. The Secretary may limit the use of the landing area if necessary
39 to prevent unreasonable interference with use by other authorized air-
40 craft. However, the Government shall—

1 (A) contribute a reasonable share, consistent with the Govern-
 2 ment's use, of the cost of maintaining and operating the landing
 3 area; and

4 (B) pay for damages caused by its use of the landing area if
 5 its use of the landing area is substantial.

6 (7) The State, political subdivision, or tax-supported organization ac-
 7 cepting the interest shall release the Government from all liability for
 8 damages arising under an agreement that provides for Government use
 9 of any part of an airport owned, controlled, or operated by the State,
 10 political subdivision, or tax-supported organization on which, adjacent
 11 to which, or in connection with which, the property is located.

12 (8) When a term under this section is not satisfied, any part of the
 13 interest in the property reverts to the Government, at the option of the
 14 Government, as the property then exists.

15 **§ 47153. Waiving and adding terms**

16 (a) GENERAL AUTHORITY.—(1) The Secretary of Transportation may
 17 waive, without charge, a term of a gift of an interest in property under this
 18 subchapter if the Secretary decides that—

19 (A) the property no longer serves the purpose for which it was given;
 20 or

21 (B) the waiver will not prevent carrying out the purpose for which
 22 the gift was made and is necessary to advance the civil aviation inter-
 23 ests of the United States.

24 (2) The Secretary of Transportation shall waive a term under paragraph
 25 (1) of this subsection on terms the Secretary considers necessary to protect
 26 or advance the civil aviation interests of the United States.

27 (b) WAIVERS AND INCLUSION OF ADDITIONAL TERMS ON REQUEST.—On
 28 request of the Secretary of Transportation or the Secretary of a military
 29 department, a department, agency, or instrumentality of the executive
 30 branch of the United States Government or a wholly owned Government
 31 corporation may waive a term required by section 47152 of this title or add
 32 another term if the appropriate Secretary decides it is necessary to protect
 33 or advance the interests of the United States in civil aviation or for national
 34 defense.

35 **CHAPTER 473—INTERNATIONAL AIRPORT FACILITIES**

Sec.

47301. Definitions.

47302. Providing airport and airway property in foreign territories.

47303. Training foreign citizens.

47304. Transfer of airport and airway property.

47305. Administrative.

47306. Criminal penalty.

36 **§ 47301. Definitions**

37 In this chapter—

1 (1) “airport property” means an interest in property used or useful
2 in operating and maintaining an airport.

3 (2) “airway property” means an interest in property used or useful
4 in operating and maintaining a ground installation, facility, or equip-
5 ment desirable for the orderly and safe operation of air traffic, includ-
6 ing air navigation, air traffic control, airway communication, and mete-
7 orological facilities.

8 (3) “foreign territory” means an area—

9 (A) over which no government or a government of a foreign
10 country has sovereignty;

11 (B) temporarily under military occupation by the United States
12 Government; or

13 (C) occupied or administered by the Government or a govern-
14 ment of a foreign country under an international agreement.

15 (4) “territory outside the continental United States” means territory
16 outside the 48 contiguous States and the District of Columbia.

17 **§ 47302. Providing airport and airway property in foreign**
18 **territories**

19 (a) GENERAL AUTHORITY.—Subject to the concurrence of the Secretary
20 of State and the consideration of objectives of the International Civil Avia-
21 tion Organization—

22 (1) the Secretary of Transportation may acquire, establish, and con-
23 struct airport property and airway property (except meteorological fa-
24 cilities) in foreign territory; and

25 (2) the Secretary of Commerce may acquire, establish, and construct
26 meteorological facilities in foreign territory.

27 (b) SPECIFIC APPROPRIATIONS REQUIRED.—Except for airport property
28 transferred under section 47304(b) of this title, an airport (as defined in
29 section 40102(a) of this title) may be acquired, established, or constructed
30 under subsection (a) of this section only if amounts have been appropriated
31 specifically for the airport.

32 (c) ACCEPTING FOREIGN PAYMENTS.—The Secretary of Transportation
33 or Commerce, as appropriate, may accept payment from a government of
34 a foreign country or international organization for facilities or services sold
35 or provided the government or organization under this chapter. The amount
36 received may be credited to the appropriation current when the expenditures
37 are or were paid, the appropriation current when the amount is received,
38 or both.

39 **§ 47303. Training foreign citizens**

40 Subject to the concurrence of the Secretary of State, the Secretary of
41 Transportation or Commerce, as appropriate, may train a foreign citizen in

1 a subject related to aeronautics and essential to the orderly and safe oper-
2 ation of civil aircraft. The training may be provided—

3 (1) directly by the appropriate Secretary or jointly with another de-
4 partment, agency, or instrumentality of the United States Government;

5 (2) through a public or private agency of the United States (includ-
6 ing a State or municipal educational institution); or

7 (3) through an international organization.

8 **§ 47304. Transfer of airport and airway property**

9 (a) GENERAL AUTHORITY.—When requested by the government of a for-
10 eign country or an international organization, the Secretary of Transpor-
11 tation or Commerce, as appropriate, may transfer to the government or or-
12 ganization airport property and airway property operated and maintained
13 under this chapter by the appropriate Secretary in foreign territory. The
14 transfer shall be on terms the appropriate Secretary considers proper, in-
15 cluding consideration agreed on through negotiations with the government
16 or organization.

17 (b) PROPERTY INSTALLED OR CONTROLLED BY MILITARY.—Subject to
18 terms to which the parties agree, the Secretary of a military department
19 may transfer without charge to the Secretary of Transportation airport
20 property and airway property (except meteorological facilities), and to the
21 Secretary of Commerce meteorological facilities, that the Secretary of the
22 military department installed or controls in territory outside the continental
23 United States. The transfer may be made if consistent with the needs of
24 national defense and—

25 (1) the Secretary of the military department finds that the property
26 or facility is no longer required exclusively for military purposes; and

27 (2) the Secretary of Transportation or Commerce, as appropriate,
28 decides that the transfer is or may be necessary to carry out this chap-
29 ter.

30 (c) REPUBLIC OF PANAMA.—(1) The Secretary of Transportation may
31 provide, operate, and maintain facilities and services for air navigation, air-
32 way communications, and air traffic control in the Republic of Panama sub-
33 ject to—

34 (A) the approval of the Secretary of Defense; and

35 (B) each obligation assumed by the United States Government under
36 an agreement between the Government and the Republic of Panama.

37 (2) The Secretary of a military department may transfer without charge
38 to the Secretary of Transportation property located in the Republic of Pan-
39 ama when the Secretary of Transportation decides that the transfer may
40 be useful in carrying out this chapter.

1 (3) Subsection (b) of this section (related to the Secretary of Transportation) and section 47302(a) and (b) of this title do not apply in carrying
2 out this subsection.
3

4 (d) RETAKING PROPERTY FOR MILITARY REQUIREMENT.—(1) When necessary for a military requirement, the Secretary of a military department
5 immediately may retake property (with any improvements to it) transferred
6 by the Secretary under subsection (b) or (c) of this section. The Secretary
7 shall pay reasonable compensation to each person (or its successor in interest)
8 that made an improvement to the property that was not made at the
9 expense of the Government. The Secretary or a delegate of the Secretary
10 shall decide on the amount of compensation.
11

12 (2) On the recommendation of the Secretary of Transportation or Commerce, as appropriate, the Secretary of a military department may decide
13 not to act under paragraph (1) of this subsection.
14

15 **§ 47305. Administrative**

16 (a) GENERAL AUTHORITY.—The Secretary of Transportation shall consolidate, operate, protect, maintain, and improve airport property and air-
17 way property (except meteorological facilities), and the Secretary of Commerce may consolidate, operate, protect, maintain, and improve meteorologi-
18 cal facilities, that the appropriate Secretary has acquired and that are located in territory outside the continental United States. In carrying out this
19 section, the appropriate Secretary may—
20
21
22

- 23 (1) adapt the property or facility to the needs of civil aeronautics;
24 (2) lease the property or facility for not more than 20 years;
25 (3) make a contract, or provide directly, for facilities and services;
26 (4) make reasonable charges for aeronautical services; and
27 (5) acquire an interest in property.

28 (b) CREDITING APPROPRIATIONS.—Money received from the direct sale
29 or charge that the Secretary of Transportation or Commerce, as appropriate, decides is equivalent to the cost of facilities and services sold or pro-
30 vided under subsection (a)(3) and (4) of this section is credited to the ap-
31 propriation from which the cost was paid. The balance shall be deposited
32 in the Treasury as miscellaneous receipts.
33

34 (c) USING OTHER GOVERNMENT FACILITIES AND SERVICES.—To carry
35 out this chapter and to use personnel and facilities of the United States
36 Government most advantageously and without unnecessary duplication, the
37 Secretary of Transportation or Commerce, as appropriate, shall request,
38 when practicable, to use a facility or service of an appropriate department,
39 agency, or instrumentality of the Government on a reimbursable basis. A
40 department, agency, or instrumentality receiving a request under this sec-
41 tion may provide the facility or service.

(d) ADVERTISING NOT REQUIRED.—Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply to a lease or contract made by the Secretary of Transportation or Commerce under this chapter.

§ 47306. Criminal penalty

A person that knowingly and willfully violates a regulation prescribed by the Secretary of Transportation to carry out this chapter shall be fined under title 18, imprisoned for not more than 6 months, or both.

CHAPTER 475—NOISE

SUBCHAPTER I—NOISE ABATEMENT

Sec.

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47503. Noise exposure maps.

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SUBCHAPTER I—NOISE ABATEMENT

§ 47501. Definitions

In this subchapter—

(1) “airport” means a public-use airport as defined in section 47102 of this title.

(2) “airport operator” means—

(A) for an airport serving air carriers that have certificates from the Secretary of Transportation, any person holding an airport operating certificate issued under section 44706 of this title; and

(B) for any other airport, the person operating the airport.

§ 47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure

After consultation with the Administrator of the Environmental Protection Agency and United States Government, State, and interstate agencies

1 that the Secretary of Transportation considers appropriate, the Secretary
2 shall by regulation—

3 (1) establish a single system of measuring noise that—

4 (A) has a highly reliable relationship between projected noise ex-
5 posure and surveyed reactions of individuals to noise; and

6 (B) is applied uniformly in measuring noise at airports and the
7 surrounding area;

8 (2) establish a single system for determining the exposure of individ-
9 uals to noise resulting from airport operations, including noise inten-
10 sity, duration, frequency, and time of occurrence; and

11 (3) identify land uses normally compatible with various exposures of
12 individuals to noise.

13 **§ 47503. Noise exposure maps**

14 (a) SUBMISSION AND PREPARATION.—An airport operator may submit to
15 the Secretary of Transportation a noise exposure map showing the
16 noncompatible uses in each area of the map on the date the map is submit-
17 ted, a description of estimated aircraft operations during 1985, and how
18 those operations will affect the map. The map shall—

19 (1) be prepared in consultation with public agencies and planning
20 authorities in the area surrounding the airport; and

21 (2) comply with regulations prescribed under section 47502 of this
22 title.

23 (b) REVISED MAPS.—If a change in the operation of an airport will es-
24 tablish a substantial new noncompatible use in an area surrounding the air-
25 port, the airport operator shall submit a revised noise exposure map to the
26 Secretary showing the new noncompatible use.

27 **§ 47504. Noise compatibility programs**

28 (a) SUBMISSIONS.—(1) An airport operator that submitted a noise expo-
29 sure map and related information under section 47503(a) of this title may
30 submit a noise compatibility program to the Secretary of Transportation
31 after—

32 (A) consulting with public agencies and planning authorities in the
33 area surrounding the airport, United States Government officials hav-
34 ing local responsibility for the airport, and air carriers using the air-
35 port; and

36 (B) notice and an opportunity for a public hearing.

37 (2) A program submitted under paragraph (1) of this subsection shall
38 state the measures the operator has taken or proposes to take to reduce ex-
39 isting noncompatible uses and prevent introducing additional noncompatible
40 uses in the area covered by the map. The measures may include—

41 (A) establishing a preferential runway system;

1 (B) restricting the use of the airport by a type or class of aircraft
2 because of the noise characteristics of the aircraft;

3 (C) constructing barriers and acoustical shielding and soundproofing
4 public buildings;

5 (D) using flight procedures to control the operation of aircraft to re-
6 duce exposure of individuals to noise in the area surrounding the air-
7 port; and

8 (E) acquiring land, air rights, easements, development rights, and
9 other interests to ensure that the property will be used in ways compat-
10 ible with airport operations.

11 (b) APPROVALS.—(1) The Secretary shall approve or disapprove a pro-
12 gram submitted under subsection (a) of this section (except as the program
13 is related to flight procedures referred to in subsection (a)(2)(D) of this sec-
14 tion) not later than 180 days after receiving it. The Secretary shall approve
15 the program (except as the program is related to flight procedures referred
16 to in subsection (a)(2)(D)) if the program—

17 (A) does not place an unreasonable burden on interstate or foreign
18 commerce;

19 (B) is reasonably consistent with achieving the goal of reducing
20 noncompatible uses and preventing the introduction of additional
21 noncompatible uses; and

22 (C) provides for necessary revisions because of a revised map submit-
23 ted under section 47503(b) of this title.

24 (2) A program (except as the program is related to flight procedures re-
25 ferred to in subsection (a)(2)(D) of this section) is deemed to be approved
26 if the Secretary does not act within the 180-day period.

27 (3) The Secretary shall submit any part of a program related to flight
28 procedures referred to in subsection (a)(2)(D) of this section to the Admin-
29 istrator of the Federal Aviation Administration. The Administrator shall ap-
30 prove or disapprove that part of the program.

31 (c) GRANTS.—(1) The Secretary may incur obligations to make grants
32 from amounts available under section 48103 of this title to carry out a
33 project under a part of a noise compatibility program approved under sub-
34 section (b) of this section. A grant may be made to—

35 (A) an airport operator submitting the program;

36 (B) a unit of local government in the area surrounding the airport,
37 if the Secretary decides the unit is able to carry out the project;

38 (C) an airport operator or unit of local government referred to in
39 clause (A) or (B) of this paragraph to carry out any part of a program
40 developed before February 18, 1980, or before implementing regula-
41 tions were prescribed, if the Secretary decides the program is substan-

1 tially consistent with reducing existing noncompatible uses and prevent-
2 ing the introduction of additional noncompatible uses and the purposes
3 of this chapter will be furthered by promptly carrying out the program;
4 and

5 (D) an airport operator or unit of local government referred to in
6 clause (A) or (B) of this paragraph to soundproof a building in the
7 noise impact area surrounding the airport that is used primarily for
8 educational or medical purposes and that the Secretary decides is ad-
9 versely affected by airport noise.

10 (2) An airport operator may agree to make a grant made under para-
11 graph (1)(A) of this subsection available to a public agency in the area sur-
12 rounding the airport if the Secretary decides the agency is able to carry out
13 the project.

14 (3) The Government's share of a project for which a grant is made under
15 paragraph (1) of this subsection is the greater of—

16 (A) 80 percent of the cost of the project; or

17 (B) the Government's share that would apply if the amounts avail-
18 able for the project were made available under subchapter I of chapter
19 471 of this title for a project at the airport.

20 (4) The provisions of subchapter I of chapter 471 of this title related to
21 grants apply to a grant made under this chapter, except—

22 (A) section 47109(a) and (b) of this title; and

23 (B) any provision that the Secretary decides is inconsistent with, or
24 unnecessary to carry out, this chapter.

25 (d) GOVERNMENT RELIEF FROM LIABILITY.—The Government is not lia-
26 ble for damages from aviation noise because of action taken under this sec-
27 tion.

28 **§ 47505. Airport noise compatibility planning grants**

29 (a) GENERAL AUTHORITY.—The Secretary of Transportation may make
30 a grant to a sponsor of an airport to develop, for planning purposes, infor-
31 mation necessary to prepare and submit—

32 (1) a noise exposure map and related information under section
33 47503 of this title, including the cost of obtaining the information; or

34 (2) a noise compatibility program under section 47504 of this title.

35 (b) AVAILABILITY OF AMOUNTS AND GOVERNMENT'S SHARE OF
36 COSTS.—A grant under subsection (a) of this section may be made from
37 amounts available under section 48103 of this title. The United States Gov-
38 ernment's share of the grant is the percent for which a project for airport
39 development at an airport would be eligible under section 47109(a) and (b)
40 of this title.

1 **§ 47506. Limitations on recovering damages for noise**

2 (a) GENERAL LIMITATIONS.—A person acquiring an interest in property
3 after February 18, 1980, in an area surrounding an airport for which a
4 noise exposure map has been submitted under section 47503 of this title
5 and having actual or constructive knowledge of the existence of the map
6 may recover damages for noise attributable to the airport only if, in addition
7 to any other elements for recovery of damages, the person shows that—

8 (1) after acquiring the interest, there was a significant—

9 (A) change in the type or frequency of aircraft operations at the
10 airport;

11 (B) change in the airport layout;

12 (C) change in flight patterns; or

13 (D) increase in nighttime operations; and

14 (2) the damages resulted from the change or increase.

15 (b) CONSTRUCTIVE KNOWLEDGE.—Constructive knowledge of the exist-
16 ence of a map under subsection (a) of this section shall be imputed, at a
17 minimum, to a person if—

18 (1) before the person acquired the interest, notice of the existence
19 of the map was published at least 3 times in a newspaper of general
20 circulation in the county in which the property is located; or

21 (2) the person is given a copy of the map when acquiring the inter-
22 est.

23 **§ 47507. Nonadmissibility of noise exposure map and related**
24 **information as evidence**

25 No part of a noise exposure map or related information described in sec-
26 tion 47503 of this title that is submitted to, or prepared by, the Secretary
27 of Transportation and no part of a list of land uses the Secretary identifies
28 as normally compatible with various exposures of individuals to noise may
29 be admitted into evidence or used for any other purpose in a civil action
30 asking for relief for noise resulting from the operation of an airport.

31 **§ 47508. Noise standards for air carriers and foreign air car-**
32 **riers providing foreign air transportation**

33 (a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall
34 require each air carrier and foreign air carrier providing foreign air trans-
35 portation to comply with noise standards—

36 (1) the Secretary prescribed for new subsonic aircraft in regulations
37 of the Secretary in effect on January 1, 1977; or

38 (2) of the International Civil Aviation Organization that are substan-
39 tially compatible with standards of the Secretary for new subsonic air-
40 craft in regulations of the Secretary at parts 36 and 91 of title 14,

1 Code of Federal Regulations, prescribed between January 2, 1977, and
2 January 1, 1982.

3 (b) COMPLIANCE AT PHASED RATE.—The Secretary shall require each
4 air carrier and foreign air carrier providing foreign air transportation to
5 comply with the noise standards at a phased rate similar to the rate for
6 aircraft registered in the United States.

7 (c) NONDISCRIMINATION.—The requirement for air carriers providing for-
8 eign air transportation may not be more stringent than the requirement for
9 foreign air carriers.

10 SUBCHAPTER II—NATIONAL AVIATION NOISE POLICY

11 **§ 47521. Findings**

12 Congress finds that—

13 (1) aviation noise management is crucial to the continued increase
14 in airport capacity;

15 (2) community noise concerns have led to uncoordinated and incon-
16 sistent restrictions on aviation that could impede the national air trans-
17 portation system;

18 (3) a noise policy must be carried out at the national level;

19 (4) local interest in aviation noise management shall be considered
20 in determining the national interest;

21 (5) community concerns can be alleviated through the use of new
22 technology aircraft and the use of revenues, including those available
23 from passenger facility fees, for noise management;

24 (6) revenues controlled by the United States Government can help
25 resolve noise problems and carry with them a responsibility to the na-
26 tional airport system;

27 (7) revenues derived from a passenger facility fee may be applied to
28 noise management and increased airport capacity; and

29 (8) a precondition to the establishment and collection of a passenger
30 facility fee is the prescribing by the Secretary of Transportation of a
31 regulation establishing procedures for reviewing airport noise and ac-
32 cess restrictions on operations of stage 2 and stage 3 aircraft.

33 **§ 47522. Definitions**

34 In this subchapter—

35 (1) “air carrier”, “air transportation”, and “United States” have the
36 same meanings given those terms in section 40102(a) of this title.

37 (2) “stage 3 noise levels” means the stage 3 noise levels in part 36
38 of title 14, Code of Federal Regulations, in effect on November 5,
39 1990.

1 **§ 47523. National aviation noise policy**

2 (a) GENERAL REQUIREMENTS.—Not later than July 1, 1991, the Sec-
3 retary of Transportation shall establish by regulation a national aviation
4 noise policy that considers this subchapter, including the phaseout and
5 nonaddition of stage 2 aircraft as provided in this subchapter and dates for
6 carrying out that policy and reporting requirements consistent with this
7 subchapter and law existing as of November 5, 1990.

8 (b) DETAILED ECONOMIC ANALYSIS.—The policy shall be based on a de-
9 tailed economic analysis of the impact of the phaseout date for stage 2 air-
10 craft on competition in the airline industry, including—

11 (1) the ability of air carriers to achieve capacity growth consistent
12 with the projected rate of growth for the airline industry;

13 (2) the impact of competition in the airline and air cargo industries;

14 (3) the impact on nonhub and small community air service; and

15 (4) the impact on new entry into the airline industry.

16 **§ 47524. Airport noise and access restriction review pro-**
17 **gram**

18 (a) GENERAL REQUIREMENTS.—The national aviation noise policy estab-
19 lished under section 47523 of this title shall provide for establishing by reg-
20 ulation a national program for reviewing airport noise and access restric-
21 tions on the operation of stage 2 and stage 3 aircraft. The program shall
22 provide for adequate public notice and opportunity for comment on the re-
23 strictions.

24 (b) STAGE 2 AIRCRAFT.—Except as provided in subsection (d) of this
25 section, an airport noise or access restriction may include a restriction on
26 the operation of stage 2 aircraft proposed after October 1, 1990, only if the
27 airport operator publishes the proposed restriction and prepares and makes
28 available for public comment at least 180 days before the effective date of
29 the proposed restriction—

30 (1) an analysis of the anticipated or actual costs and benefits of the
31 existing or proposed restriction;

32 (2) a description of alternative restrictions;

33 (3) a description of the alternative measures considered that do not
34 involve aircraft restrictions; and

35 (4) a comparison of the costs and benefits of the alternative meas-
36 ures to the costs and benefits of the proposed restriction.

37 (c) STAGE 3 AIRCRAFT.—(1) Except as provided in subsection (d) of this
38 section, an airport noise or access restriction on the operation of stage 3
39 aircraft not in effect on October 1, 1990, may become effective only if the
40 restriction has been agreed to by the airport proprietor and all aircraft oper-
41 ators or has been submitted to and approved by the Secretary of Transpor-

1 tation after an airport or aircraft operator's request for approval as pro-
2 vided by the program established under this section. Restrictions to which
3 this paragraph applies include—

4 (A) a restriction on noise levels generated on either a single event
5 or cumulative basis;

6 (B) a restriction on the total number of stage 3 aircraft operations;

7 (C) a noise budget or noise allocation program that would include
8 stage 3 aircraft;

9 (D) a restriction on hours of operations; and

10 (E) any other restriction on stage 3 aircraft.

11 (2) Not later than 180 days after the Secretary receives an airport or
12 aircraft operator's request for approval of an airport noise or access restric-
13 tion on the operation of a stage 3 aircraft, the Secretary shall approve or
14 disapprove the restriction. The Secretary may approve the restriction only
15 if the Secretary finds on the basis of substantial evidence that—

16 (A) the restriction is reasonable, nonarbitrary, and nondiscrim-
17 inatory;

18 (B) the restriction does not create an unreasonable burden on inter-
19 state or foreign commerce;

20 (C) the restriction is not inconsistent with maintaining the safe and
21 efficient use of the navigable airspace;

22 (D) the restriction does not conflict with a law or regulation of the
23 United States;

24 (E) an adequate opportunity has been provided for public comment
25 on the restriction; and

26 (F) the restriction does not create an unreasonable burden on the
27 national aviation system.

28 (3) Paragraphs (1) and (2) of this subsection do not apply if the Admin-
29 istrator of the Federal Aviation Administration, before November 5, 1990,
30 has formed a working group (outside the process established by part 150
31 of title 14, Code of Federal Regulations) with a local airport operator to
32 examine the noise impact of air traffic control procedure changes at the air-
33 port. However, if an agreement on noise reductions at that airport is made
34 between the airport proprietor and one or more air carriers or foreign air
35 carriers that constitute a majority of the carrier use of the airport, this
36 paragraph applies only to a local action to enforce the agreement.

37 (4) The Secretary may reevaluate an airport noise or access restriction
38 previously agreed to or approved under this subsection on request of an air-
39 craft operator able to demonstrate to the satisfaction of the Secretary that
40 there has been a change in the noise environment of the affected airport

1 that justifies a reevaluation. The Secretary shall establish by regulation pro-
2 cedures for conducting a reevaluation. A reevaluation—

3 (A) shall be based on the criteria in paragraph (2) of this subsection;

4 and

5 (B) may be conducted only after 2 years after a decision under para-
6 graph (2) of this subsection has been made.

7 (d) NONAPPLICATION.—Subsections (b) and (c) of this section do not
8 apply to—

9 (1) a local action to enforce a negotiated or executed airport noise
10 or access agreement between the airport operator and the aircraft oper-
11 ators in effect on November 5, 1990;

12 (2) a local action to enforce a negotiated or executed airport noise
13 or access restriction agreed to by the airport operator and the aircraft
14 operators before November 5, 1990;

15 (3) an intergovernmental agreement including an airport noise or ac-
16 cess restriction in effect on November 5, 1990;

17 (4) a subsequent amendment to an airport noise or access agreement
18 or restriction in effect on November 5, 1990, that does not reduce or
19 limit aircraft operations or affect aircraft safety;

20 (5)(A) an airport noise or access restriction adopted by an airport
21 operator not later than October 1, 1990, and stayed as of October 1,
22 1990, by a court order or as a result of litigation, if any part of the
23 restriction is subsequently allowed by a court to take effect; or

24 (B) a new restriction imposed by an airport operator to replace any
25 part of a restriction described in subclause (A) of this clause that is
26 disallowed by a court, if the new restriction would not prohibit aircraft
27 operations in effect on November 5, 1990; or

28 (6) a local action that represents the adoption of the final part of
29 a program of a staged airport noise or access restriction if the initial
30 part of the program was adopted during 1988 and was in effect on No-
31 vember 5, 1990.

32 (e) GRANT LIMITATIONS.—Beginning on the 91st day after the Secretary
33 prescribes a regulation under subsection (a) of this section, a sponsor of a
34 facility operating under an airport noise or access restriction on the oper-
35 ation of stage 3 aircraft that first became effective after October 1, 1990,
36 is eligible for a grant under section 47104 of this title and is eligible to
37 impose a passenger facility fee under section 40117 of this title only if the
38 restriction has been—

39 (1) agreed to by the airport proprietor and aircraft operators;

40 (2) approved by the Secretary as required by subsection (c)(1) of
41 this section; or

1 (3) rescinded.

2 **§ 47525. Decision about airport noise and access restrictions**
3 **on certain stage 2 aircraft**

4 The Secretary of Transportation shall conduct a study and decide on the
5 application of section 47524(a)–(d) of this title to airport noise and access
6 restrictions on the operation of stage 2 aircraft with a maximum weight of
7 not more than 75,000 pounds. In making the decision, the Secretary shall
8 consider—

9 (1) noise levels produced by those aircraft relative to other aircraft;

10 (2) the benefits to general aviation and the need for efficiency in the
11 national air transportation system;

12 (3) the differences in the nature of operations at airports and the
13 areas immediately surrounding the airports;

14 (4) international standards and agreements on aircraft noise; and

15 (5) other factors the Secretary considers necessary.

16 **§ 47526. Limitations for noncomplying airport noise and ac-**
17 **cess restrictions**

18 Unless the Secretary of Transportation is satisfied that an airport is not
19 imposing an airport noise or access restriction not in compliance with this
20 subchapter, the airport may not—

21 (1) receive money under subchapter I of chapter 471 of this title;

22 or

23 (2) impose a passenger facility fee under section 40117 of this title.

24 **§ 47527. Liability of the United States Government for noise**
25 **damages**

26 When a proposed airport noise or access restriction is disapproved under
27 this subchapter, the United States Government shall assume liability for
28 noise damages only to the extent that a taking has occurred as a direct re-
29 sult of the disapproval. The United States Court of Federal Claims has ex-
30 clusive jurisdiction of a civil action under this section.

31 **§ 47528. Prohibition on operating certain aircraft not com-**
32 **plying with stage 3 noise levels**

33 (a) PROHIBITION.—Except as provided in subsection (b) of this section
34 and section 47530 of this title, a person may operate after December 31,
35 1999, a civil subsonic turbojet with a maximum weight of more than 75,000
36 pounds to or from an airport in the United States only if the Secretary of
37 Transportation finds that the aircraft complies with the stage 3 noise levels.

38 (b) WAIVERS.—(1) If, not later than July 1, 1999, at least 85 percent
39 of the aircraft used by an air carrier to provide air transportation comply
40 with the stage 3 noise levels, the carrier may apply for a waiver of sub-
41 section (a) of this section for the remaining aircraft used by the carrier to

1 provide air transportation. The application must be filed with the Secretary
2 not later than January 1, 1999, and must include a plan with firm orders
3 for making all aircraft used by the carrier to provide air transportation
4 comply with the noise levels not later than December 31, 2003.

5 (2) The Secretary may grant a waiver under this subsection if the Sec-
6 retary finds it would be in the public interest. In making the finding, the
7 Secretary shall consider the effect of granting the waiver on competition in
8 the air carrier industry and on small community air service.

9 (3) A waiver granted under this subsection may not permit the operation
10 of stage 2 aircraft in the United States after December 31, 2003.

11 (c) SCHEDULE FOR PHASED-IN COMPLIANCE.—The Secretary shall es-
12 tablish by regulation a schedule for phased-in compliance with subsection
13 (a) of this section. The phase-in period shall begin on November 5, 1990,
14 and end before December 31, 1999. The regulations shall establish interim
15 compliance dates. The schedule for phased-in compliance shall be based
16 on—

17 (1) a detailed economic analysis of the impact of the phaseout date
18 for stage 2 aircraft on competition in the airline industry, including—

19 (A) the ability of air carriers to achieve capacity growth consist-
20 ent with the projected rate of growth for the airline industry;

21 (B) the impact of competition in the airline and air cargo indus-
22 tries;

23 (C) the impact on nonhub and small community air service; and

24 (D) the impact on new entry into the airline industry; and

25 (2) an analysis of the impact of aircraft noise on individuals residing
26 near airports.

27 (d) ANNUAL REPORT.—Beginning with calendar year 1992—

28 (1) each air carrier shall submit to the Secretary an annual report
29 on the progress the carrier is making toward complying with the re-
30 quirements of this section and regulations prescribed under this sec-
31 tion; and

32 (2) the Secretary shall submit to Congress an annual report on the
33 progress being made toward that compliance.

34 (e) HAWAIIAN OPERATIONS.—(1) In this subsection, “turnaround serv-
35 ice” means a flight between places only in Hawaii.

36 (2)(A) An air carrier or foreign air carrier may not operate in Hawaii,
37 or between a place in Hawaii and a place outside the 48 contiguous States,
38 a greater number of stage 2 aircraft with a maximum weight of more than
39 75,000 pounds than it operated in Hawaii, or between a place in Hawaii
40 and a place outside the 48 contiguous States, on November 5, 1990.

1 (B) An air carrier that provided turnaround service in Hawaii on Novem-
2 ber 5, 1990, using stage 2 aircraft with a maximum weight of more than
3 75,000 pounds may include in the number of aircraft authorized under sub-
4 paragraph (A) of this paragraph all stage 2 aircraft with a maximum weight
5 of more than 75,000 pounds that were owned or leased by that carrier on
6 that date, whether or not the aircraft were operated by the carrier on that
7 date.

8 (3) An air carrier may provide turnaround service in Hawaii using stage
9 2 aircraft with a maximum weight of more than 75,000 pounds only if the
10 carrier provided the service on November 5, 1990.

11 **§ 47529. Nonaddition rule**

12 (a) GENERAL LIMITATIONS.—Except as provided in subsection (b) of this
13 section and section 47530 of this title, a person may operate a civil subsonic
14 turbojet aircraft with a maximum weight of more than 75,000 pounds that
15 is imported into the United States after November 4, 1990, only if the air-
16 craft—

17 (1) complies with the stage 3 noise levels; or

18 (2) was purchased by the person importing the aircraft into the
19 United States under a legally binding contract made before November
20 5, 1990.

21 (b) EXEMPTIONS.—The Secretary of Transportation may provide an ex-
22 emption from subsection (a) of this section to permit a person to obtain
23 modifications to an aircraft to meet the stage 3 noise levels.

24 (c) AIRCRAFT DEEMED NOT IMPORTED.—In this section, an aircraft is
25 deemed not to have been imported into the United States if the aircraft—

26 (1) was owned on November 5, 1990, by—

27 (A) a corporation, trust, or partnership organized under the
28 laws of the United States or a State (including the District of Co-
29 lumbia);

30 (B) an individual who is a citizen of the United States; or

31 (C) an entity that is owned or controlled by a corporation, trust,
32 partnership, or individual described in subclause (A) or (B) of this
33 clause; and

34 (2) enters the United States not later than 6 months after the expi-
35 ration of a lease agreement (including any extension) between an owner
36 described in clause (1) of this subsection and a foreign carrier.

37 **§ 47530. Nonapplication of sections 47528(a)–(d) and 47529 to**
38 **aircraft outside the 48 contiguous States**

39 Sections 47528(a)–(d) and 47529 of this title do not apply to aircraft
40 used only to provide air transportation outside the 48 contiguous States. A
41 civil subsonic turbojet aircraft with a maximum weight of more than 75,000

1 pounds that is imported into a noncontiguous State or a territory or posses-
 2 sion of the United States after November 4, 1990, may be used to provide
 3 air transportation in the 48 contiguous States only if the aircraft complies
 4 with the stage 3 noise levels.

5 **§ 47531. Penalties for violating sections 47528–47530**

6 A person violating sections 47528, 47529, or 47530 of this title or a reg-
 7 ulation prescribed under those sections is subject to the same civil penalties
 8 and procedures under chapter 463 of this title as a person violating section
 9 44701(a) or (b) or 44702–44716 of this title.

10 **§ 47532. Judicial review**

11 An action taken by the Secretary of Transportation under sections
 12 47528–47531 of this title is subject to judicial review as provided under sec-
 13 tion 46110 of this title.

14 **§ 47533. Relationship to other laws**

15 Except as provided by section 47524 of this title, this subchapter does
 16 not affect—

17 (1) law in effect on November 5, 1990, on airport noise or access
 18 restrictions by local authorities;

19 (2) any proposed airport noise or access restriction at a general avia-
 20 tion airport if the airport proprietor has formally initiated a regulatory
 21 or legislative process before October 2, 1990; or

22 (3) the authority of the Secretary of Transportation to seek and ob-
 23 tain legal remedies the Secretary considers appropriate, including in-
 24 junctive relief.

25 **PART C—FINANCING**

26 **CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND**
 27 **AUTHORIZATIONS**

Sec.

48101. Air navigation facilities.

48102. Research and development.

48103. Airport planning and development and noise compatibility planning and programs.

48104. Certain direct costs and joint air navigation services.

48105. Weather reporting services.

48106. Airway science curriculum grants.

48107. Civil aviation security research and development.

48108. Availability and uses of amounts.

48109. Submission of budget information and legislative recommendations and comments.

48110. Facilities for advanced training of maintenance technicians for air carrier aircraft.

28 **§ 48101. Air navigation facilities**

29 (a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Not more than a
 30 total of the following amounts may be appropriated to the Secretary of
 31 Transportation out of the Airport and Airway Trust Fund established under
 32 section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to
 33 acquire, establish, and improve air navigation facilities under section
 34 44502(a)(1)(A) of this title:

1 (1) for the fiscal years ending September 30, 1991–1993,
2 \$8,200,000,000.

3 (2) for the fiscal years ending September 30, 1991–1994,
4 \$11,100,000,000.

5 (3) for the fiscal years ending September 30, 1991–1995,
6 \$14,000,000,000.

7 (b) MAJOR AIRWAY CAPITAL INVESTMENT PLAN CHANGES.—If the Sec-
8 retary decides that it is necessary to augment or substantially modify ele-
9 ments of the Airway Capital Investment Plan referred to in section
10 44501(b) of this title (including a decision that it is necessary to establish
11 more than 23 area control facilities), not more than \$100,000,000 may be
12 appropriated to the Secretary out of the Fund for the fiscal year ending
13 September 30, 1994, to carry out the augmentation or modification.

14 (c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this sec-
15 tion remain available until expended.

16 **§ 48102. Research and development**

17 (a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following
18 amounts may be appropriated to the Secretary of Transportation out of the
19 Airport and Airway Trust Fund established under section 9502 of the Inter-
20 nal Revenue Code of 1986 (26 U.S.C. 9502) to carry out sections 44504,
21 44505, 44507, 44509, and 44511–44513 of this title:

22 (1) for the fiscal year ending September 30, 1993—

23 (A) \$14,700,000 only for management and analysis projects and
24 activities.

25 (B) \$87,000,000 only for capacity and air traffic management
26 technology projects and activities.

27 (C) \$28,000,000 only for communications, navigation, and sur-
28 veillance projects and activities.

29 (D) \$7,700,000 only for weather projects and activities.

30 (E) \$6,800,000 only for airport technology projects and activi-
31 ties.

32 (F) \$44,000,000 only for aircraft safety technology projects and
33 activities.

34 (G) \$41,100,000 only for system security technology projects
35 and activities.

36 (H) \$31,000,000 only for human factors and aviation medicine
37 projects and activities.

38 (I) \$4,500,000 for environment and energy projects and activi-
39 ties.

40 (J) \$5,200,000 for innovative and cooperative research projects
41 and activities.

1 (2) for the fiscal year ending September 30, 1994, \$297,000,000.

2 (b) AVAILABILITY FOR RESEARCH.—(1) At least 15 percent of the
3 amount appropriated under subsection (a) of this section shall be for long-
4 term research projects.

5 (2) At least 3 percent of the amount appropriated under subsection (a)
6 of this section shall be available to the Administrator of the Federal Avia-
7 tion Administration to make grants under section 44511 of this title.

8 (c) TRANSFERS BETWEEN CATEGORIES.—(1) Not more than 10 percent
9 of the net amount authorized for a category of projects and activities in a
10 fiscal year under subsection (a) of this section may be transferred to or
11 from that category in that fiscal year.

12 (2) The Secretary may transfer more than 10 percent of an authorized
13 amount to or from a category only after—

14 (A) submitting a written explanation of the proposed transfer to the
15 Committees on Science, Space, and Technology and Appropriations of
16 the House of Representatives and the Committees on Commerce,
17 Science, and Transportation and Appropriations of the Senate; and

18 (B) 30 days have passed after the explanation is submitted or each
19 Committee notifies the Secretary in writing that it does not object to
20 the proposed transfer.

21 (d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—(1) Of the
22 amounts made available under subsection (a) of this section, at least
23 \$25,000,000 may be appropriated each fiscal year for research and develop-
24 ment under section 44505(a) and (c) of this title on preserving and enhanc-
25 ing airport capacity, including research and development on improvements
26 to airport design standards, maintenance, safety, operations, and environ-
27 mental concerns.

28 (2) The Administrator shall submit to the Committees on Science, Space,
29 and Technology and Public Works and Transportation of the House of Rep-
30 resentatives and the Committee on Commerce, Science, and Transportation
31 of the Senate a report on expenditures made under paragraph (1) of this
32 subsection for each fiscal year. The report shall be submitted not later than
33 60 days after the end of the fiscal year.

34 (e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary
35 amounts may be appropriated to the Secretary out of amounts in the Fund
36 available for research and development to conduct research under section
37 44506(a) and (b) of this title.

38 (f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection
39 (a) of this section remain available until expended.

1 **§48103. Airport planning and development and noise com-**
2 **patibility planning and programs**

3 Not more than a total of \$15,966,700,000 is available to the Secretary
4 of Transportation for the fiscal years ending September 30, 1982–1993, out
5 of the Airport and Airway Trust Fund established under section 9502 of
6 the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants for
7 airport planning and airport development under section 47104 of this title,
8 airport noise compatibility planning under section 47505(a)(2) of this title,
9 and carrying out noise compatibility programs under section 47504(c) of
10 this title.

11 **§48104. Certain direct costs and joint air navigation serv-**
12 **ices**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in this
14 section, the balance of the money available in the Airport and Airway Trust
15 Fund established under section 9502 of the Internal Revenue Code of 1986
16 (26 U.S.C. 9502) may be appropriated to the Secretary of Transportation
17 out of the Fund for—

18 (1) direct costs the Secretary incurs to flight check, operate, and
19 maintain air navigation facilities referred to in section 44502(a)(1)(A)
20 of this title safely and efficiently; and

21 (2) the costs of services provided under international agreements re-
22 lated to the joint financing of air navigation services assessed against
23 the United States Government.

24 (b) LIMITATION.—The amount that may be appropriated out of the Fund
25 for each of the fiscal years ending September 30, 1993–1995, may not be
26 more than an amount equal to—

27 (1) 75 percent of the amount made available under sections 106(k)
28 and 48101–48103 of this title for that fiscal year; less

29 (2) the amount made available under sections 48101–48103 of this
30 title for that fiscal year.

31 **§48105. Weather reporting services**

32 To reimburse the Secretary of Commerce for the cost incurred by the Na-
33 tional Oceanic and Atmospheric Administration of providing weather report-
34 ing services to the Federal Aviation Administration, the Secretary of Trans-
35 portation may expend from amounts available under section 48104 of this
36 title not more than the following amounts:

37 (1) for the fiscal year ending September 30, 1993, \$35,596,000.

38 (2) for the fiscal year ending September 30, 1994, \$37,800,000.

39 (3) for the fiscal year ending September 30, 1995, \$39,000,000.

1 **§ 48106. Airway science curriculum grants**

2 Amounts are available from the Airport and Airway Trust Fund estab-
3 lished under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C.
4 9502) to carry out section 44510 of this title. The amounts remain available
5 until expended.

6 **§ 48107. Civil aviation security research and development**

7 After the review under section 44912(b) of this title is completed, nec-
8 essary amounts may be appropriated to the Secretary of Transportation out
9 of the Airport and Airway Trust Fund established under section 9502 of
10 the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants under
11 section 44912(a)(4)(A).

12 **§ 48108. Availability and uses of amounts**

13 (a) AVAILABILITY OF AMOUNTS.—Amounts equal to the amounts author-
14 ized under sections 48101–48105 of this title remain in the Airport and
15 Airway Trust Fund established under section 9502 of the Internal Revenue
16 Code of 1986 (26 U.S.C. 9502) until appropriated for the purposes of sec-
17 tions 48101–48105.

18 (b) LIMITATIONS ON USES.—(1) Amounts in the Fund may be appro-
19 priated only to carry out a program or activity referred to in this chapter.

20 (2) Amounts in the Fund may be appropriated for administrative ex-
21 penses of the Department of Transportation or a component of the Depart-
22 ment only to the extent authorized by section 48104 of this title.

23 (c) LIMITATION ON OBLIGATING OR EXPENDING AMOUNTS.—In a fiscal
24 year beginning after September 30, 1995, the Secretary of Transportation
25 may obligate or expend an amount appropriated out of the Fund under sec-
26 tion 48104 of this title only if a law expressly amends section 48104.

27 **§ 48109. Submission of budget information and legislative**
28 **recommendations and comments**

29 When the Administrator of the Federal Aviation Administration submits
30 to the Secretary of Transportation, the President, or the Director of the Of-
31 fice of Management and Budget any budget information, legislative rec-
32 ommendation, or comment on legislation about amounts authorized in sec-
33 tion 48101 or 48102 of this title, the Administrator concurrently shall sub-
34 mit a copy of the information, recommendation, or comment to the Speaker
35 of the House of Representatives, the Committees on Public Works and
36 Transportation and Appropriations of the House, the President of the Sen-
37 ate, and the Committees on Commerce, Science, and Transportation and
38 Appropriations of the Senate.

1 **§48110. Facilities for advanced training of maintenance**
 2 **technicians for air carrier aircraft**

3 For the fiscal years ending September 30, 1993–1995, amounts necessary
 4 to carry out section 44515 of this title may be appropriated to the Secretary
 5 of Transportation out of the Airport and Airway Trust Fund established
 6 under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502).
 7 The amounts remain available until expended.

8 **PART D—MISCELLANEOUS**

9 **CHAPTER 491—BUY-AMERICAN PREFERENCES**

Sec.

49101. Buying goods produced in the United States.

49102. Restricting contract awards because of discrimination against United States goods or services.

49103. Contract preference for domestic firms.

49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities.

49105. Fraudulent use of “Made in America” label.

10 **§49101. Buying goods produced in the United States**

11 (a) PREFERENCE.—The Secretary of Transportation may obligate an
 12 amount that may be appropriated to carry out section 106(k), 44502(a)(2),
 13 or 44509, subchapter I of chapter 471 (except sections 47106(d) and
 14 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and
 15 48110) of this title for a project only if steel and manufactured goods used
 16 in the project are produced in the United States.

17 (b) WAIVER.—The Secretary may waive subsection (a) of this section if
 18 the Secretary finds that—

19 (1) applying subsection (a) would be inconsistent with the public in-
 20 terest;

21 (2) the steel and goods produced in the United States are not pro-
 22 duced in a sufficient and reasonably available amount or are not of a
 23 satisfactory quality;

24 (3) when procuring a facility or equipment under section
 25 44502(a)(2) or 44509, subchapter I of chapter 471 (except sections
 26 47106(d) and 47127), or chapter 481 (except sections 48102(e),
 27 48106, 48107, and 48110) of this title—

28 (A) the cost of components and subcomponents produced in the
 29 United States is more than 60 percent of the cost of all compo-
 30 nents of the facility or equipment; and

31 (B) final assembly of the facility or equipment has occurred in
 32 the United States; or

33 (4) including domestic material will increase the cost of the overall
 34 project by more than 25 percent.

35 (c) LABOR COSTS.—In this section, labor costs involved in final assembly
 36 are not included in calculating the cost of components.

1 **§ 49102. Restricting contract awards because of discrimina-**
2 **tion against United States goods or services**

3 A person or enterprise domiciled or operating under the laws of a foreign
4 country may not make a contract or subcontract under section 106(k),
5 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections
6 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106,
7 48107, and 48110) of this title or subtitle B of title IX of the Omnibus
8 Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–
9 353) if the government of that country unfairly maintains, in government
10 procurement, a significant and persistent pattern of discrimination against
11 United States goods or services that results in identifiable harm to United
12 States businesses, that the President identifies under section 305(g)(1)(A)
13 of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)).

14 **§ 49103. Contract preference for domestic firms**

15 (a) DEFINITIONS.—In this section—

16 (1) “domestic firm” means a business entity incorporated, and con-
17 ducting business, in the United States.

18 (2) “foreign firm” means a business entity not described in clause
19 (1) of this subsection.

20 (b) PREFERENCE.—Subject to subsections (c) and (d) of this section, the
21 Administrator of the Federal Aviation Administration may make, with a do-
22 mestic firm, a contract related to a grant made under section 44511, 44512,
23 or 44513 of this title that, under competitive procedures, would be made
24 with a foreign firm, if—

25 (1) the Administrator decides, and the Secretary of Commerce and
26 the United States Trade Representative concur, that the public interest
27 requires making the contract with the domestic firm, considering Unit-
28 ed States international obligations and trade relations;

29 (2) the difference between the bids submitted by the foreign firm and
30 the domestic firm is not more than 6 percent;

31 (3) the final product of the domestic firm will be assembled com-
32 pletely in the United States; and

33 (4) at least 51 percent of the final product of the domestic firm will
34 be produced in the United States.

35 (c) NONAPPLICATION.—Subsection (b) of this section does not apply if—

36 (1) compelling national security considerations require that sub-
37 section (b) of this section not apply; or

38 (2) the Trade Representative decides that making the contract would
39 violate the General Agreement on Tariffs and Trade or an international
40 agreement to which the United States is a party.

1 (d) APPLICATION TO CERTAIN GRANTS.—This section applies only to a
2 contract related to a grant made under section 44511, 44512, or 44513 of
3 this title for which—

4 (1) an amount is authorized by section 48102(a), (b), or (d) of this
5 title to be made available for the fiscal years ending September 30,
6 1991, and September 30, 1992; and

7 (2) a solicitation for bid is issued after November 5, 1990.

8 (e) REPORT.—The Administrator shall submit a report to Congress on—

9 (1) contracts to which this section applies that are made with foreign
10 firms in the fiscal years ending September 30, 1991, and September
11 30, 1992;

12 (2) the number of contracts that meet the requirements of subsection
13 (b) of this section, but that the Trade Representative decides would
14 violate the General Agreement on Tariffs and Trade or an international
15 agreement to which the United States is a party; and

16 (3) the number of contracts made under this section.

17 **§49104. Restriction on airport projects using products or**
18 **services of foreign countries denying fair market**
19 **opportunities**

20 (a) DEFINITION AND RULES FOR CONSTRUING SECTION.—In this sec-
21 tion—

22 (1) “project” has the same meaning given that term in section
23 47102 of this title.

24 (2) each foreign instrumentality and each territory and possession of
25 a foreign country administered separately for customs purposes is a
26 separate foreign country.

27 (3) an article substantially produced or manufactured in a foreign
28 country is a product of the country.

29 (4) a service provided by a person that is a national of a foreign
30 country or that is controlled by a national of a foreign country is a
31 service of the country.

32 (b) LIMITATION ON USE OF AVAILABLE AMOUNTS.—(1) An amount
33 made available under subchapter I of chapter 471 of this title (except sec-
34 tions 47106(d) and 47127) may not be used for a project that uses a prod-
35 uct or service of a foreign country during any period the country is on the
36 list maintained by the United States Trade Representative under subsection
37 (d)(1) of this section.

38 (2) Paragraph (1) of this subsection does not apply when the Secretary
39 of Transportation decides that—

40 (A) applying paragraph (1) to the product, service, or project is not
41 in the public interest;

1 (B) a product or service of the same class or type and of satisfactory
 2 quality is not produced or offered in the United States, or in a foreign
 3 country not listed under subsection (d)(1) of this section, in a sufficient
 4 and reasonably available amount; and

5 (C) the project cost will increase by more than 20 percent if the
 6 product or service is excluded.

7 (c) DECISIONS ON DENIAL OF FAIR MARKET OPPORTUNITIES.—Not
 8 later than 30 days after a report is submitted to Congress under section
 9 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the Trade Represent-
 10 ative, for a construction project of more than \$500,000 for which the gov-
 11 ernment of a foreign country supplies any part of the amount, shall decide
 12 whether the foreign country denies fair market opportunities for products
 13 and suppliers of the United States in procurement or for United States bid-
 14 ders. In making the decision, the Trade Representative shall consider infor-
 15 mation obtained in preparing the report and other information the Trade
 16 Representative considers relevant.

17 (d) LIST OF COUNTRIES DENYING FAIR MARKET OPPORTUNITIES.—(1)
 18 The Trade Representative shall maintain a list of each foreign country the
 19 Trade Representative finds under subsection (c) of this section is denying
 20 fair market opportunities. The country shall remain on the list until the
 21 Trade Representative decides the country provides fair market opportuni-
 22 ties.

23 (2) The Trade Representative shall publish in the Federal Register—

24 (A) annually the list required under paragraph (1) of this subsection;
 25 and

26 (B) any modification of the list made before the next list is pub-
 27 lished.

28 **§ 49105. Fraudulent use of “Made in America” label**

29 If the Secretary of Transportation decides that a person intentionally af-
 30 fixed a “Made in America” label to goods sold in or shipped to the United
 31 States that are not made in the United States, the Secretary shall declare
 32 the person ineligible, for not less than 3 nor more than 5 years, to receive
 33 a contract or grant from the United States Government related to a con-
 34 tract made under section 106(k), 44502(a)(2), or 44509, subchapter I of
 35 chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except
 36 sections 48102(e), 48106, 48107, and 48110) of this title or subtitle B of
 37 title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law
 38 101–508, 104 Stat. 1388–353). The Secretary may bring a civil action to
 39 enforce this section in any district court of the United States.

40 **SUBTITLE VIII—PIPELINES**

CHAPTER	Sec.
601. SAFETY	60101

603. USER FEES	60301
605. INTERSTATE COMMERCE REGULATION	60501

1

CHAPTER 601—SAFETY

Sec.

- 60101. Definitions.
- 60102. General authority.
- 60103. Standards for liquefied natural gas pipeline facilities.
- 60104. Requirements and limitations.
- 60105. State certifications.
- 60106. State agreements.
- 60107. State grants.
- 60108. Inspection and maintenance.
- 60109. High-density population areas and environmentally sensitive areas.
- 60110. Excess flow valves.
- 60111. Financial responsibility for liquefied natural gas facilities.
- 60112. Pipeline facilities hazardous to life and property.
- 60113. Customer-owned natural gas service lines.
- 60114. One-call notification systems.
- 60115. Technical safety standards committees.
- 60116. Public education programs.
- 60117. Administrative.
- 60118. Compliance and waivers.
- 60119. Judicial review.
- 60120. Enforcement.
- 60121. Actions by private persons.
- 60122. Civil penalties.
- 60123. Criminal penalties.
- 60124. Annual reports.
- 60125. Authorization of appropriations.

2 **§ 60101. Definitions**

3 (a) In this chapter—

4 (1) “existing liquefied natural gas facility”—

5 (A) means a liquefied natural gas facility for which an applica-
6 tion to approve the site, construction, or operation of the facility
7 was filed before March 1, 1978, with—8 (i) the Federal Energy Regulatory Commission (or any
9 predecessor); or10 (ii) the appropriate State or local authority, if the facility
11 is not subject to the jurisdiction of the Commission under the
12 Natural Gas Act (15 U.S.C. 717 et seq.); but13 (B) does not include a facility on which construction is begun
14 after November 29, 1979, without the approval.15 (2) “gas” means natural gas, flammable gas, or toxic or corrosive
16 gas.17 (3) “gas pipeline facility” includes a pipeline, a right of way, a facil-
18 ity, a building, or equipment used in transporting gas or treating gas
19 during its transportation.

20 (4) “hazardous liquid” means—

21 (A) petroleum or a petroleum product; and

22 (B) a substance the Secretary of Transportation decides may
23 pose an unreasonable risk to life or property when transported by

1 a hazardous liquid pipeline facility in a liquid state (except for liq-
2 uefied natural gas).

3 (5) “hazardous liquid pipeline facility” includes a pipeline, a right of
4 way, a facility, a building, or equipment used or intended to be used
5 in transporting hazardous liquid.

6 (6) “interstate gas pipeline facility”—

7 (A) means a gas pipeline facility—

8 (i) used to transport gas; and

9 (ii) subject to the jurisdiction of the Commission under the
10 Natural Gas Act (15 U.S.C. 717 et seq.); but

11 (B) does not include a gas pipeline facility transporting gas
12 from an interstate gas pipeline in a State to a direct sales cus-
13 tomer in that State buying gas for its own consumption.

14 (7) “interstate hazardous liquid pipeline facility” means a hazardous
15 liquid pipeline facility used to transport hazardous liquid in interstate
16 or foreign commerce.

17 (8) “interstate or foreign commerce”—

18 (A) related to gas, means commerce—

19 (i) between a place in a State and a place outside that
20 State; or

21 (ii) that affects any commerce described in subclause (A)(i)
22 of this clause; and

23 (B) related to hazardous liquid, means commerce between—

24 (i) a place in a State and a place outside that State; or

25 (ii) places in the same State through a place outside the
26 State.

27 (9) “intrastate gas pipeline facility” means—

28 (A) a gas pipeline facility and transportation of gas within a
29 State not subject to the jurisdiction of the Commission under the
30 Natural Gas Act (15 U.S.C. 717 et seq.); and

31 (B) a gas pipeline facility transporting gas from an interstate
32 gas pipeline in a State to a direct sales customer in that State
33 buying gas for its own consumption.

34 (10) “intrastate hazardous liquid pipeline facility” means a hazard-
35 ous liquid pipeline facility that is not an interstate hazardous liquid
36 pipeline facility.

37 (11) “liquefied natural gas” means natural gas in a liquid or semi-
38 solid state.

39 (12) “liquefied natural gas accident” means a release, burning, or
40 explosion of liquefied natural gas from any cause, except a release,
41 burning, or explosion that, under regulations prescribed by the Sec-

1 retary, does not pose a threat to public health or safety, property, or
2 the environment.

3 (13) “liquefied natural gas conversion” means conversion of natural
4 gas into liquefied natural gas or conversion of liquefied natural gas into
5 natural gas.

6 (14) “liquefied natural gas pipeline facility”—

7 (A) means a gas pipeline facility used for transporting or stor-
8 ing liquefied natural gas, or for liquefied natural gas conversion,
9 in interstate or foreign commerce; but

10 (B) does not include any part of a structure or equipment lo-
11 cated in navigable waters (as defined in section 3 of the Federal
12 Power Act (16 U.S.C. 796)).

13 (15) “municipality” means a political subdivision of a State.

14 (16) “new liquefied natural gas pipeline facility” means a liquefied
15 natural gas pipeline facility except an existing liquefied natural gas
16 pipeline facility.

17 (17) “person”, in addition to its meaning under section 1 of title 1
18 (except as to societies), includes a State, a municipality, and a trustee,
19 receiver, assignee, or personal representative of a person.

20 (18) “pipeline facility” means a gas pipeline facility and a hazardous
21 liquid pipeline facility.

22 (19) “pipeline transportation” means transporting gas and trans-
23 porting hazardous liquid.

24 (20) “State” means a State of the United States, the District of Co-
25 lumbia, and Puerto Rico.

26 (21) “transporting gas”—

27 (A) means the gathering, transmission, or distribution of gas by
28 pipeline, or the storage of gas, in interstate or foreign commerce;
29 but

30 (B) does not include gathering gas in a rural area outside a
31 populated area designated by the Secretary as a nonrural area.

32 (22) “transporting hazardous liquid”—

33 (A) means the movement of hazardous liquid by pipeline, or the
34 storage of hazardous liquid incidental to the movement of hazard-
35 ous liquid by pipeline, in or affecting interstate or foreign com-
36 merce; but

37 (B) does not include moving hazardous liquid through—

38 (i) gathering lines in a rural area;

39 (ii) onshore production, refining, or manufacturing facili-
40 ties; or

1 (iii) storage or in-plant piping systems associated with on-
2 shore production, refining, or manufacturing facilities.

3 (b) GATHERING LINES.—(1)(A) Not later than October 24, 1994, the
4 Secretary shall define by regulation the term “gathering line”.

5 (B) In defining “gathering line” for gas, the Secretary—

6 (i) shall consider functional and operational characteristics of the
7 lines to be included in the definition; and

8 (ii) is not bound by a classification the Commission establishes under
9 the Natural Gas Act (15 U.S.C. 717 et seq.).

10 (2)(A) Not later than October 24, 1995, the Secretary shall define by
11 regulation the term “regulated gathering line”. In defining the term, the
12 Secretary shall consider factors such as location, length of line from the well
13 site, operating pressure, throughput, and the composition of the transported
14 gas or hazardous liquid, as appropriate, in deciding on the types of lines
15 that functionally are gathering but should be regulated under this chapter
16 because of specific physical characteristics.

17 (B)(i) The Secretary also shall consider diameter when defining “regu-
18 lated gathering line” for hazardous liquid.

19 (ii) The definition of “regulated gathering line” for hazardous liquid may
20 not include a crude oil gathering line that has a nominal diameter of not
21 more than 6 inches, is operated at low pressure, and is located in a rural
22 area that is not unusually sensitive to environmental damage.

23 **§ 60102. General authority**

24 (a)(1) MINIMUM SAFETY STANDARDS.—The Secretary of Transportation
25 shall prescribe minimum safety standards for pipeline transportation and
26 for pipeline facilities. The standards—

27 (A) apply to transporters of gas and hazardous liquid and to owners
28 and operators of pipeline facilities;

29 (B) may apply to the design, installation, inspection, emergency
30 plans and procedures, testing, construction, extension, operation, re-
31 placement, and maintenance of pipeline facilities; and

32 (C) shall include a requirement that all individuals responsible for
33 the operation and maintenance of pipeline facilities be tested for quali-
34 fications and certified to operate and maintain those facilities.

35 (2) As the Secretary considers appropriate, the operator of a pipeline fa-
36 cility may make the certification under paragraph (1)(C) of this subsection.
37 Testing and certification under paragraph (1)(C) shall address the ability
38 to recognize and react appropriately to abnormal operating conditions that
39 may indicate a dangerous situation or a condition exceeding design limits.

40 (b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—A standard pre-
41 scribed under subsection (a) of this section shall be practicable and designed

1 to meet the need for gas pipeline safety, for safely transporting hazardous
2 liquid, and for protecting the environment. Except as provided in section
3 60103 of this title, when prescribing the standard the Secretary shall con-
4 sider—

5 (1) relevant available—

6 (A) gas pipeline safety information; or

7 (B) hazardous liquid pipeline information;

8 (2) the appropriateness of the standard for the particular type of
9 pipeline transportation or facility;

10 (3) the reasonableness of the standard; and

11 (4) the extent to which the standard will contribute to public safety
12 and the protection of the environment.

13 (c) PUBLIC SAFETY PROGRAM REQUIREMENTS.—(1) The Secretary shall
14 include in the standards prescribed under subsection (a) of this section a
15 requirement that an operator of a gas pipeline facility participate in a public
16 safety program that—

17 (A) notifies an operator of proposed demolition, excavation, tunnel-
18 ing, or construction near or affecting the facility;

19 (B) requires an operator to identify a pipeline facility that may be
20 affected by the proposed demolition, excavation, tunneling, or construc-
21 tion, to prevent damaging the facility; and

22 (C) the Secretary decides will protect a facility adequately against
23 a hazard caused by demolition, excavation, tunneling, or construction.

24 (2) To the extent a public safety program referred to in paragraph (1)
25 of this subsection is not available, the Secretary shall prescribe standards
26 requiring an operator to take action the Secretary prescribes to provide
27 services comparable to services that would be available under a public safety
28 program.

29 (3) The Secretary may include in the standards prescribed under sub-
30 section (a) of this section a requirement that an operator of a hazardous
31 liquid pipeline facility participate in a public safety program meeting the re-
32 quirements of paragraph (1) of this subsection or maintain and carry out
33 a damage prevention program that provides services comparable to services
34 that would be available under a public safety program.

35 (d) FACILITY OPERATION INFORMATION STANDARDS.—The Secretary
36 shall prescribe minimum standards requiring an operator of a pipeline facil-
37 ity subject to this chapter to maintain, to the extent practicable, information
38 related to operating the facility and, when requested, to provide the infor-
39 mation to the Secretary and an appropriate State official. The information
40 shall include—

1 (1) the business name, address, and telephone number, including an
2 operations emergency telephone number, of the operator;

3 (2) accurate maps and a supplementary geographic description, in-
4 cluding an identification of areas described in regulations prescribed
5 under section 60109 of this title, that show the location in the State
6 of—

7 (A) major gas pipeline facilities of the operator, including trans-
8 mission lines and significant distribution lines; and

9 (B) major hazardous liquid pipeline facilities of the operator;

10 (3) a description of—

11 (A) the characteristics of the operator's pipelines in the State;
12 and

13 (B) products transported through the operator's pipelines in the
14 State;

15 (4) the manual that governs operating and maintaining pipeline fa-
16 cilities in the State;

17 (5) an emergency response plan describing the operator's procedures
18 for responding to and containing releases, including—

19 (A) identifying specific action the operator will take on discover-
20 ing a release;

21 (B) liaison procedures with State and local authorities for emer-
22 gency response; and

23 (C) communication and alert procedures for immediately notify-
24 ing State and local officials at the time of a release; and

25 (6) other information the Secretary considers useful to inform a
26 State of the presence of pipeline facilities and operations in the State.

27 (e) PIPE INVENTORY STANDARDS.—The Secretary shall prescribe mini-
28 mum standards requiring an operator of a pipeline facility subject to this
29 chapter and, to the extent the Secretary considers necessary, an operator
30 of a gathering line that is not a regulated gathering line (as defined under
31 section 60101(b)(2) of this title), to maintain for the Secretary, to the ex-
32 tent practicable, an inventory with appropriate information about the types
33 of pipe used for the transmission of gas or hazardous liquid, as appropriate,
34 in the operator's system and additional information, including the material's
35 history and the leak history of the pipe. The inventory—

36 (1) for a gas pipeline facility, shall include an identification of each
37 facility passing through an area described in regulations prescribed
38 under section 60109 of this title but shall exclude equipment used with
39 the compression of gas; and

40 (2) for a hazardous liquid pipeline facility, shall include an identifica-
41 tion of each facility and gathering line passing through an area de-

1 scribed in regulations prescribed under section 60109 of this title,
2 whether the facility or gathering line otherwise is subject to this chap-
3 ter, but shall exclude equipment associated only with the pipeline
4 pumps or storage facilities.

5 (f) STANDARDS AS ACCOMMODATING “SMART PIGS”.—(1) The Secretary
6 shall prescribe minimum safety standards requiring that the design and con-
7 struction of a new gas pipeline transmission facility or hazardous liquid
8 pipeline facility, and the required replacement of an existing gas pipeline
9 transmission facility, hazardous liquid pipeline facility, or equipment, be car-
10 ried out, to the extent practicable, in a way that accommodates the passage
11 through the facility of an instrumented internal inspection device (commonly
12 referred to as a “smart pig”). The Secretary may apply the standard to an
13 existing gas or hazardous liquid transmission facility and require the facility
14 to be changed to allow the facility to be inspected with an instrumented in-
15 ternal inspection device if the basic construction of the facility will accom-
16 modate the device.

17 (2) Not later than October 24, 1995, the Secretary shall prescribe regula-
18 tions requiring the periodic inspection of each pipeline the operator of the
19 pipeline identifies under section 60109 of this title. The regulations shall
20 include any circumstances under which an inspection shall be conducted
21 with an instrumented internal inspection device and, if the device is not re-
22 quired, use of an inspection method that is at least as effective as using
23 the device in providing for the safety of the pipeline.

24 (g) EFFECTIVE DATES.—A standard prescribed under this section and
25 section 60110 of this title is effective on the 30th day after the Secretary
26 prescribes the standard. However, the Secretary for good cause may pre-
27 scribe a different effective date when required because of the time reason-
28 ably necessary to comply with the standard. The different date must be
29 specified in the regulation prescribing the standard.

30 (h) SAFETY CONDITION REPORTS.—(1) The Secretary shall prescribe
31 regulations requiring each operator of a pipeline facility (except a master
32 meter) to submit to the Secretary a written report on any—

33 (A) condition that is a hazard to life, property, or the environment;

34 and

35 (B) safety-related condition that causes or has caused a significant
36 change or restriction in the operation of a pipeline facility.

37 (2) The Secretary must receive the report not later than 5 working days
38 after a representative of a person to which this section applies first estab-
39 lishes that the condition exists. Notice of the condition shall be given con-
40 currently to appropriate State authorities.

1 (i) CARBON DIOXIDE REGULATION.—The Secretary shall regulate carbon
2 dioxide transported by a hazardous liquid pipeline facility. The Secretary
3 shall prescribe regulations related to hazardous liquid to ensure the safe
4 transportation of carbon dioxide by such a facility.

5 (j) EMERGENCY FLOW RESTRICTING DEVICES.—(1) Not later than Octo-
6 ber 24, 1994, the Secretary shall survey and assess the effectiveness of
7 emergency flow restricting devices (including remotely controlled valves and
8 check valves) and other procedures, systems, and equipment used to detect
9 and locate hazardous liquid pipeline ruptures and minimize product releases
10 from hazardous liquid pipeline facilities.

11 (2) Not later than 2 years after the survey and assessment are completed,
12 the Secretary shall prescribe regulations on the circumstances under which
13 an operator of a hazardous liquid pipeline facility must use an emergency
14 flow restricting device or other procedure, system, or equipment described
15 in paragraph (1) of this subsection on the facility.

16 (k) PROHIBITION AGAINST LOW INTERNAL STRESS EXCEPTION.—The
17 Secretary may not provide an exception to this chapter for a hazardous liq-
18 uid pipeline facility only because the facility operates at low internal stress.

19 **§60103. Standards for liquefied natural gas pipeline facili-**
20 **ties**

21 (a) LOCATION STANDARDS.—The Secretary of Transportation shall pre-
22 scribe minimum safety standards for deciding on the location of a new lique-
23 fied natural gas pipeline facility. In prescribing a standard, the Secretary
24 shall consider the—

25 (1) kind and use of the facility;

26 (2) existing and projected population and demographic characteris-
27 tics of the location;

28 (3) existing and proposed land use near the location;

29 (4) natural physical aspects of the location;

30 (5) medical, law enforcement, and fire prevention capabilities near
31 the location that can cope with a risk caused by the facility; and

32 (6) need to encourage remote siting.

33 (b) DESIGN, INSTALLATION, CONSTRUCTION, INSPECTION, AND TESTING
34 STANDARDS.—The Secretary of Transportation shall prescribe minimum
35 safety standards for designing, installing, constructing, initially inspecting,
36 and initially testing a new liquefied natural gas pipeline facility. When pre-
37 scribing a standard, the Secretary shall consider—

38 (1) the characteristics of material to be used in constructing the fa-
39 cility and of alternative material;

40 (2) design factors;

1 (3) the characteristics of the liquefied natural gas to be stored or
2 converted at, or transported by, the facility; and

3 (4) the public safety factors of the design and of alternative designs,
4 particularly the ability to prevent and contain a liquefied natural gas
5 spill.

6 (c) NONAPPLICATION.—(1) Except as provided in paragraph (2) of this
7 subsection, a design, location, installation, construction, initial inspection, or
8 initial testing standard prescribed under this chapter after March 1, 1978,
9 does not apply to an existing liquefied natural gas pipeline facility if the
10 standard is to be applied because of authority given—

11 (A) under this chapter; or

12 (B) under another law, and the standard is not prescribed at the
13 time the authority is applied.

14 (2)(A) Any design, installation, construction, initial inspection, or initial
15 testing standard prescribed under this chapter after March 1, 1978, may
16 provide that the standard applies to any part of a replacement component
17 of a liquefied natural gas pipeline facility if the component or part is placed
18 in service after the standard is prescribed and application of the standard—

19 (i) does not make the component or part incompatible with other
20 components or parts; or

21 (ii) is not impracticable otherwise.

22 (B) Any location standard prescribed under this chapter after March 1,
23 1978, does not apply to any part of a replacement component of an existing
24 liquefied natural gas pipeline facility.

25 (3) A design, installation, construction, initial inspection, or initial testing
26 standard does not apply to a liquefied natural gas pipeline facility existing
27 when the standard is adopted.

28 (d) OPERATION AND MAINTENANCE STANDARDS.—The Secretary of
29 Transportation shall prescribe minimum operating and maintenance stand-
30 ards for a liquefied natural gas pipeline facility. In prescribing a standard,
31 the Secretary shall consider—

32 (1) the conditions, features, and type of equipment and structures
33 that make up or are used in connection with the facility;

34 (2) the fire prevention and containment equipment at the facility;

35 (3) security measures to prevent an intentional act that could cause
36 a liquefied natural gas accident;

37 (4) maintenance procedures and equipment;

38 (5) the training of personnel in matters specified by this subsection;
39 and

40 (6) other factors and conditions related to the safe handling of lique-
41 fied natural gas.

1 (e) EFFECTIVE DATES.—A standard prescribed under this section is ef-
2 fective on the 30th day after the Secretary of Transportation prescribes the
3 standard. However, the Secretary for good cause may prescribe a different
4 effective date when required because of the time reasonably necessary to
5 comply with the standard. The different date must be specified in the regu-
6 lation prescribing the standard.

7 (f) CONTINGENCY PLANS.—A new liquefied natural gas pipeline facility
8 may be operated only after the operator submits an adequate contingency
9 plan that states the action to be taken if a liquefied natural gas accident
10 occurs. The Secretary of Energy or appropriate State or local authority
11 shall decide if the plan is adequate.

12 (g) EFFECT ON OTHER STANDARDS.—This section does not preclude ap-
13 plying a standard prescribed under section 60102 of this title to a gas pipe-
14 line facility (except a liquefied natural gas pipeline facility) associated with
15 a liquefied natural gas pipeline facility.

16 **§ 60104. Requirements and limitations**

17 (a) OPPORTUNITY TO PRESENT VIEWS.—The Secretary of Transpor-
18 tation shall give an interested person an opportunity to make oral and writ-
19 ten presentations of information, views, and arguments when prescribing a
20 standard under this chapter.

21 (b) NONAPPLICATION.—A design, installation, construction, initial inspec-
22 tion, or initial testing standard does not apply to a pipeline facility existing
23 when the standard is adopted.

24 (c) PREEMPTION.—A State authority that has submitted a current certifi-
25 cation under section 60105(a) of this title may adopt additional or more
26 stringent safety standards for intrastate pipeline facilities and intrastate
27 pipeline transportation only if those standards are compatible with the mini-
28 mum standards prescribed under this chapter. A State authority may not
29 adopt or continue in force safety standards for interstate pipeline facilities
30 or interstate pipeline transportation.

31 (d) CONSULTATION.—(1) When continuity of gas service is affected by
32 prescribing a standard or waiving compliance with standards under this
33 chapter, the Secretary of Transportation shall consult with and advise the
34 Federal Energy Regulatory Commission or a State authority having juris-
35 diction over the affected gas pipeline facility before prescribing the standard
36 or waiving compliance. The Secretary shall delay the effective date of the
37 standard or waiver until the Commission or State authority has a reason-
38 able opportunity to grant an authorization it considers necessary.

39 (2) In a proceeding under section 3 or 7 of the Natural Gas Act (15
40 U.S.C. 717b or 717f), each applicant for authority to import natural gas
41 or to establish, construct, operate, or extend a gas pipeline facility subject

1 to an applicable safety standard shall certify that it will design, install, in-
2 spect, test, construct, operate, replace, and maintain a gas pipeline facility
3 under those standards and plans for inspection and maintenance under sec-
4 tion 60108 of this title. The certification is binding on the Secretary of En-
5 ergy and the Commission except when an appropriate enforcement agency
6 has given timely written notice to the Commission that the applicant has
7 violated a standard prescribed under this chapter.

8 (e) LOCATION AND ROUTING OF FACILITIES.—This chapter does not au-
9 thorize the Secretary of Transportation to prescribe the location or routing
10 of a pipeline facility.

11 **§60105. State certifications**

12 (a) GENERAL REQUIREMENTS AND SUBMISSION.—Except as provided in
13 this section and sections 60114 and 60121 of this title, the Secretary of
14 Transportation may not prescribe or enforce safety standards and practices
15 for an intrastate pipeline facility or intrastate pipeline transportation to the
16 extent that the safety standards and practices are regulated by a State au-
17 thority (including a municipality if the standards and practices apply to
18 intrastate gas pipeline transportation) that submits to the Secretary annu-
19 ally a certification for the facilities and transportation that complies with
20 subsections (b) and (c) of this section.

21 (b) CONTENTS.—Each certification submitted under subsection (a) of this
22 section shall state that the State authority—

23 (1) has regulatory jurisdiction over the standards and practices to
24 which the certification applies;

25 (2) has adopted, by the date of certification, each applicable stand-
26 ard prescribed under this chapter or, if a standard under this chapter
27 was prescribed not later than 120 days before certification, is taking
28 steps to adopt that standard;

29 (3) is enforcing each adopted standard through ways that include in-
30 spections conducted by State employees meeting the qualifications the
31 Secretary prescribes under section 60107(d)(1)(C) of this title;

32 (4) is encouraging and promoting programs designed to prevent
33 damage by demolition, excavation, tunneling, or construction activity to
34 the pipeline facilities to which the certification applies;

35 (5) may require record maintenance, reporting, and inspection sub-
36 stantially the same as provided under section 60117 of this title;

37 (6) may require that plans for inspection and maintenance under
38 section 60108 (a) and (b) of this title be filed for approval; and

39 (7) may enforce safety standards of the authority under a law of the
40 State by injunctive relief and civil penalties substantially the same as

1 provided under sections 60120 and 60122(a)(1) and (b)–(f) of this
2 title.

3 (c) REPORTS.—(1) Each certification submitted under subsection (a) of
4 this section shall include a report that contains—

5 (A) the name and address of each person to whom the certification
6 applies that is subject to the safety jurisdiction of the State authority;

7 (B) each accident or incident reported during the prior 12 months
8 by that person involving a fatality, personal injury requiring hos-
9 pitalization, or property damage or loss of more than an amount the
10 Secretary establishes (even if the person sustaining the fatality, per-
11 sonal injury, or property damage or loss is not subject to the safety
12 jurisdiction of the authority), any other accident the authority consid-
13 ers significant, and a summary of the investigation by the authority of
14 the cause and circumstances surrounding the accident or incident;

15 (C) the record maintenance, reporting, and inspection practices con-
16 ducted by the authority to enforce compliance with safety standards
17 prescribed under this chapter to which the certification applies, includ-
18 ing the number of inspections of pipeline facilities the authority made
19 during the prior 12 months; and

20 (D) any other information the Secretary requires.

21 (2) The report included in the first certification submitted under sub-
22 section (a) of this section is only required to state information available at
23 the time of certification.

24 (d) APPLICATION.—A certification in effect under this section does not
25 apply to safety standards prescribed under this chapter after the date of
26 certification. This chapter applies to each applicable safety standard pre-
27 scribed after the date of certification until the State authority adopts the
28 standard and submits the appropriate certification to the Secretary under
29 subsection (a) of this section.

30 (e) MONITORING.—The Secretary may monitor a safety program estab-
31 lished under this section to ensure that the program complies with the cer-
32 tification. A State authority shall cooperate with the Secretary under this
33 subsection.

34 (f) REJECTIONS OF CERTIFICATION.—If after receiving a certification the
35 Secretary decides the State authority is not enforcing satisfactorily compli-
36 ance with applicable safety standards prescribed under this chapter, the
37 Secretary may reject the certification, assert United States Government ju-
38 risdiction, or take other appropriate action to achieve adequate enforcement.
39 The Secretary shall give the authority notice and an opportunity for a hear-
40 ing before taking final action under this subsection. When notice is given,

1 the burden of proof is on the authority to demonstrate that it is enforcing
2 satisfactorily compliance with the prescribed standards.

3 **§ 60106. State agreements**

4 (a) GENERAL AUTHORITY.—If the Secretary of Transportation does not
5 receive a certification under section 60105 of this title, the Secretary may
6 make an agreement with a State authority (including a municipality if the
7 agreement applies to intrastate gas pipeline transportation) authorizing it
8 to take necessary action. Each agreement shall—

9 (1) establish an adequate program for record maintenance, reporting,
10 and inspection designed to assist compliance with applicable safety
11 standards prescribed under this chapter; and

12 (2) prescribe procedures for approval of plans of inspection and
13 maintenance substantially the same as required under section 60108
14 (a) and (b) of this title.

15 (b) NOTIFICATION.—Each agreement shall require the State authority to
16 notify the Secretary promptly of a violation or probable violation of an ap-
17 plicable safety standard discovered as a result of action taken in carrying
18 out an agreement under this section.

19 (c) MONITORING.—The Secretary may monitor a safety program estab-
20 lished under this section to ensure that the program complies with the
21 agreement. A State authority shall cooperate with the Secretary under this
22 subsection.

23 (d) ENDING AGREEMENTS.—The Secretary may end an agreement made
24 under this section when the Secretary finds that the State authority has not
25 complied with any provision of the agreement. The Secretary shall give the
26 authority notice and an opportunity for a hearing before ending an agree-
27 ment. The finding and decision to end the agreement shall be published in
28 the Federal Register and may not become effective for at least 15 days after
29 the date of publication.

30 **§ 60107. State grants**

31 (a) GENERAL AUTHORITY.—If a State authority files an application not
32 later than September 30 of a calendar year, the Secretary of Transportation
33 shall pay not more than 50 percent of the cost of the personnel, equipment,
34 and activities the authority reasonably requires during the next calendar
35 year—

36 (1) to carry out a safety program under a certification under section
37 60105 of this title or an agreement under section 60106 of this title;
38 or

39 (2) to act as an agent of the Secretary on interstate gas pipeline fa-
40 cilities or interstate hazardous liquid pipeline facilities.

1 (b) PAYMENTS.—After notifying and consulting with a State authority,
2 the Secretary may withhold any part of a payment when the Secretary de-
3 cides that the authority is not carrying out satisfactorily a safety program
4 or not acting satisfactorily as an agent. The Secretary may pay an authority
5 under this section only when the authority ensures the Secretary that it will
6 provide the remaining costs of a safety program and that the total State
7 amount spent for a safety program (excluding grants of the United States
8 Government) will at least equal the average amount spent—

9 (1) for a gas safety program, for the fiscal years that ended June
10 30, 1967, and June 30, 1968; and

11 (2) for a hazardous liquid safety program, for the fiscal years that
12 ended September 30, 1978, and September 30, 1979.

13 (c) APPORTIONMENT AND METHOD OF PAYMENT.—The Secretary shall
14 apportion the amount appropriated to carry out this section among the
15 States. A payment may be made under this section in installments, in ad-
16 vance, or on a reimbursable basis.

17 (d) ADDITIONAL AUTHORITY AND CONSIDERATIONS.—(1) The Secretary
18 may prescribe—

19 (A) the form of, and way of filing, an application under this section;

20 (B) reporting and fiscal procedures the Secretary considers necessary
21 to ensure the proper accounting of money of the Government; and

22 (C) qualifications for a State to meet to receive a payment under this
23 section, including qualifications for State employees who perform in-
24 spection activities under section 60105 or 60106 of this title.

25 (2) The qualifications prescribed under paragraph (1)(C) of this sub-
26 section may—

27 (A) consider the experience and training of the employee;

28 (B) order training or other requirements; and

29 (C) provide for approval of qualifications on a conditional basis until
30 specified requirements are met.

31 **§ 60108. Inspection and maintenance**

32 (a) PLANS.—(1) Each person transporting gas or hazardous liquid or
33 owning or operating an intrastate gas pipeline facility or hazardous liquid
34 pipeline facility shall carry out a current written plan (including any
35 changes) for inspection and maintenance of each facility used in the trans-
36 portation and owned or operated by the person. A copy of the plan shall
37 be kept at any office of the person the Secretary of Transportation consid-
38 ers appropriate. The Secretary also may require a person transporting gas
39 or hazardous liquid or owning or operating a pipeline facility subject to this
40 chapter to file a plan for inspection and maintenance for approval.

1 (2) If the Secretary or a State authority responsible for enforcing stand-
2 ards prescribed under this chapter decides that a plan required under para-
3 graph (1) of this subsection is inadequate for safe operation, the Secretary
4 or authority shall require the person to revise the plan. Revision may be
5 required only after giving notice and an opportunity for a hearing. A plan
6 required under paragraph (1) must be practicable and designed to meet the
7 need for pipeline safety and must include terms designed to enhance the
8 ability to discover safety-related conditions described in section 60102(h)(1)
9 of this title. In deciding on the adequacy of a plan, the Secretary or author-
10 ity shall consider—

- 11 (A) relevant available pipeline safety information;
- 12 (B) the appropriateness of the plan for the particular kind of pipe-
13 line transportation or facility;
- 14 (C) the reasonableness of the plan; and
- 15 (D) the extent to which the plan will contribute to public safety and
16 the protection of the environment.

17 (3) A plan required under this subsection shall be made available to the
18 Secretary or State authority on request under section 60117 of this title.

19 (b) INSPECTION AND TESTING.—(1) The Secretary shall inspect and re-
20 quire appropriate testing of a pipeline facility subject to this chapter that
21 is not covered by a certification under section 60105 of this title or an
22 agreement under section 60106 of this title. The Secretary shall decide on
23 the frequency and type of inspection and testing under this subsection on
24 a case-by-case basis after considering the following:

- 25 (A) the location of the pipeline facility.
- 26 (B) the type, size, age, manufacturer, method of construction, and
27 condition of the pipeline facility.
- 28 (C) the nature and volume of material transported through the pipe-
29 line facility.
- 30 (D) the pressure at which that material is transported.
- 31 (E) climatic, geologic, and seismic characteristics (including soil
32 characteristics) and conditions of the area in which the pipeline facility
33 is located.
- 34 (F) existing and projected population and demographic characteris-
35 tics of the area in which the pipeline facility is located.
- 36 (G) for a hazardous liquid pipeline facility, the proximity of the area
37 in which the facility is located to an area that is unusually sensitive
38 to environmental damage.
- 39 (H) the frequency of leaks.
- 40 (I) other factors the Secretary decides are relevant to the safety of
41 pipeline facilities.

1 (2) To the extent and in amounts provided in advance in an appropriation
2 law, the Secretary shall decide on the frequency of inspection under para-
3 graph (1) of this subsection. However, an inspection must occur at least
4 once every 2 years. The Secretary may reduce the frequency of an inspec-
5 tion of a master meter system.

6 (3) Testing under this subsection shall use the most appropriate tech-
7 nology practicable.

8 (c) PIPELINE FACILITIES OFFSHORE AND IN NAVIGABLE WATERS.—(1)
9 In this subsection—

10 (A) “abandoned” means permanently removed from service.

11 (B) “pipeline facility” includes an underwater abandoned pipeline fa-
12 cility.

13 (C) if a pipeline facility has no operator, the most recent operator
14 of the facility is deemed to be the operator of the facility.

15 (2)(A) Not later than May 16, 1993, on the basis of experience with the
16 inspections under section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act
17 of 1968 or section 203(l)(1)(A) of the Hazardous Liquid Pipeline Safety
18 Act of 1979, as appropriate, and any other information available to the Sec-
19 retary, the Secretary shall establish a mandatory, systematic, and, where
20 appropriate, periodic inspection program of—

21 (i) all offshore pipeline facilities; and

22 (ii) any other pipeline facility crossing under, over, or through navi-
23 gable waters (as defined by the Secretary) if the Secretary decides that
24 the location of the facility in those navigable waters could pose a haz-
25 ard to navigation or public safety.

26 (B) In prescribing regulations to carry out subparagraph (A) of this para-
27 graph—

28 (i) the Secretary shall identify what is a hazard to navigation with
29 respect to an underwater abandoned pipeline facility; and

30 (ii) for an underwater pipeline facility abandoned after October 24,
31 1992, the Secretary shall include requirements that will lessen the po-
32 tential that the facility will pose a hazard to navigation and shall con-
33 sider the relationship between water depth and navigational safety and
34 factors relevant to the local marine environment.

35 (3)(A) The Secretary shall establish by regulation a program requiring
36 an operator of a pipeline facility described in paragraph (2) of this sub-
37 section to report a potential or existing navigational hazard involving that
38 pipeline facility to the Secretary through the appropriate Coast Guard of-
39 fice.

40 (B) The operator of a pipeline facility described in paragraph (2) of this
41 subsection that discovers any part of the pipeline facility that is a hazard

1 to navigation shall mark the location of the hazardous part with a Coast-
2 Guard-approved marine buoy or marker and immediately shall notify the
3 Secretary as provided by the Secretary under subparagraph (A) of this
4 paragraph. A marine buoy or marker used under this subparagraph is
5 deemed a pipeline sign or right-of-way marker under section 60123(c) of
6 this title.

7 (4)(A) The Secretary shall require by regulation that each pipeline facility
8 described in paragraph (2) of this subsection that is a hazard to navigation
9 is buried not later than 6 months after the date the condition of the facility
10 is reported to the Secretary. The Secretary may extend that 6-month period
11 for a reasonable period to ensure compliance with this paragraph.

12 (B) In prescribing regulations for subparagraph (A) of this paragraph for
13 an underwater pipeline facility abandoned after October 24, 1992, the Sec-
14 retary shall include requirements that will lessen the potential that the facil-
15 ity will pose a hazard to navigation and shall consider the relationship be-
16 tween water depth and navigational safety and factors relevant to the local
17 marine environment.

18 (5)(A) Not later than October 24, 1994, the Secretary shall establish
19 standards on what is an exposed offshore pipeline facility and what is a haz-
20 ard to navigation under this subsection.

21 (B) Not later than 6 months after the Secretary establishes standards
22 under subparagraph (A) of this paragraph, or October 24, 1995, whichever
23 occurs first, the operator of each offshore pipeline facility not described in
24 section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or sec-
25 tion 203(l)(1)(A) of the Hazardous Liquid Pipeline Safety Act of 1979, as
26 appropriate, shall inspect the facility and report to the Secretary on any
27 part of the facility that is exposed or is a hazard to navigation. This sub-
28 paragraph applies only to a facility that is between the high water mark
29 and the point at which the subsurface is under 15 feet of water, as meas-
30 ured from mean low water. An inspection that occurred after October 3,
31 1989, may be used for compliance with this subparagraph if the inspection
32 conforms to the requirements of this subparagraph.

33 (C) The Secretary may extend the time period specified in subparagraph
34 (B) of this paragraph for not more than 6 months if the operator of a facil-
35 ity satisfies the Secretary that the operator has made a good faith effort,
36 with reasonable diligence, but has been unable to comply by the end of that
37 period.

38 (6)(A) The operator of a pipeline facility abandoned after October 24,
39 1992, shall report the abandonment to the Secretary in a way that specifies
40 whether the facility has been abandoned properly according to applicable
41 United States Government and State requirements.

1 (B) Not later than October 24, 1995, the operator of a pipeline facility
2 abandoned before October 24, 1992, shall report to the Secretary reasonably
3 available information related to the facility, including information that a
4 third party possesses. The information shall include the location, size, date,
5 and method of abandonment, whether the facility has been abandoned prop-
6 erly under applicable law, and other relevant information the Secretary may
7 require. Not later than April 24, 1994, the Secretary shall specify how the
8 information shall be reported. The Secretary shall ensure that the Govern-
9 ment maintains the information in a way accessible to appropriate Govern-
10 ment agencies and State authorities.

11 (C) The Secretary shall request that a State authority having information
12 on a collision between a vessel and an underwater pipeline facility report
13 the information to the Secretary in a timely way and make a reasonable
14 effort to specify the location, date, and severity of the collision. Chapter 35
15 of title 44 does not apply to this subparagraph.

16 (7) The Secretary may not exempt from this chapter an offshore hazard-
17 ous liquid pipeline facility only because the pipeline facility transfers hazard-
18 ous liquid in an underwater pipeline between a vessel and an onshore facil-
19 ity.

20 (d) REPLACING CAST IRON GAS PIPELINES.—(1) The Secretary shall
21 publish a notice on the availability of industry guidelines, developed by the
22 Gas Piping Technology Committee, for replacing cast iron pipelines. Not
23 later than 2 years after the guidelines become available, the Secretary shall
24 conduct a survey of gas pipeline operators with cast iron pipe in their sys-
25 tems to establish—

26 (A) the extent to which each operator has adopted a plan for the
27 safe management and replacement of cast iron;

28 (B) the elements of the plan, including the anticipated rate of re-
29 placement; and

30 (C) the progress that has been made.

31 (2) Chapter 35 of title 44 does not apply to the conduct of the survey.

32 (3) This subsection does not prevent the Secretary from developing Gov-
33 ernment guidelines or regulations for cast iron gas pipelines as the Sec-
34 retary considers appropriate.

35 **§ 60109. High-density population areas and environmentally**
36 **sensitive areas**

37 (a) IDENTIFICATION REQUIREMENTS.—Not later than October 24, 1994,
38 the Secretary of Transportation shall prescribe regulations that—

39 (1) establish criteria for identifying—

1 (A) by operators of gas pipeline facilities, each gas pipeline fa-
2 cility (except a natural gas distribution line) located in a high-den-
3 sity population area; and

4 (B) by operators of hazardous liquid pipeline facilities and gath-
5 ering lines—

6 (i) each hazardous liquid pipeline facility, whether other-
7 wise subject to this chapter, that crosses a navigable water-
8 way (as the Secretary defines by regulation) or that is located
9 in an area described in the criteria as a high-density popu-
10 lation area; and

11 (ii) each hazardous liquid pipeline facility and gathering
12 line, whether otherwise subject to this chapter, located in an
13 area that the Secretary, in consultation with the Adminis-
14 trator of the Environmental Protection Agency, describes as
15 unusually sensitive to environmental damage if there is a haz-
16 ardous liquid pipeline accident; and

17 (2) provide that the identification be carried out through the inven-
18 tory required under section 60102(c) of this title.

19 (b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describ-
20 ing an area that is unusually sensitive to environmental damage if there is
21 a hazardous liquid pipeline accident, the Secretary shall consider includ-
22 ing—

23 (1) earthquake zones and areas subject to landslides and other sub-
24 stantial ground movements;

25 (2) areas of likely ground water contamination if a hazardous liquid
26 pipeline facility ruptures;

27 (3) freshwater lakes, rivers, and waterways; and

28 (4) river deltas and other areas subject to soil erosion or subsidence
29 from flooding or other water action where a hazardous liquid pipeline
30 facility is likely to become exposed or undermined.

31 **§ 60110. Excess flow valves**

32 (a) APPLICATION.—This section applies only to—

33 (1) a natural gas distribution system installed after the effective date
34 of regulations prescribed under this section; and

35 (2) any other natural gas distribution system when repair to the sys-
36 tem requires replacing a part to accommodate installing excess flow
37 valves.

38 (b) INSTALLATION REQUIREMENTS AND CONSIDERATIONS.—Not later
39 than April 24, 1994, the Secretary of Transportation shall prescribe regula-
40 tions on the circumstances under which an operator of a natural gas dis-

1 (b) HEARINGS.—An operator receiving a notice under subsection (a) of
2 this section may have a hearing on the record not later than 30 days after
3 receiving the notice. The operator may show why the Secretary should not
4 issue an order requiring the operator to demonstrate and maintain financial
5 responsibility in at least the amount the Secretary considers adequate.

6 (c) ORDERS.—After an opportunity for a hearing on the record, the Sec-
7 retary may issue the order if the Secretary decides it is justified in the pub-
8 lic interest.

9 **§ 60112. Pipeline facilities hazardous to life and property**

10 (a) GENERAL AUTHORITY.—After notice and an opportunity for a hear-
11 ing, the Secretary of Transportation may decide a pipeline facility is hazard-
12 ous if the Secretary decides the facility is—

13 (1) hazardous to life, property, or the environment; or

14 (2) constructed or operated, or a component of the facility is con-
15 structed or operated, with equipment, material, or a technique the Sec-
16 retary decides is hazardous to life, property, or the environment.

17 (b) CONSIDERATIONS.—In making a decision under subsection (a) of this
18 section, the Secretary shall consider, if relevant—

19 (1) the characteristics of the pipe and other equipment used in the
20 pipeline facility, including the age, manufacture, physical properties,
21 and method of manufacturing, constructing, or assembling the equip-
22 ment;

23 (2) the nature of the material the pipeline facility transports, the
24 corrosive and deteriorative qualities of the material, the sequence in
25 which the material are transported, and the pressure required for
26 transporting the material;

27 (3) the aspects of the area in which the pipeline facility is located,
28 including climatic and geologic conditions and soil characteristics;

29 (4) the proximity of the area in which the hazardous liquid pipeline
30 facility is located to environmentally sensitive areas;

31 (5) the population density and population and growth patterns of the
32 area in which the pipeline facility is located;

33 (6) any recommendation of the National Transportation Safety
34 Board made under another law; and

35 (7) other factors the Secretary considers appropriate.

36 (c) OPPORTUNITY FOR STATE COMMENT.—The Secretary shall provide,
37 to any appropriate official of a State in which a pipeline facility is located
38 and about which a proceeding has begun under this section, notice and an
39 opportunity to comment on an agreement the Secretary proposes to make
40 to resolve the proceeding. State comment shall incorporate comments of af-
41 fected local officials.

1 (d) CORRECTIVE ACTION ORDERS.—If the Secretary decides under sub-
2 section (a) of this section that a pipeline facility is hazardous, the Secretary
3 shall order the operator of the facility to take necessary corrective action.

4 (e) WAIVER OF NOTICE AND HEARING IN EMERGENCY.—The Secretary
5 may waive the requirements for notice and an opportunity for a hearing
6 under this section and issue expeditiously an order under this section if the
7 Secretary decides failure to issue the order expeditiously will result in likely
8 serious harm to life, property, or the environment. An order under this sub-
9 section shall provide an opportunity for a hearing as soon as practicable
10 after the order is issued.

11 **§ 60113. Customer-owned natural gas service lines**

12 (a) MAINTENANCE INFORMATION.—Not later than October 24, 1993, the
13 Secretary of Transportation shall prescribe regulations requiring an opera-
14 tor of a natural gas distribution pipeline that does not maintain customer-
15 owned natural gas service lines up to building walls to advise its customers
16 of—

17 (1) the requirements for maintaining those lines;

18 (2) any resources known to the operator that could assist customers
19 in carrying out the maintenance;

20 (3) information the operator has on operating and maintaining its
21 lines that could assist customers; and

22 (4) the potential hazards of not maintaining the lines.

23 (b) Actions To Promote Safety.—Not later than one year after submit-
24 ting the report required under section 115(b) of the Pipeline Safety Act of
25 1992 (Public Law 102–508, 106 Stat. 3296), the Secretary, considering the
26 report and in cooperation and coordination with appropriate State and local
27 authorities, shall take appropriate action to promote the adoption of meas-
28 ures to improve the safety of customer-owned natural gas service lines.

29 **§ 60114. One-call notification systems**

30 (a) MINIMUM REQUIREMENTS.—The Secretary of Transportation shall
31 prescribe regulations providing minimum requirements for establishing and
32 operating a one-call notification system for a State to adopt that will notify
33 an operator of a pipeline facility of activity in the vicinity of the facility that
34 could threaten the safety of the facility. The regulations shall include the
35 following:

36 (1) a requirement that the system apply to all areas of the State
37 containing underground pipeline facilities.

38 (2) a requirement that a person intending to engage in an activity
39 the Secretary decides could cause physical damage to an underground
40 facility must contact the appropriate system to establish if there are
41 underground facilities present in the area of the intended activity.

1 (3) a requirement that all operators of underground pipeline facilities
2 participate in an appropriate one-call notification system.

3 (4) qualifications for an operator of a facility, a private contractor,
4 or a State or local authority to operate a system.

5 (5) procedures for advertisement and notice of the availability of a
6 system.

7 (6) a requirement about the information to be provided by a person
8 contacting the system under clause (2) of this subsection.

9 (7) a requirement for the response of the operator of the system and
10 of the facility after they are contacted by an individual under this sub-
11 section.

12 (8) a requirement that each State decide whether the system will be
13 toll free.

14 (9) a requirement for sanctions substantially the same as provided
15 under sections 60120, 60122, and 60123 of this title.

16 (b) GRANTS.—The Secretary may make a grant to a State under this sec-
17 tion to develop and establish a one-call notification system consistent with
18 subsection (a) of this section.

19 (c) MARKING FACILITIES.—On notification by an operator of a damage
20 prevention program or by a person planning to carry out demolition, exca-
21 vation, tunneling, or construction in the vicinity of a pipeline facility, the
22 operator of the facility shall mark accurately, in a reasonable and timely
23 way, the location of the pipeline facilities in the vicinity of the demolition,
24 excavation, tunneling, or construction.

25 (d) APPORTIONMENT.—When apportioning the amount appropriated to
26 carry out section 60107 of this title among the States, the Secretary—

27 (1) shall consider whether a State has adopted or is seeking adoption
28 of a one-call notification system under this section; and

29 (2) shall withhold part of a payment under section 60107 of this title
30 when the Secretary decides a State has not adopted, or is not seeking
31 adoption of, a one-call notification system.

32 (e) RELATIONSHIP TO OTHER LAWS.—This section and regulations pre-
33 scribed under this section do not affect the liability established under a law
34 of the United States or a State for damage caused by an activity described
35 in subsection (a)(2) of this section.

36 **§ 60115. Technical safety standards committees**

37 (a) ORGANIZATION.—The Technical Pipeline Safety Standards Committee
38 and the Technical Hazardous Liquid Pipeline Safety Standards Committee
39 are committees in the Department of Transportation.

40 (b) COMPOSITION AND APPOINTMENT.—(1) The Technical Pipeline Safe-
41 ty Standards Committee is composed of 15 members appointed by the Sec-

1 retary of Transportation after consulting with public and private agencies
2 concerned with the technical aspect of transporting gas or operating a gas
3 pipeline facility. Each member must be experienced in the safety regulation
4 of transporting gas and of gas pipeline facilities or technically qualified, by
5 training, experience, or knowledge in at least one field of engineering appli-
6 cable to transporting gas or operating a gas pipeline facility, to evaluate gas
7 pipeline safety standards.

8 (2) The Technical Hazardous Liquid Pipeline Safety Standards Commit-
9 tee is composed of 15 members appointed by the Secretary after consulting
10 with public and private agencies concerned with the technical aspect of
11 transporting hazardous liquid or operating a hazardous liquid pipeline facil-
12 ity. Each member must be experienced in the safety regulation of transport-
13 ing hazardous liquid and of hazardous liquid pipeline facilities or technically
14 qualified, by training, experience, or knowledge in at least one field of engi-
15 neering applicable to transporting hazardous liquid or operating a hazardous
16 liquid pipeline facility, to evaluate hazardous liquid pipeline safety stand-
17 ards.

18 (3) The members of each committee are appointed as follows:

19 (A) 5 individuals selected from departments, agencies, and instru-
20 mentalities of the United States Government and of the States.

21 (B) 4 individuals selected from the natural gas or hazardous liquid
22 industry, as appropriate, after consulting with industry representatives.

23 (C) 6 individuals selected from the general public.

24 (4)(A) Two of the individuals selected for each committee under para-
25 graph (3)(A) of this subsection must be State commissioners. The Secretary
26 shall consult with the national organization of State commissions (referred
27 to in section 10344(f) of this title) before selecting those 2 individuals.

28 (B) At least 3 of the individuals selected for each committee under para-
29 graph (3)(B) of this subsection must be currently in the active operation
30 of natural gas pipelines or hazardous liquid pipeline facilities, as appro-
31 priate.

32 (C) Two of the individuals selected for each committee under paragraph
33 (3)(C) of this subsection must have education, background, or experience in
34 environmental protection or public safety. At least one individual selected
35 for each committee under paragraph (3)(C) may not have a financial inter-
36 est in the pipeline, petroleum, or natural gas industries.

37 (c) COMMITTEE REPORTS ON PROPOSED STANDARDS.—(1) The Sec-
38 retary shall give to—

39 (A) the Technical Pipeline Safety Standards Committee each stand-
40 ard proposed under this chapter for transporting gas and for gas pipe-
41 line facilities; and

1 (B) the Technical Hazardous Liquid Pipeline Safety Standards Com-
2 mittee each standard proposed under this chapter for transporting haz-
3 arduous liquid and for hazardous liquid pipeline facilities.

4 (2) Not later than 90 days after receiving the proposed standard, the ap-
5 propriate committee shall prepare a report on the technical feasibility, rea-
6 sonableness, and practicability of the proposed standard. The Secretary
7 shall publish each report, including minority views. The report if timely
8 made is part of the proceeding for prescribing the standard. The Secretary
9 is not bound by the conclusions of the committee. However, if the Secretary
10 rejects the conclusions of the committee, the Secretary shall publish the rea-
11 sons.

12 (3) The Secretary may prescribe a standard after the end of the 90-day
13 period.

14 (d) PROPOSED COMMITTEE STANDARDS AND POLICY DEVELOPMENT
15 RECOMMENDATIONS.—(1) The Technical Pipeline Safety Standards Com-
16 mittee may propose to the Secretary a safety standard for transporting gas
17 and for gas pipeline facilities. The Technical Hazardous Liquid Pipeline
18 Safety Standards Committee may propose to the Secretary a safety stand-
19 ard for transporting hazardous liquid and for hazardous liquid pipeline fa-
20 cilities.

21 (2) If requested by the Secretary, a committee shall make policy develop-
22 ment recommendations to the Secretary.

23 (e) MEETINGS.—Each committee shall meet with the Secretary at least
24 twice annually. Each committee proceeding shall be recorded. The record of
25 the proceeding shall be available to the public.

26 (f) PAY AND EXPENSES.—The Secretary may establish the pay for each
27 member of a committee for each day (including travel time) when perform-
28 ing duties of the committee. However, a member may not be paid more than
29 the daily equivalent of the maximum annual rate of basic pay payable under
30 section 5376 of title 5. A member is entitled to expenses under section 5703
31 of title 5. A payment under this subsection does not make a member an
32 officer or employee of the Government. This subsection does not apply to
33 members regularly employed by the Government.

34 **§60116. Public education programs**

35 Under regulations the Secretary of Transportation prescribes, each per-
36 son transporting gas shall carry out a program to educate the public on the
37 possible hazards associated with gas leaks and the importance of reporting
38 gas odors and leaks to the appropriate authority. The Secretary may de-
39 velop material suitable for use in the program.

§ 60117. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of records, take depositions, and conduct research, testing, development, demonstration, and training activities. The Secretary may not charge a tuition-type fee for training State or local government personnel in the enforcement of regulations prescribed under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—To enable the Secretary to decide whether a person transporting gas or hazardous liquid or operating a pipeline facility is complying with this chapter and standards prescribed or orders issued under this chapter, the person shall—

(1) maintain records, make reports, and provide information the Secretary requires; and

(2) make the records, reports, and information available when the Secretary requests.

(c) ENTRY AND INSPECTION.—An officer, employee, or agent of the Department of Transportation designated by the Secretary, on display of proper credentials to the individual in charge, may enter premises to inspect the records and property of a person at a reasonable time and in a reasonable way to decide whether a person is complying with this chapter and standards prescribed or orders issued under this chapter.

(d) CONFIDENTIALITY OF INFORMATION.—Information related to a confidential matter referred to in section 1905 of title 18 that is obtained by the Secretary or an officer, employee, or agent in carrying out this section may be disclosed only to another officer or employee concerned with carrying out this chapter or in a proceeding under this chapter.

(e) USE OF ACCIDENT REPORTS.—(1) Each accident report made by an officer, employee, or agent of the Department may be used in a judicial proceeding resulting from the accident. The officer, employee, or agent may be required to testify in the proceeding about the facts developed in investigating the accident. The report shall be made available to the public in a way that does not identify an individual.

(2) Each report related to research and demonstration projects and related activities is public information.

(f) TESTING FACILITIES INVOLVED IN ACCIDENTS.—The Secretary may require testing of a part of a pipeline facility subject to this chapter that has been involved in or affected by an accident only after—

(1) notifying the appropriate State official in the State in which the facility is located; and

1 (2) attempting to negotiate a mutually acceptable plan for testing
2 with the owner of the facility and, when the Secretary considers appro-
3 priate, the National Transportation Safety Board.

4 (g) PROVIDING SAFETY INFORMATION.—On request, the Secretary shall
5 provide the Federal Energy Regulatory Commission or appropriate State
6 authority with information the Secretary has on the safety of material, oper-
7 ations, devices, or processes related to pipeline transportation or operating
8 a pipeline facility.

9 (h) COOPERATION.—The Secretary may—

10 (1) advise, assist, and cooperate with other departments, agencies,
11 and instrumentalities of the United States Government, the States, and
12 public and private agencies and persons in planning and developing
13 safety standards and ways to inspect and test to decide whether those
14 standards have been complied with;

15 (2) consult with and make recommendations to other departments,
16 agencies, and instrumentalities of the Government, State and local gov-
17 ernments, and public and private agencies and persons to develop and
18 encourage activities, including the enactment of legislation, that will as-
19 sist in carrying out this chapter and improve State and local pipeline
20 safety programs; and

21 (3) participate in a proceeding involving safety requirements related
22 to a liquefied natural gas facility before the Commission or a State au-
23 thority.

24 (i) PROMOTING COORDINATION.—After consulting with appropriate State
25 officials, the Secretary shall establish procedures to promote more effective
26 coordination between departments, agencies, and instrumentalities of the
27 Government and State authorities with regulatory authority over pipeline fa-
28 cilities about responses to a pipeline accident.

29 (j) WITHHOLDING INFORMATION FROM CONGRESS.—This section does
30 not authorize information to be withheld from a committee of Congress au-
31 thorized to have the information.

32 **§60118. Compliance and waivers**

33 (a) GENERAL REQUIREMENTS.—A person transporting gas or hazardous
34 liquid or owning or operating a pipeline facility shall—

35 (1) comply with applicable safety standards prescribed under this
36 chapter, except as provided in this section;

37 (2) prepare and carry out a plan for inspection and maintenance re-
38 quired under section 60108(a) and (b) of this title; and

39 (3) allow access to or copying of records, make reports and provide
40 information, and allow entry or inspection required under section
41 60117(a)–(d) of this title.

1 (b) COMPLIANCE ORDERS.—The Secretary of Transportation may issue
2 orders directing compliance with this chapter or a regulation prescribed
3 under this chapter. An order shall state clearly the action a person must
4 take to comply.

5 (c) WAIVERS BY SECRETARY.—On application of a person transporting
6 gas or hazardous liquid or operating a pipeline facility, the Secretary by
7 order may waive compliance with any part of an applicable standard pre-
8 scribed under this chapter on terms the Secretary considers appropriate, if
9 the waiver is not inconsistent with pipeline safety. The Secretary shall state
10 the reasons for granting a waiver under this subsection. The Secretary may
11 act on a waiver only after notice and an opportunity for a hearing.

12 (d) WAIVERS BY STATE AUTHORITIES.—If a certification under section
13 60105 of this title or an agreement under section 60106 of this title is in
14 effect, the State authority may waive compliance with a safety standard to
15 which the certification or agreement applies in the same way and to the
16 same extent the Secretary may waive compliance under subsection (c) of
17 this section. However, the authority must give the Secretary written notice
18 of the waiver at least 60 days before its effective date. If the Secretary
19 makes a written objection before the effective date of the waiver, the waiver
20 is stayed. After notifying the authority of the objection, the Secretary shall
21 provide a prompt opportunity for a hearing. The Secretary shall make the
22 final decision on granting the waiver.

23 **§ 60119. Judicial review**

24 (a) REVIEW OF REGULATIONS AND WAIVER ORDERS.—(1) Except as
25 provided in subsection (b) of this section, a person adversely affected by a
26 regulation prescribed under this chapter or an order issued about an appli-
27 cation for a waiver under section 60118(c) or (d) of this title may apply
28 for review of the regulation or order by filing a petition for review in the
29 United States Court of Appeals for the District of Columbia Circuit or in
30 the court of appeals of the United States for the circuit in which the person
31 resides or has its principal place of business. The petition must be filed not
32 later than 89 days after the regulation is prescribed or order is issued. The
33 clerk of the court immediately shall send a copy of the petition to the Sec-
34 retary of Transportation.

35 (2) A judgment of a court under paragraph (1) of this subsection may
36 be reviewed only by the Supreme Court under section 1254 of title 28. A
37 remedy under paragraph (1) is in addition to any other remedies provided
38 by law.

39 (b) REVIEW OF FINANCIAL RESPONSIBILITY ORDERS.—(1) A person ad-
40 versely affected by an order issued under section 60111 of this title may
41 apply for review of the order by filing a petition for review in the appro-

1 appropriate court of appeals of the United States. The petition must be filed not
2 later than 60 days after the order is issued. Findings of fact the Secretary
3 makes are conclusive if supported by substantial evidence.

4 (2) A judgment of a court under paragraph (1) of this subsection may
5 be reviewed only by the Supreme Court under section 1254(1) of title 28.

6 **§ 60120. Enforcement**

7 (a) CIVIL ACTIONS.—(1) On the request of the Secretary of Transpor-
8 tation, the Attorney General may bring a civil action in an appropriate dis-
9 trict court of the United States to enforce this chapter or a regulation pre-
10 scribed or order issued under this chapter. The court may award appro-
11 priate relief, including punitive damages.

12 (2) At the request of the Secretary, the Attorney General may bring a
13 civil action in a district court of the United States to require a person to
14 comply immediately with a subpoena or to allow an officer, employee, or
15 agent authorized by the Secretary to enter the premises, and inspect the
16 records and property, of the person to decide whether the person is comply-
17 ing with this chapter. The action may be brought in the judicial district in
18 which the defendant resides, is found, or does business. The court may pun-
19 ish a failure to obey the order as a contempt of court.

20 (b) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating
21 an injunction issued under this section, the violation of which is also a viola-
22 tion of this chapter, the defendant may demand a jury trial. The defendant
23 shall be tried as provided in rule 42(b) of the Federal Rules of Criminal
24 Procedure (18 App. U.S.C.).

25 (c) EFFECT ON TORT LIABILITY.—This chapter does not affect the tort
26 liability of any person.

27 **§ 60121. Actions by private persons**

28 (a) GENERAL AUTHORITY.—(1) A person may bring a civil action in an
29 appropriate district court of the United States for an injunction against an-
30 other person (including the United States Government and other govern-
31 mental authorities to the extent permitted under the 11th amendment to
32 the Constitution) for a violation of this chapter or a regulation prescribed
33 or order issued under this chapter. However, the person—

34 (A) may bring the action only after 60 days after the person has
35 given notice of the violation to the Secretary of Transportation or to
36 the appropriate State authority (when the violation is alleged to have
37 occurred in a State certified under section 60105 of this title) and to
38 the person alleged to have committed the violation;

39 (B) may not bring the action if the Secretary or authority has begun
40 and diligently is pursuing an administrative proceeding for the viola-
41 tion; and

1 (C) may not bring the action if the Attorney General of the United
2 States, or the chief law enforcement officer of a State, has begun and
3 diligently is pursuing a judicial proceeding for the violation.

4 (2) The Secretary shall prescribe the way in which notice is given under
5 this subsection.

6 (3) The Secretary, with the approval of the Attorney General, or the At-
7 torney General may intervene in an action under paragraph (1) of this sub-
8 section.

9 (b) COSTS AND FEES.—The court may award costs, reasonable expert
10 witness fees, and a reasonable attorney's fee to a prevailing plaintiff in a
11 civil action under this section. The court may award costs to a prevailing
12 defendant when the action is unreasonable, frivolous, or meritless. In this
13 subsection, a reasonable attorney's fee is a fee—

14 (1) based on the actual time spent and the reasonable expenses of
15 the attorney for legal services provided to a person under this section;
16 and

17 (2) computed at the rate prevailing for providing similar services for
18 actions brought in the court awarding the fee.

19 (c) STATE VIOLATIONS AS VIOLATIONS OF THIS CHAPTER.—In this sec-
20 tion, a violation of a safety standard or practice of a State is deemed to
21 be a violation of this chapter or a regulation prescribed or order issued
22 under this chapter only to the extent the standard or practice is not more
23 stringent than a comparable minimum safety standard prescribed under this
24 chapter.

25 (d) ADDITIONAL REMEDIES.—A remedy under this section is in addition
26 to any other remedies provided by law. This section does not restrict a right
27 to relief that a person or a class of persons may have under another law
28 or at common law.

29 **§ 60122. Civil penalties**

30 (a) GENERAL PENALTIES.—(1) A person that the Secretary of Transpor-
31 tation decides, after written notice and an opportunity for a hearing, has
32 violated section 60114(c) or 60118(a) of this title or a regulation prescribed
33 or order issued under this chapter is liable to the United States Government
34 for a civil penalty of not more than \$25,000 for each violation. A separate
35 violation occurs for each day the violation continues. The maximum civil
36 penalty under this paragraph for a related series of violations is \$500,000.

37 (2) A person violating a standard or order under section 60103 or 60111
38 of this title is liable to the Government for a civil penalty of not more than
39 \$50,000 for each violation. A penalty under this paragraph may be imposed
40 in addition to penalties imposed under paragraph (1) of this subsection.

1 (b) PENALTY CONSIDERATIONS.—In determining the amount of a civil
2 penalty under this section, the Secretary shall consider—

3 (1) the nature, circumstances, and gravity of the violation;

4 (2) with respect to the violator, the degree of culpability, any history
5 of prior violations, the ability to pay, and any effect on ability to con-
6 tinue doing business;

7 (3) good faith in attempting to comply; and

8 (4) other matters that justice requires.

9 (c) COLLECTION AND COMPROMISE.—(1) The Secretary may request the
10 Attorney General to bring a civil action in an appropriate district court of
11 the United States to collect a civil penalty imposed under this section.

12 (2) The Secretary may compromise the amount of a civil penalty imposed
13 under this section before referral to the Attorney General.

14 (d) SETOFF.—The Government may deduct the amount of a civil penalty
15 imposed or compromised under this section from amounts it owes the person
16 liable for the penalty.

17 (e) DEPOSIT IN TREASURY.—Amounts collected under this section shall
18 be deposited in the Treasury as miscellaneous receipts.

19 (f) PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.—Separate
20 penalties for violating a regulation prescribed under this chapter and for
21 violating an order under section 60112 or 60118(b) of this title may not
22 be imposed under this chapter if both violations are based on the same act.

23 **§ 60123. Criminal penalties**

24 (a) GENERAL PENALTY.—A person knowingly and willfully violating sec-
25 tion 60114(c) or 60118(a) of this title or a regulation prescribed or order
26 issued under this chapter shall be fined under title 18, imprisoned for not
27 more than 5 years, or both.

28 (b) PENALTY FOR DAMAGING OR DESTROYING FACILITY.—A person
29 knowingly and willfully damaging or destroying, or attempting to damage
30 or destroy, an interstate gas pipeline facility or interstate hazardous liquid
31 pipeline facility shall be fined under title 18, imprisoned for not more than
32 15 years, or both.

33 (c) PENALTY FOR DAMAGING OR DESTROYING SIGN.—A person know-
34 ingly and willfully defacing, damaging, removing, or destroying a pipeline
35 sign or right-of-way marker required by a law or regulation of the United
36 States shall be fined under title 18, imprisoned for not more than one year,
37 or both.

38 (d) PENALTY FOR NOT USING ONE-CALL NOTIFICATION SYSTEM OR
39 NOT HEEDING LOCATION INFORMATION OR MARKINGS.—A person shall be
40 fined under title 18, imprisoned for not more than 5 years, or both, if the
41 person knowingly and willfully—

1 (1) engages in an excavation activity—

2 (A) without first using an available one-call notification system
3 to establish the location of underground facilities in the excavation
4 area; or

5 (B) without paying attention to appropriate location information
6 or markings the operator of a pipeline facility establishes; and

7 (2) subsequently damages—

8 (A) a pipeline facility that results in death, serious bodily harm,
9 or actual damage to property of more than \$50,000; or

10 (B) a hazardous liquid pipeline facility that results in the re-
11 lease of more than 50 barrels of product.

12 **§ 60124. Annual reports**

13 (a) SUBMISSION AND CONTENTS.—The Secretary of Transportation shall
14 submit to Congress not later than August 15 of each year a report on carry-
15 ing out this chapter for the prior calendar year for gas and a report on carry-
16 ing out this chapter for the prior calendar year for hazardous liquid. Each
17 report shall include the following information about the prior year for gas
18 or hazardous liquid, as appropriate:

19 (1) a thorough compilation of the leak repairs, accidents, and casual-
20 ties and a statement of cause when investigated and established by the
21 National Transportation Safety Board.

22 (2) a list of applicable pipeline safety standards prescribed under this
23 chapter including identification of standards prescribed during the
24 year.

25 (3) a summary of the reasons for each waiver granted under section
26 60118(c) and (d) of this title.

27 (4) an evaluation of the degree of compliance with applicable safety
28 standards, including a list of enforcement actions and compromises of
29 alleged violations by location and company name.

30 (5) a summary of outstanding problems in carrying out this chapter,
31 in order of priority.

32 (6) an analysis and evaluation of—

33 (A) research activities, including their policy implications, com-
34 pleted as a result of the United States Government and private
35 sponsorship; and

36 (B) technological progress in safety achieved.

37 (7) a list, with a brief statement of the issues, of completed or pend-
38 ing judicial actions under this chapter.

39 (8) the extent to which technical information was distributed to the
40 scientific community and consumer-oriented information was made
41 available to the public.

1 (9) a compilation of certifications filed under section 60105 of this
2 title that were—

3 (A) in effect; or

4 (B) rejected in any part by the Secretary and a summary of the
5 reasons for each rejection.

6 (10) a compilation of agreements made under section 60106 of this
7 title that were—

8 (A) in effect; or

9 (B) ended in any part by the Secretary and a summary of the
10 reasons for ending each agreement.

11 (11) a description of the number and qualifications of State pipeline
12 safety inspectors in each State for which a certification under section
13 60105 of this title or an agreement under section 60106 of this title
14 is in effect and the number and qualifications of inspectors the Sec-
15 retary recommends for that State.

16 (12) recommendations for legislation the Secretary considers nec-
17 essary—

18 (A) to promote cooperation among the States in improving—

19 (i) gas pipeline safety; or

20 (ii) hazardous liquid pipeline safety programs; and

21 (B) to strengthen the national gas pipeline safety program.

22 (b) SUBMISSION OF ONE REPORT.—The Secretary may submit one report
23 to carry out subsection (a) of this section.

24 **§ 60125. Authorization of appropriations**

25 (a) GAS.—Not more than the following amounts may be appropriated to
26 the Secretary of Transportation to carry out this chapter (except sections
27 60107 and 60114(b)) related to gas:

28 (1) \$6,857,000 for the fiscal year ending September 30, 1993.

29 (2) \$7,000,000 for the fiscal year ending September 30, 1994.

30 (3) \$7,500,000 for the fiscal year ending September 30, 1995.

31 (b) HAZARDOUS LIQUID.—Not more than the following amounts may be
32 appropriated to the Secretary to carry out this chapter (except sections
33 60107 and 60114(b)) related to hazardous liquid:

34 (1) \$1,728,500 for the fiscal year ending September 30, 1993.

35 (2) \$1,866,800 for the fiscal year ending September 30, 1994.

36 (3) \$2,000,000 for the fiscal year ending September 30, 1995.

37 (c) STATE GRANTS.—(1) Not more than the following amounts may be
38 appropriated to the Secretary to carry out section 60107 of this title:

39 (A) \$7,750,000 for the fiscal year ending September 30, 1993.

40 (B) \$9,000,000 for the fiscal year ending September 30, 1994.

41 (C) \$10,000,000 for the fiscal year ending September 30, 1995.

1 (2) At least 5 percent of amounts appropriated to carry out United States
2 Government grants-in-aid programs for a fiscal year are available only to
3 carry out section 60107 of this title related to hazardous liquid.

4 (3) Not more than 20 percent of a pipeline safety program grant under
5 section 60107 of this title may be allocated to indirect expenses.

6 (d) GRANTS FOR ONE-CALL NOTIFICATION SYSTEMS.—Not more than
7 \$_____ may be appropriated to the Secretary for the fiscal year end-
8 ing September 30, 19__, to carry out section 60114(b) of this title.
9 Amounts under this subsection remain available until expended.

10 (e) CREDITING APPROPRIATIONS FOR EXPENDITURES FOR TRAINING.—
11 The Secretary may credit to an appropriation authorized under subsection
12 (a) or (b) of this section amounts received from sources other than the Gov-
13 ernment for reimbursement for expenses incurred by the Secretary in pro-
14 viding training.

15 (f) AVAILABILITY OF UNUSED AMOUNTS FOR GRANTS.—(1) The Sec-
16 retary shall make available for grants to States amounts appropriated for
17 each of the fiscal years that ended September 30, 1986, and 1987, that
18 have not been expended in making grants under section 60107 of this title.

19 (2) A grant under this subsection is available to a State that after De-
20 cember 31, 1987—

21 (A) undertakes a new responsibility under section 60105 of this title;

22 or

23 (B) implements a one-call damage prevention program established
24 under State law.

25 (3) This subsection does not authorize a State to receive more than 50
26 percent of its allowable pipeline safety costs from a grant under this chap-
27 ter.

28 (4) A State may receive not more than \$75,000 under this subsection.

29 (5) Amounts under this subsection remain available until expended.

30 **CHAPTER 603—USER FEES**

Sec.

60301. User fees.

31 **§ 60301. User fees**

32 (a) SCHEDULE OF FEES.—The Secretary of Transportation shall pre-
33 scribe a schedule of fees for all natural gas and hazardous liquids trans-
34 ported by pipelines subject to chapter 601 of this title. The fees shall be
35 based on usage (in reasonable relationship to volume-miles, miles, revenues,
36 or a combination of volume-miles, miles, and revenues) of the pipelines. The
37 Secretary shall consider the allocation of resources of the Department of
38 Transportation when establishing the schedule.

39 (b) IMPOSITION AND TIME OF COLLECTION.—A fee shall be imposed on
40 each person operating a gas pipeline transmission facility, a liquefied natu-

1 ral gas pipeline facility, or a hazardous liquid pipeline facility to which chap-
 2 ter 601 of this title applies. The fee shall be collected before the end of the
 3 fiscal year to which it applies.

4 (c) MEANS OF COLLECTION.—The Secretary shall prescribe procedures to
 5 collect fees under this section. The Secretary may use a department, agency,
 6 or instrumentality of the United States Government or of a State or local
 7 government to collect the fee and may reimburse the department, agency,
 8 or instrumentality a reasonable amount for its services.

9 (d) USE OF FEES.—A fee collected under this section—

10 (1)(A) related to a gas pipeline facility may be used only for an ac-
 11 tivity related to gas under chapter 601 of this title; and

12 (B) related to a hazardous liquid pipeline facility may be used only
 13 for an activity related to hazardous liquid under chapter 601 of this
 14 title; and

15 (2) may be used only to the extent provided in advance in an appro-
 16 priation law.

17 (e) LIMITATIONS.—Fees prescribed under subsection (a) of this section
 18 shall be sufficient to pay for the costs of activities described in subsection
 19 (d) of this section. However, the total amount collected for a fiscal year may
 20 not be more than 105 percent of the total amount of the appropriations
 21 made for the fiscal year for activities to be financed by the fees.

22 **CHAPTER 605—INTERSTATE COMMERCE REGULATION**

Sec.

60501. Secretary of Energy.

60502. Federal Energy Regulatory Commission.

60503. Effect of enactment.

23 **§ 60501. Secretary of Energy**

24 Except as provided in section 60502 of this title, the Secretary of Energy
 25 has the duties and powers related to the transportation of oil by pipeline
 26 that were vested on October 1, 1977, in the Interstate Commerce Commis-
 27 sion or the chairman or a member of the Commission.

28 **§ 60502. Federal Energy Regulatory Commission**

29 The Federal Energy Regulatory Commission has the duties and powers
 30 related to the establishment of a rate or charge for the transportation of
 31 oil by pipeline or the valuation of that pipeline that were vested on October
 32 1, 1977, in the Interstate Commerce Commission or an officer or component
 33 of the Interstate Commerce Commission.

34 **§ 60503. Effect of enactment**

35 The enactment of the Act of October 17, 1978 (Public Law 95-473, 92
 36 Stat. 1337), the Act of January 12, 1983 (Public Law 97-449, 96 Stat.
 37 2413), and the Act enacting this section does not repeal, and has no sub-
 38 stantive effect on, any right, obligation, liability, or remedy of an oil pipe-

1 line, including a right, obligation, liability, or remedy arising under the
 2 Interstate Commerce Act or the Act of August 29, 1916 (known as the
 3 Pomerene Bills of Lading Act), before any department, agency, or instru-
 4 mentality of the United States Government, an officer or employee of the
 5 Government, or a court of competent jurisdiction.

6 **SUBTITLE IX—COMMERCIAL SPACE**
 7 **TRANSPORTATION**

CHAPTER		Sec.
701.	COMMERCIAL SPACE LAUNCH ACTIVITIES	70101
703.	SPACE TRANSPORTATION INFRASTRUCTURE MATCHING GRANTS.	70301

CHAPTER 701—COMMERCIAL SPACE LAUNCH ACTIVITIES

Sec.	
70101.	Findings and purposes.
70102.	Definitions.
70103.	General authority.
70104.	Restrictions on launches and operations.
70105.	License applications and requirements.
70106.	Monitoring activities.
70107.	Effective periods, and modifications, suspensions, and revocations, of licenses.
70108.	Prohibition, suspension, and end of launches and operation of launch sites.
70109.	Preemption of scheduled launches.
70110.	Administrative hearings and judicial review.
70111.	Acquiring United States Government property and services.
70112.	Liability insurance and financial responsibility requirements.
70113.	Paying claims exceeding liability insurance and financial responsibility requirements.
70114.	Disclosing information.
70115.	Enforcement and penalty.
70116.	Consultation.
70117.	Relationship to other executive agencies, laws, and international obligations.
70118.	User fees.
70119.	Authorization of appropriations.

8 **§ 70101. Findings and purposes**

9 (a) FINDINGS.—Congress finds that—

10 (1) the peaceful uses of outer space continue to be of great value
 11 and to offer benefits to all mankind;

12 (2) private applications of space technology have achieved a signifi-
 13 cant level of commercial and economic activity and offer the potential
 14 for growth in the future, particularly in the United States;

15 (3) new and innovative equipment and services are being sought,
 16 produced, and offered by entrepreneurs in telecommunications, infor-
 17 mation services, and remote sensing technologies;

18 (4) the private sector in the United States has the capability of de-
 19 veloping and providing private satellite launching and associated serv-
 20 ices that would complement the launching and associated services now
 21 available from the United States Government;

22 (5) the development of commercial launch vehicles and associated
 23 services would enable the United States to retain its competitive posi-
 24 tion internationally, contributing to the national interest and economic
 25 well-being of the United States;

1 (6) providing launch services by the private sector is consistent with
2 the national security and foreign policy interests of the United States
3 and would be facilitated by stable, minimal, and appropriate regulatory
4 guidelines that are fairly and expeditiously applied;

5 (7) the United States should encourage private sector launches and
6 associated services and, only to the extent necessary, regulate those
7 launches and services to ensure compliance with international obliga-
8 tions of the United States and to protect the public health and safety,
9 safety of property, and national security and foreign policy interests of
10 the United States;

11 (8) space transportation, including the establishment and operation
12 of launch sites and complementary facilities, the providing of launch
13 services, the establishment of support facilities, and the providing of
14 support services, is an important element of the transportation system
15 of the United States, and in connection with the commerce of the Unit-
16 ed States there is a need to develop a strong space transportation in-
17 frastructure with significant private sector involvement; and

18 (9) the participation of State governments in encouraging and facili-
19 tating private sector involvement in space-related activity, particularly
20 through the establishment of a space transportation-related infrastruc-
21 ture, including launch sites, complementary facilities, and launch site
22 support facilities, is in the national interest and is of significant public
23 benefit.

24 (b) PURPOSES.—The purposes of this chapter are—

25 (1) to promote economic growth and entrepreneurial activity through
26 use of the space environment for peaceful purposes;

27 (2) to encourage the United States private sector to provide launch
28 vehicles and associated services by—

29 (A) simplifying and expediting the issuance and transfer of com-
30 mercial launch licenses; and

31 (B) facilitating and encouraging the use of Government-devel-
32 oped space technology;

33 (3) to provide that the Secretary of Transportation is to oversee and
34 coordinate the conduct of commercial launch operations, issue and
35 transfer commercial launch licenses authorizing those operations, and
36 protect the public health and safety, safety of property, and national
37 security and foreign policy interests of the United States; and

38 (4) to facilitate the strengthening and expansion of the United
39 States space transportation infrastructure, including the enhancement
40 of United States launch sites and launch-site support facilities, with

1 Government, State, and private sector involvement, to support the full
2 range of United States space-related activities.

3 **§ 70102. Definitions**

4 In this chapter—

5 (1) “citizen of the United States” means—

6 (A) an individual who is a citizen of the United States;

7 (B) an entity organized or existing under the laws of the United
8 States or a State; or

9 (C) an entity organized or existing under the laws of a foreign
10 country if the controlling interest (as defined by the Secretary of
11 Transportation) is held by an individual or entity described in
12 subclause (A) or (B) of this clause.

13 (2) “executive agency” has the same meaning given that term in sec-
14 tion 105 of title 5.

15 (3) “launch” means to place or try to place a launch vehicle and any
16 payload—

17 (A) in a suborbital trajectory;

18 (B) in Earth orbit in outer space; or

19 (C) otherwise in outer space.

20 (4) “launch property” means an item built for, or used in, the
21 launch preparation or launch of a launch vehicle.

22 (5) “launch services” means—

23 (A) activities involved in the preparation of a launch vehicle and
24 payload for launch; and

25 (B) the conduct of a launch.

26 (6) “launch site” means the location on Earth from which a launch
27 takes place (as defined in a license the Secretary issues or transfers
28 under this chapter) and necessary facilities.

29 (7) “launch vehicle” means—

30 (A) a vehicle built to operate in, or place a payload in, outer
31 space; and

32 (B) a suborbital rocket.

33 (8) “payload” means an object that a person undertakes to place in
34 outer space by means of a launch vehicle, including components of the
35 vehicle specifically designed or adapted for that object.

36 (9) “person” means an individual and an entity organized or existing
37 under the laws of a State or country.

38 (10) “State” means a State of the United States, the District of Co-
39 lumbia, and a territory or possession of the United States.

40 (11) “third party” means a person except—

- 1 (A) the United States Government or the Government's contrac-
2 tors or subcontractors involved in launch services;
3 (B) a licensee or transferee under this chapter;
4 (C) a licensee's or transferee's contractors, subcontractors, or
5 customers involved in launch services; or
6 (D) the customer's contractors or subcontractors involved in
7 launch services.

8 (12) "United States" means the States of the United States, the
9 District of Columbia, and the territories and possessions of the United
10 States.

11 **§ 70103. General authority**

12 (a) GENERAL.—The Secretary of Transportation shall carry out this
13 chapter.

14 (b) FACILITATING COMMERCIAL LAUNCHES.—In carrying out this chap-
15 ter, the Secretary shall—

16 (1) encourage, facilitate, and promote commercial space launches by
17 the private sector; and

18 (2) take actions to facilitate private sector involvement in commercial
19 space transportation activity, and to promote public-private partner-
20 ships involving the United States Government, State governments, and
21 the private sector to build, expand, modernize, or operate a space
22 launch infrastructure.

23 (c) EXECUTIVE AGENCY ASSISTANCE.—When necessary, the head of an
24 executive agency shall assist the Secretary in carrying out this chapter.

25 **§ 70104. Restrictions on launches and operations**

26 (a) LICENSE REQUIREMENT.—A license issued or transferred under this
27 chapter is required for the following:

28 (1) for a person to launch a launch vehicle or to operate a launch
29 site in the United States.

30 (2) for a citizen of the United States (as defined in section
31 70102(1)(A) or (B) of this title) to launch a launch vehicle or to oper-
32 ate a launch site outside the United States.

33 (3) for a citizen of the United States (as defined in section
34 70102(1)(C) of this title) to launch a launch vehicle or to operate a
35 launch site outside the United States and outside the territory of a for-
36 eign country unless there is an agreement between the United States
37 Government and the government of the foreign country providing that
38 the government of the foreign country has jurisdiction over the launch
39 or operation.

40 (4) for a citizen of the United States (as defined in section
41 70102(1)(C) of this title) to launch a launch vehicle or to operate a

1 launch site in the territory of a foreign country if there is an agreement
2 between the United States Government and the government of the for-
3 eign country providing that the United States Government has jurisdic-
4 tion over the launch or operation.

5 (b) COMPLIANCE WITH PAYLOAD REQUIREMENTS.—The holder of a
6 launch license under this chapter may launch a payload only if the payload
7 complies with all requirements of the laws of the United States related to
8 launching a payload.

9 (c) PREVENTING LAUNCHES.—The Secretary of Transportation shall es-
10 tablish whether all required licenses, authorizations, and permits required
11 for a payload have been obtained. If no license, authorization, or permit is
12 required, the Secretary may prevent the launch if the Secretary decides the
13 launch would jeopardize the public health and safety, safety of property, or
14 national security or foreign policy interest of the United States.

15 **§ 70105. License applications and requirements**

16 (a) APPLICATIONS.—A person may apply to the Secretary of Transpor-
17 tation for a license or transfer of a license under this chapter in the form
18 and way the Secretary prescribes. Consistent with the public health and
19 safety, safety of property, and national security and foreign policy interests
20 of the United States, the Secretary, not later than 180 days after receiving
21 an application, shall issue or transfer a license if the Secretary decides in
22 writing that the applicant complies, and will continue to comply, with this
23 chapter and regulations prescribed under this chapter. The Secretary shall
24 inform the applicant of any pending issue and action required to resolve the
25 issue if the Secretary has not made a decision not later than 120 days after
26 receiving an application.

27 (b) REQUIREMENTS.—(1) Except as provided in this subsection, all re-
28 quirements of the laws of the United States applicable to the launch of a
29 launch vehicle or the operation of a launch site are requirements for a li-
30 cense under this chapter.

31 (2) The Secretary may prescribe—

32 (A) any term necessary to ensure compliance with this chapter, in-
33 cluding on-site verification that a launch or operation complies with
34 representations stated in the application;

35 (B) an additional requirement necessary to protect the public health
36 and safety, safety of property, national security interests, and foreign
37 policy interests of the United States; and

38 (C) by regulation that a requirement of a law of the United States
39 not be a requirement for a license if the Secretary, after consulting
40 with the head of the appropriate executive agency, decides that the re-
41 quirement is not necessary to protect the public health and safety, safe-

1 ty of property, and national security and foreign policy interests of the
2 United States.

3 (3) The Secretary may waive a requirement for an individual applicant
4 if the Secretary decides that the waiver is in the public interest and will
5 not jeopardize the public health and safety, safety of property, and national
6 security and foreign policy interests of the United States.

7 (c) PROCEDURES AND TIMETABLES.—The Secretary shall establish pro-
8 cedures and timetables that expedite review of a license application and re-
9 duce the regulatory burden for an applicant.

10 **§ 70106. Monitoring activities**

11 (a) GENERAL REQUIREMENTS.—A licensee under this chapter must allow
12 the Secretary of Transportation to place an officer or employee of the Unit-
13 ed States Government or another individual as an observer at a launch site
14 the licensee uses, at a production facility or assembly site a contractor of
15 the licensee uses to produce or assemble a launch vehicle, or at a site at
16 which a payload is integrated with a launch vehicle. The observer will mon-
17 itor the activity of the licensee or contractor at the time and to the extent
18 the Secretary considers reasonable to ensure compliance with the license or
19 to carry out the duties of the Secretary under section 70104(c) of this title.
20 A licensee must cooperate with an observer carrying out this subsection.

21 (b) CONTRACTS.—To the extent provided in advance in an appropriation
22 law, the Secretary may make a contract with a person to carry out sub-
23 section (a) of this section.

24 **§ 70107. Effective periods, and modifications, suspensions, 25 and revocations, of licenses**

26 (a) EFFECTIVE PERIODS OF LICENSES.—The Secretary of Transpor-
27 tation shall specify the period for which a license issued or transferred
28 under this chapter is in effect.

29 (b) MODIFICATIONS.—On the initiative of the Secretary or on application
30 of the licensee, the Secretary may modify a license issued or transferred
31 under this chapter if the Secretary decides the modification will comply with
32 this chapter.

33 (c) SUSPENSIONS AND REVOCATIONS.—The Secretary may suspend or re-
34 voke a license if the Secretary decides that—

35 (1) the licensee has not complied substantially with a requirement of
36 this chapter or a regulation prescribed under this chapter; or

37 (2) the suspension or revocation is necessary to protect the public
38 health and safety, the safety of property, or a national security or for-
39 eign policy interest of the United States.

40 (d) EFFECTIVE PERIODS OF MODIFICATIONS, SUSPENSIONS, AND REV-
41 OCATIONS.—Unless the Secretary specifies otherwise, a modification, sus-

1 pension, or revocation under this section takes effect immediately and re-
2 mains in effect during a review under section 70110 of this title.

3 (e) NOTIFICATION.—The Secretary shall notify the licensee in writing of
4 the decision of the Secretary under this section and any action the Secretary
5 takes or proposes to take based on the decision.

6 **§ 70108. Prohibition, suspension, and end of launches and**
7 **operation of launch sites**

8 (a) GENERAL AUTHORITY.—The Secretary of Transportation may pro-
9 hibit, suspend, or end immediately the launch of a launch vehicle or the op-
10 eration of a launch site licensed under this chapter if the Secretary decides
11 the launch or operation is detrimental to the public health and safety, the
12 safety of property, or a national security or foreign policy interest of the
13 United States.

14 (b) EFFECTIVE PERIODS OF ORDERS.—An order under this section takes
15 effect immediately and remains in effect during a review under section
16 70110 of this title.

17 **§ 70109. Preemption of scheduled launches**

18 (a) GENERAL.—With the cooperation of the Secretary of Defense and the
19 Administrator of the National Aeronautics and Space Administration, the
20 Secretary of Transportation shall act to ensure that a launch of a payload
21 is not preempted from access to a United States Government launch site
22 or launch property, except for imperative national need, when a launch date
23 commitment from the Government has been obtained for a launch licensed
24 under this chapter. A licensee or transferee preempted from access to a
25 launch site or launch property does not have to pay the Government any
26 amount for launch services attributable only to the scheduled launch pre-
27 vented by the preemption.

28 (b) IMPERATIVE NATIONAL NEED DECISIONS.—In consultation with the
29 Secretary of Transportation, the Secretary of Defense or the Administrator
30 shall decide when an imperative national need requires preemption under
31 subsection (a) of this section. That decision may not be delegated.

32 (c) REPORTS.—In cooperation with the Secretary of Transportation, the
33 Secretary of Defense or the Administrator, as appropriate, shall submit to
34 Congress not later than 7 days after a decision to preempt under subsection
35 (a) of this section, a report that includes an explanation of the cir-
36 cumstances justifying the decision and a schedule for ensuring the prompt
37 launching of a preempted payload.

38 **§ 70110. Administrative hearings and judicial review**

39 (a) ADMINISTRATIVE HEARINGS.—The Secretary of Transportation shall
40 provide an opportunity for a hearing on the record to—

1 (1) an applicant under this chapter, for a decision of the Secretary
2 under section 70105(a) of this title to issue or transfer a license with
3 terms or deny the issuance or transfer of a license;

4 (2) an owner or operator of a payload under this chapter, for a deci-
5 sion of the Secretary under section 70104(c) of this title to prevent the
6 launch of the payload; and

7 (3) a licensee under this chapter, for a decision of the Secretary
8 under—

9 (A) section 70107 (b) or (c) of this title to modify, suspend, or
10 revoke a license; or

11 (B) section 70108(a) of this title to prohibit, suspend, or end
12 a launch or operation of a launch site licensed by the Secretary.

13 (b) JUDICIAL REVIEW.—A final action of the Secretary under this chap-
14 ter is subject to judicial review as provided in chapter 7 of title 5.

15 **§70111. Acquiring United States Government property and**
16 **services**

17 (a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—(1) The Secretary
18 of Transportation shall facilitate and encourage the acquisition by the pri-
19 vate sector and State governments of—

20 (A) launch property of the United States Government that is excess
21 or otherwise is not needed for public use; and

22 (B) launch services, including utilities, of the Government otherwise
23 not needed for public use.

24 (2) In acting under paragraph (1) of this subsection, the Secretary shall
25 consider the commercial availability on reasonable terms of substantially
26 equivalent launch property or launch services from a domestic source.

27 (b) PRICE.—(1) In this subsection, “direct costs” means the actual costs
28 that—

29 (A) can be associated unambiguously with a commercial launch ef-
30 fort; and

31 (B) the Government would not incur if there were no commercial
32 launch effort.

33 (2) In consultation with the Secretary, the head of the executive agency
34 providing the property or service under subsection (a) of this section shall
35 establish the price for the property or service. The price for—

36 (A) acquiring launch property by sale or transaction instead of sale
37 is the fair market value;

38 (B) acquiring launch property (except by sale or transaction instead
39 of sale) is an amount equal to the direct costs, including specific wear
40 and tear and property damage, the Government incurred because of ac-
41 quisition of the property; and

1 (C) launch services is an amount equal to the direct costs, including
2 the basic pay of Government civilian and contractor personnel, the Gov-
3 ernment incurred because of acquisition of the services.

4 (c) COLLECTION BY SECRETARY.—The Secretary may collect a payment
5 under this section with the consent of the head of the executive agency es-
6 tablishing the price. Amounts collected under this subsection shall be depos-
7 ited in the Treasury. Amounts (except for excess launch property) shall be
8 credited to the appropriation from which the cost of providing the property
9 or services was paid.

10 (d) COLLECTION BY OTHER GOVERNMENTAL HEADS.—The head of a de-
11 partment, agency, or instrumentality of the Government may collect a pay-
12 ment for an activity involved in producing a launch vehicle or its payload
13 for launch if the activity was agreed to by the owner or manufacturer of
14 the launch vehicle or payload.

15 **§70112. Liability insurance and financial responsibility re-**
16 **quirements**

17 (a) GENERAL REQUIREMENTS.—(1) When a license is issued or trans-
18 ferred under this chapter, the licensee or transferee shall obtain liability in-
19 surance or demonstrate financial responsibility in amounts to compensate
20 for the maximum probable loss from claims by—

21 (A) a third party for death, bodily injury, or property damage or loss
22 resulting from an activity carried out under the license; and

23 (B) the United States Government against a person for damage or
24 loss to Government property resulting from an activity carried out
25 under the license.

26 (2) The Secretary of Transportation shall determine the amounts re-
27 quired under paragraph (1)(A) and (B) of this subsection, after consulting
28 with the Administrator of the National Aeronautics and Space Administra-
29 tion, the Secretary of the Air Force, and the heads of other appropriate ex-
30 ecutive agencies.

31 (3) For the total claims related to one launch, a licensee or transferee
32 is not required to obtain insurance or demonstrate financial responsibility
33 of more than—

34 (A)(i) \$500,000,000 under paragraph (1)(A) of this subsection; or
35 (ii) \$100,000,000 under paragraph (1)(B) of this subsection; or

36 (B) the maximum liability insurance available on the world market
37 at reasonable cost if the amount is less than the applicable amount in
38 clause (A) of this paragraph.

39 (4) An insurance policy or demonstration of financial responsibility under
40 this subsection shall protect the following, to the extent of their potential
41 liability for involvement in launch services, at no cost to the Government:

1 (A) the Government.

2 (B) executive agencies and personnel, contractors, and subcontractors of the Government.

4 (C) contractors, subcontractors, and customers of the licensee or transferee.

6 (D) contractors and subcontractors of the customer.

7 (b) RECIPROCAL WAIVER OF CLAIMS.—(1) A license issued or transferred
8 under this chapter shall contain a provision requiring the licensee or transferee to make a reciprocal waiver of claims with its contractors, subcontractors, and customers, and contractors and subcontractors of the customers, involved in launch services under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license.

15 (2) The Secretary of Transportation shall make, for the Government, executive agencies of the Government involved in launch services, and contractors and subcontractors involved in launch services, a reciprocal waiver of claims with the licensee or transferee, contractors, subcontractors, and customers of the licensee or transferee, and contractors and subcontractors of the customers, involved in launch services under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license. The waiver applies only to the extent that claims are more than the amount of insurance or demonstration of financial responsibility required under subsection (a)(1)(B) of this section. After consulting with the Administrator and the Secretary of the Air Force, the Secretary of Transportation may waive, for the Government and a department, agency, and instrumentality of the Government, the right to recover damages for damage or loss to Government property to the extent insurance is not available because of a policy exclusion the Secretary of Transportation decides is usual for the type of insurance involved.

33 (c) DETERMINATION OF MAXIMUM PROBABLE LOSSES.—The Secretary of Transportation shall determine the maximum probable losses under subsection (a)(1)(A) and (B) of this section associated with an activity under a license not later than 90 days after a licensee or transferee requires a determination and submits all information the Secretary requires. The Secretary shall amend the determination as warranted by new information.

39 (d) ANNUAL REPORT.—(1) Not later than November 15 of each year, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science,

1 Space, and Technology of the House of Representatives a report on current
2 determinations made under subsection (c) of this section related to all is-
3 sued licenses and the reasons for the determinations.

4 (2) Not later than May 15 of each year, the Secretary of Transportation
5 shall review the amounts specified in subsection (a)(3)(A) of this section
6 and submit a report to Congress that contains proposed adjustments in the
7 amounts to conform with changed liability expectations and availability of
8 insurance on the world market. The proposed adjustment takes effect 30
9 days after a report is submitted.

10 (e) LAUNCHES INVOLVING GOVERNMENT FACILITIES AND PERSON-
11 NEL.—The Secretary of Transportation shall establish requirements consist-
12 ent with this chapter for proof of financial responsibility and other assur-
13 ances necessary to protect the Government and its executive agencies and
14 personnel from liability, death, bodily injury, or property damage or loss as
15 a result of a launch or operation of a launch site involving a facility or per-
16 sonnel of the Government. The Secretary may not relieve the Government
17 of liability under this subsection for death, bodily injury, or property dam-
18 age or loss resulting from the willful misconduct of the Government or its
19 agents.

20 (f) COLLECTION AND CREDITING PAYMENTS.—The head of a depart-
21 ment, agency, or instrumentality of the Government shall collect a payment
22 owed for damage or loss to Government property under its jurisdiction or
23 control resulting from an activity carried out under a license issued or
24 transferred under this chapter. The payment shall be credited to the current
25 applicable appropriation, fund, or account of the department, agency, or in-
26 strumentality.

27 **§ 70113. Paying claims exceeding liability insurance and fi-**
28 **nancial responsibility requirements**

29 (a) GENERAL REQUIREMENTS.—(1) To the extent provided in advance in
30 an appropriation law or to the extent additional legislative authority is en-
31 acted providing for paying claims in a compensation plan submitted under
32 subsection (d) of this section, the Secretary of Transportation shall provide
33 for the payment by the United States Government of a successful claim (in-
34 cluding reasonable litigation or settlement expenses) of a third party against
35 a licensee or transferee under this chapter, a contractor, subcontractor, or
36 customer of the licensee or transferee, or a contractor or subcontractor of
37 a customer, resulting from an activity carried out under the license issued
38 or transferred under this chapter for death, bodily injury, or property dam-
39 age or loss resulting from an activity carried out under the license. How-
40 ever, claims may be paid under this section only to the extent the total
41 amount of successful claims related to one launch—

1 (A) is more than the amount of insurance or demonstration of finan-
2 cial responsibility required under section 70112(a)(1)(A) of this title;
3 and

4 (B) is not more than \$1,500,000,000 (plus additional amounts nec-
5 essary to reflect inflation occurring after January 1, 1989) above that
6 insurance or financial responsibility amount.

7 (2) The Secretary may not provide for paying a part of a claim for which
8 death, bodily injury, or property damage or loss results from willful mis-
9 conduct by the licensee or transferee. To the extent insurance required
10 under section 70112(a)(1)(A) of this title is not available to cover a success-
11 ful third party liability claim because of an insurance policy exclusion the
12 Secretary decides is usual for the type of insurance involved, the Secretary
13 may provide for paying the excluded claims without regard to the limitation
14 contained in section 70112(a)(1).

15 (b) NOTICE, PARTICIPATION, AND APPROVAL.—Before a payment under
16 subsection (a) of this section is made—

17 (1) notice must be given to the Government of a claim, or a civil
18 action related to the claim, against a party described in subsection
19 (a)(1) of this section for death, bodily injury, or property damage or
20 loss;

21 (2) the Government must be given an opportunity to participate or
22 assist in the defense of the claim or action; and

23 (3) the Secretary must approve any part of a settlement to be paid
24 out of appropriations of the Government.

25 (c) WITHHOLDING PAYMENTS.—The Secretary may withhold a payment
26 under subsection (a) of this section if the Secretary certifies that the
27 amount is not reasonable. However, the Secretary shall deem to be reason-
28 able the amount of a claim finally decided by a court of competent jurisdic-
29 tion.

30 (d) SURVEYS, REPORTS, AND COMPENSATION PLANS.—(1) If as a result
31 of an activity carried out under a license issued or transferred under this
32 chapter the total of claims related to one launch is likely to be more than
33 the amount of required insurance or demonstration of financial responsibil-
34 ity, the Secretary shall—

35 (A) survey the causes and extent of damage; and

36 (B) submit expeditiously to Congress a report on the results of the
37 survey.

38 (2) Not later than 90 days after a court determination indicates that the
39 liability for the total of claims related to one launch may be more than the
40 required amount of insurance or demonstration of financial responsibility,

1 the President, on the recommendation of the Secretary, shall submit to Con-
2 gress a compensation plan that—

3 (A) outlines the total dollar value of the claims;

4 (B) recommends sources of amounts to pay for the claims;

5 (C) includes legislative language required to carry out the plan if ad-
6 ditional legislative authority is required; and

7 (D) for a single event or incident, may not be for more than
8 \$1,500,000,000.

9 (3) A compensation plan submitted to Congress under paragraph (2) of
10 this subsection shall—

11 (A) have an identification number; and

12 (B) be submitted to the Senate and the House of Representatives
13 on the same day and when the Senate and House are in session.

14 (e) CONGRESSIONAL RESOLUTIONS.—(1) In this subsection, “resolu-
15 tion”—

16 (A) means a joint resolution of Congress the matter after the resolv-
17 ing clause of which is as follows: “That the Congress approves the com-
18 pensation plan numbered _____ submitted to the Congress on
19 _____ ____, 19____.”, with the blank spaces being filled appro-
20 priately; but

21 (B) does not include a resolution that includes more than one com-
22 pensation plan.

23 (2) The Senate shall consider under this subsection a compensation plan
24 requiring additional appropriations or legislative authority not later than 60
25 calendar days of continuous session of Congress after the date on which the
26 plan is submitted to Congress.

27 (3) A resolution introduced in the Senate shall be referred immediately
28 to a committee by the President of the Senate. All resolutions related to
29 the same plan shall be referred to the same committee.

30 (4)(A) If the committee of the Senate to which a resolution has been re-
31 ferred does not report the resolution within 20 calendar days after it is re-
32 ferred, a motion is in order to discharge the committee from further consid-
33 eration of the resolution or to discharge the committee from further consid-
34 eration of the plan.

35 (B) A motion to discharge may be made only by an individual favoring
36 the resolution and is highly privileged (except that the motion may not be
37 made after the committee has reported a resolution on the plan). Debate
38 on the motion is limited to one hour, to be divided equally between those
39 favoring and those opposing the resolution. An amendment to the motion
40 is not in order. A motion to reconsider the vote by which the motion is
41 agreed to or disagreed to is not in order.

1 (C) If the motion to discharge is agreed to or disagreed to, the motion
2 may not be renewed and another motion to discharge the committee from
3 another resolution on the same plan may not be made.

4 (5)(A) After a committee of the Senate reports, or is discharged from fur-
5 ther consideration of, a resolution, a motion to proceed to the consideration
6 of the resolution is in order at any time, even though a similar previous mo-
7 tion has been disagreed to. The motion is highly privileged and is not debat-
8 able. An amendment to the motion is not in order. A motion to reconsider
9 the vote by which the motion is agreed to or disagreed to is not in order.

10 (B) Debate on the resolution referred to in subparagraph (A) of this
11 paragraph is limited to not more than 10 hours, to be divided equally be-
12 tween those favoring and those opposing the resolution. A motion further
13 to limit debate is not debatable. An amendment to, or motion to recommit,
14 the resolution is not in order. A motion to reconsider the vote by which the
15 resolution is agreed to or disagreed to is not in order.

16 (6) The following shall be decided in the Senate without debate:

17 (A) a motion to postpone related to the discharge from committee.

18 (B) a motion to postpone consideration of a resolution.

19 (C) a motion to proceed to the consideration of other business.

20 (D) an appeal from a decision of the chair related to the application
21 of the rules of the Senate to the procedures related to resolution.

22 (f) APPLICATION.—This section applies to a license issued or transferred
23 under this chapter for which the Secretary receives a complete and valid ap-
24 plication not later than December 31, 1999.

25 **§ 70114. Disclosing information**

26 The Secretary of Transportation, an officer or employee of the United
27 States Government, or a person making a contract with the Secretary under
28 section 70106(b) of this title may disclose information under this chapter
29 that qualifies for an exemption under section 552(b)(4) of title 5 or is des-
30 ignated as confidential by the person or head of the executive agency provid-
31 ing the information only if the Secretary decides withholding the informa-
32 tion is contrary to the public or national interest.

33 **§ 70115. Enforcement and penalty**

34 (a) PROHIBITIONS.—A person may not violate this chapter, a regulation
35 prescribed under this chapter, or any term of a license issued or transferred
36 under this chapter.

37 (b) GENERAL AUTHORITY.—(1) In carrying out this chapter, the Sec-
38 retary of Transportation may—

39 (A) conduct investigations and inquiries;

40 (B) administer oaths;

41 (C) take affidavits; and

1 (D) under lawful process—

2 (i) enter at a reasonable time a launch site, production facility,
3 assembly site of a launch vehicle, or site at which a payload is in-
4 tegrated with a launch vehicle to inspect an object to which this
5 chapter applies or a record or report the Secretary requires be
6 made or kept under this chapter; and

7 (ii) seize the object, record, or report when there is probable
8 cause to believe the object, record, or report was used, is being
9 used, or likely will be used in violation of this chapter.

10 (2) The Secretary may delegate a duty or power under this chapter relat-
11 ed to enforcement to an officer or employee of another executive agency with
12 the consent of the head of the agency.

13 (c) CIVIL PENALTY.—(1) After notice and an opportunity for a hearing
14 on the record, a person the Secretary finds to have violated subsection (a)
15 of this section is liable to the United States Government for a civil penalty
16 of not more than \$100,000. A separate violation occurs for each day the
17 violation continues.

18 (2) In conducting a hearing under paragraph (1) of this subsection, the
19 Secretary may—

20 (A) subpoena witnesses and records; and

21 (B) enforce a subpoena in an appropriate district court of the United
22 States.

23 (3) The Secretary shall impose the civil penalty by written notice. The
24 Secretary may compromise or remit a penalty imposed, or that may be im-
25 posed, under this section.

26 (4) The Secretary shall recover a civil penalty not paid after the penalty
27 is final or after a court enters a final judgment for the Secretary.

28 **§ 70116. Consultation**

29 (a) MATTERS AFFECTING NATIONAL SECURITY.—The Secretary of
30 Transportation shall consult with the Secretary of Defense on a matter
31 under this chapter affecting national security. The Secretary of Defense
32 shall identify and notify the Secretary of Transportation of a national secu-
33 rity interest relevant to an activity under this chapter.

34 (b) MATTERS AFFECTING FOREIGN POLICY.—The Secretary of Trans-
35 portation shall consult with the Secretary of State on a matter under this
36 chapter affecting foreign policy. The Secretary of State shall identify and
37 notify the Secretary of Transportation of a foreign policy interest or obliga-
38 tion relevant to an activity under this chapter.

39 (c) OTHER MATTERS.—In carrying out this chapter, the Secretary of
40 Transportation shall consult with the head of another executive agency—

- 1 (1) to provide consistent application of licensing requirements under
2 this chapter;
3 (2) to ensure fair treatment for all license applicants; and
4 (3) when appropriate.

5 **§70117. Relationship to other executive agencies, laws, and**
6 **international obligations**

7 (a) EXECUTIVE AGENCIES.—Except as provided in this chapter, a person
8 is not required to obtain from an executive agency a license, approval, waiver,
9 or exemption to launch a launch vehicle or operate a launch site.

10 (b) FEDERAL COMMUNICATIONS COMMISSION AND SECRETARY OF COM-
11 MERCE.—This chapter does not affect the authority of—

12 (1) the Federal Communications Commission under the Communica-
13 tions Act of 1934 (47 U.S.C. 151 et seq.); or

14 (2) the Secretary of Commerce under the Land Remote-Sensing
15 Commercialization Act of 1984 (15 U.S.C. 4201 et seq.).

16 (c) STATES AND POLITICAL SUBDIVISIONS.—A State or political subdivi-
17 sion of a State—

18 (1) may not adopt or have in effect a law, regulation, standard, or
19 order inconsistent with this chapter; but

20 (2) may adopt or have in effect a law, regulation, standard, or order
21 consistent with this chapter that is in addition to or more stringent
22 than a requirement of, or regulation prescribed under, this chapter.

23 (d) CONSULTATION.—The Secretary of Transportation is encouraged to
24 consult with a State to simplify and expedite the approval of a space launch
25 activity.

26 (e) FOREIGN COUNTRIES.—The Secretary of Transportation shall—

27 (1) carry out this chapter consistent with an obligation the United
28 States Government assumes in a treaty, convention, or agreement in
29 force between the Government and the government of a foreign coun-
30 try; and

31 (2) consider applicable laws and requirements of a foreign country
32 when carrying out this chapter.

33 (f) LAUNCH NOT AN EXPORT.—A launch vehicle or payload that is
34 launched is not, because of the launch, an export for purposes of a law con-
35 trolling exports.

36 (g) NONAPPLICATION.—This chapter does not apply to—

37 (1) a launch, operation of a launch vehicle or launch site, or other
38 space activity the Government carries out for the Government; or

39 (2) planning or policies related to the launch, operation, or activity.

1 **§ 70118. User fees**

2 The Secretary of Transportation may collect a user fee for a regulatory
3 or other service conducted under this chapter only if specifically authorized
4 by this chapter.

5 **§ 70119. Authorization of appropriations**

6 The following amounts may be appropriated to the Secretary of Transpor-
7 tation for the fiscal year ending September 30, 1993:

8 (1) \$4,900,000 to carry out this chapter.

9 (2) \$20,000,000 for a program to ensure the resiliency of the space
10 launch infrastructure of the United States if a law is enacted to estab-
11 lish that program in the Department of Transportation.

12 **CHAPTER 703—SPACE TRANSPORTATION**
13 **INFRASTRUCTURE MATCHING GRANTS**

Sec.

70301. Definitions.

70302. Grant authority.

70303. Grant applications.

70304. Environmental requirements.

70305. Authorization of appropriations.

14 **§ 70301. Definitions**

15 In this chapter—

16 (1) the definitions in section 502 of the National Aeronautics and
17 Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C.
18 5802) apply.

19 (2) “commercial space transportation infrastructure development”
20 includes—

21 (A) construction, improvement, design, and engineering of space
22 transportation infrastructure in the United States; and

23 (B) technical studies to define how new or enhanced space
24 transportation infrastructure can best meet the needs of the Unit-
25 ed States commercial space transportation industry.

26 (3) “project” means a project (or separate projects submitted to-
27 gether) to carry out commercial space transportation infrastructure de-
28 velopment, including the combined submission of all projects to be un-
29 dertaken at a particular site in a fiscal year.

30 (4) “project grant” means a grant of an amount by the Secretary
31 of Transportation to a sponsor for one or more projects.

32 (5) “public agency” means a State or an agency of a State, a politi-
33 cal subdivision of a State, or a tax-supported organization.

34 (6) “sponsor” means a public agency that, individually or jointly
35 with one or more other public agencies, submits to the Secretary under
36 this chapter an application for a project grant.

§ 70302. Grant authority

(a) GENERAL AUTHORITY.—To ensure the resiliency of the space transportation infrastructure of the United States, the Secretary of Transportation may make project grants to sponsors as provided in this chapter.

(b) LIMITATIONS.—The Secretary may make a project grant under this chapter only if—

(1) at least 10 percent of the total cost of the project will be paid by the private sector; and

(2) the grant will not be for more than 50 percent of the total cost of the project.

§ 70303. Grant applications

(a) GENERAL.—A sponsor may submit to the Secretary of Transportation an application for a project grant. The application must state the project to be undertaken and be in the form and contain the information the Secretary requires.

(b) CONSIDERATIONS AND CONSULTATION.—(1) In selecting proposed projects for grants under this section, the Secretary of Transportation shall consider—

(A) the contribution of the project to industry capabilities that serve the United States Government's space transportation needs;

(B) the extent of industry's financial contribution to the project;

(C) the extent of industry's participation in the project;

(D) the positive impact of the project on the international competitiveness of the United States space transportation industry;

(E) the extent of State contributions to the project; and

(F) the impact of the project on launch operations and other activities at Government launch ranges.

(2) The Secretary of Transportation shall consult with the Secretary of Defense, the Administrator of the National Space and Aeronautics Administration, and the heads of other appropriate agencies of the Government about paragraph (1)(A) and (F) of this subsection.

(c) REQUIREMENTS.—The Secretary of Transportation may approve an application only if the Secretary is satisfied that—

(1) the project will contribute to the purposes of this chapter;

(2) the project is reasonably consistent with plans (existing at the time of approval of the project) of public agencies that are—

(A) authorized by the State in which the project is located; and

(B) responsible for the development of the area surrounding the project site;

(3) if the application proposes to use Government property, the specific consent of the head of the appropriate agency has been obtained;

1 (4) the project will be completed without unreasonable delay;

2 (5) the sponsor submitting the application has the legal authority to
3 engage in the project; and

4 (6) any additional requirements prescribed by the Secretary have
5 been met.

6 (d) PREFERENCE FOR INDUSTRY CONTRIBUTIONS.—The Secretary of
7 Transportation shall give preference to applications for projects for which
8 there will be greater industry financial contributions, all other factors being
9 equal.

10 **§ 70304. Environmental requirements**

11 (a) POLICY.—It is the policy of the United States that projects selected
12 under this chapter shall provide for the protection and enhancement of the
13 natural resources and the quality of the environment of the United States.
14 In carrying out this policy, the Secretary of Transportation shall consult
15 with the Secretary of the Interior and the Administrator of the Environ-
16 mental Protection Agency about a project that may have a significant effect
17 on natural resources, including fish and wildlife, natural, scenic, and rec-
18 reational assets, water and air quality, and other factors affecting the envi-
19 ronment. If the Secretary of Transportation finds that a project will have
20 a significant adverse effect, the Secretary may approve the application for
21 the project only if, after a complete review that is a matter of public record,
22 the Secretary makes a written finding that no feasible and prudent alter-
23 native to the project exists and that all reasonable steps have been taken
24 to minimize the adverse effect.

25 (b) PUBLIC HEARING REQUIREMENT.—The Secretary of Transportation
26 may approve an application only if the sponsor of the project certifies to
27 the Secretary that an opportunity for a public hearing has been provided
28 to consider the economic, social, and environmental effects of the project
29 and its consistency with the goals of any planning carried out by the com-
30 munity. When a hearing is held under this paragraph, the sponsor shall sub-
31 mit a copy of the transcript of the hearing to the Secretary.

32 (c) COMPLIANCE WITH AIR AND WATER QUALITY STANDARDS.—(1) The
33 Secretary of Transportation may approve an application only if the chief ex-
34 ecutive officer of the State in which the project is located certifies in writing
35 to the Secretary that there is reasonable assurance that the project will be
36 located, designed, constructed, and operated to comply with applicable air
37 and water quality standards. If the Administrator has not prescribed those
38 standards, certification shall be obtained from the Administrator. Notice of
39 certification or refusal to certify shall be provided not later than 60 days
40 after the Secretary receives the application.

1 (2) The Secretary of Transportation shall condition the approval of an
 2 application on compliance with applicable air and water quality standards
 3 during construction and operation.

4 (d) COMPLIANCE WITH LAWS AND REGULATIONS.—The Secretary of
 5 Transportation may require a certification from a sponsor that the sponsor
 6 will comply with all applicable laws and regulations. The Secretary may re-
 7 scind at any time acceptance of a certification from a sponsor under this
 8 subsection. This subsection does not affect any responsibility of the Sec-
 9 retary under another law, including—

- 10 (1) section 303 of this title;
- 11 (2) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et
 12 seq.);
- 13 (3) title VIII of the Act of April 11, 1968 (42 U.S.C. 3601 et seq.);
- 14 (4) the National Environmental Policy Act of 1969 (42 U.S.C. 4321
 15 et seq.); and
- 16 (5) the Uniform Relocation Assistance and Real Property Acquisition
 17 Policies Act of 1970 (42 U.S.C. 4601 et seq.).

18 **§ 70305. Authorization of appropriations**

19 Not more than \$10,000,000 may be appropriated to the Secretary of
 20 Transportation to make grants under this chapter. Amounts appropriated
 21 under this section remain available until expended.

22 **SUBTITLE X—MISCELLANEOUS**

CHAPTER	Sec.
801. BILLS OF LADING	80101
803. CONTRABAND	80301
805. MISCELLANEOUS	80501

CHAPTER 801—BILLS OF LADING

Sec.
80101. Definitions.
80102. Application.
80103. Negotiable and nonnegotiable bills.
80104. Form and requirements for negotiation.
80105. Title and rights affected by negotiation.
80106. Transfer without negotiation.
80107. Warranties and liability.
80108. Alterations and additions.
80109. Liens under negotiable bills.
80110. Duty to deliver goods.
80111. Liability for delivery of goods.
80112. Liability under negotiable bills issued in parts, sets, or duplicates.
80113. Liability for nonreceipt, misdescription, and improper loading.
80114. Lost, stolen, and destroyed negotiable bills.
80115. Limitation on use of judicial process to obtain possession of goods from common car- riers.
80116. Criminal penalty.

23 **§ 80101. Definitions**

24 In this chapter—
 25 (1) “consignee” means the person named in a bill of lading as the
 26 person to whom the goods are to be delivered.

1 (2) “consignor” means the person named in a bill of lading as the
2 person from whom the goods have been received for shipment.

3 (3) “goods” means merchandise or personal property that has been,
4 is being, or will be transported.

5 (4) “holder” means a person having possession of, and a property
6 right in, a bill of lading.

7 (5) “order” means an order by indorsement on a bill of lading.

8 (6) “purchase” includes taking by mortgage or pledge.

9 (7) “State” means a State of the United States, the District of Co-
10 lumbia, and a territory or possession of the United States.

11 **§ 80102. Application**

12 This chapter applies to a bill of lading when the bill is issued by a com-
13 mon carrier for the transportation of goods—

14 (1) between a place in the District of Columbia and another place
15 in the District of Columbia;

16 (2) between a place in a territory or possession of the United States
17 and another place in the same territory or possession;

18 (3) between a place in a State and a place in another State;

19 (4) between a place in a State and a place in the same State through
20 another State or a foreign country; or

21 (5) from a place in a State to a place in a foreign country.

22 **§ 80103. Negotiable and nonnegotiable bills**

23 (a) NEGOTIABLE BILLS.—(1) A bill of lading is negotiable if the bill—

24 (A) states that the goods are to be delivered to the order of a con-
25 signee; and

26 (B) does not contain on its face an agreement with the shipper that
27 the bill is not negotiable.

28 (2) Inserting in a negotiable bill of lading the name of a person to be
29 notified of the arrival of the goods—

30 (A) does not limit its negotiability; and

31 (B) is not notice to the purchaser of the goods of a right the named
32 person has to the goods.

33 (b) NONNEGOTIABLE BILLS.—(1) A bill of lading is nonnegotiable if the
34 bill states that the goods are to be delivered to a consignee. The
35 indorsement of a nonnegotiable bill does not—

36 (A) make the bill negotiable; or

37 (B) give the transferee any additional right.

38 (2) A common carrier issuing a nonnegotiable bill of lading must put
39 “nonnegotiable” or “not negotiable” on the bill. This paragraph does not
40 apply to an informal memorandum or acknowledgment.

§ 80104. Form and requirements for negotiation

(a) GENERAL RULES.—(1) A negotiable bill of lading may be negotiated by indorsement. An indorsement may be made in blank or to a specified person. If the goods are deliverable to the order of a specified person, then the bill must be indorsed by that person.

(2) A negotiable bill of lading may be negotiated by delivery when the common carrier, under the terms of the bill, undertakes to deliver the goods to the order of a specified person and that person or a subsequent indorsee has indorsed the bill in blank.

(3) A negotiable bill of lading may be negotiated by a person possessing the bill, regardless of the way in which the person got possession, if—

(A) a common carrier, under the terms of the bill, undertakes to deliver the goods to that person; or

(B) when the bill is negotiated, it is in a form that allows it to be negotiated by delivery.

(b) VALIDITY NOT AFFECTED.—The validity of a negotiation of a bill of lading is not affected by the negotiation having been a breach of duty by the person making the negotiation, or by the owner of the bill having been deprived of possession by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill is negotiated, or a person to whom the bill is subsequently negotiated, gives value for the bill in good faith and without notice of the breach of duty, fraud, accident, mistake, duress, loss, theft, or conversion.

(c) NEGOTIATION BY SELLER, MORTGAGOR, OR PLEDGOR TO PERSON WITHOUT NOTICE.—When goods for which a negotiable bill of lading has been issued are in a common carrier's possession, and the person to whom the bill has been issued retains possession of the bill after selling, mortgaging, or pledging the goods or bill, the subsequent negotiation of the bill by that person to another person receiving the bill for value, in good faith, and without notice of the prior sale, mortgage, or pledge has the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

§ 80105. Title and rights affected by negotiation

(a) TITLE.—When a negotiable bill of lading is negotiated—

(1) the person to whom it is negotiated acquires the title to the goods that—

(A) the person negotiating the bill had the ability to convey to a purchaser in good faith for value; and

(B) the consignor and consignee had the ability to convey to such a purchaser; and

1 (2) the common carrier issuing the bill becomes obligated directly to
2 the person to whom the bill is negotiated to hold possession of the
3 goods under the terms of the bill the same as if the carrier had issued
4 the bill to that person.

5 (b) SUPERIORITY OF RIGHTS.—When a negotiable bill of lading is nego-
6 tiated to a person for value in good faith, that person’s right to the goods
7 for which the bill was issued is superior to a seller’s lien or to a right to
8 stop the transportation of the goods. This subsection applies whether the
9 negotiation is made before or after the common carrier issuing the bill re-
10 ceives notice of the seller’s claim. The carrier may deliver the goods to an
11 unpaid seller only if the bill first is surrendered for cancellation.

12 (c) MORTGAGEE AND LIEN HOLDER RIGHTS NOT AFFECTED.—Except
13 as provided in subsection (b) of this section, this chapter does not limit a
14 right of a mortgagee or lien holder having a mortgage or lien on goods
15 against a person that purchased for value in good faith from the owner, and
16 got possession of the goods immediately before delivery to the common car-
17 rier.

18 **§ 80106. Transfer without negotiation**

19 (a) DELIVERY AND AGREEMENT.—The holder of a bill of lading may
20 transfer the bill without negotiating it by delivery and agreement to transfer
21 title to the bill or to the goods represented by it. Subject to the agreement,
22 the person to whom the bill is transferred has title to the goods against the
23 transferor.

24 (b) COMPELLING INDORSEMENT.—When a negotiable bill of lading is
25 transferred for value by delivery without being negotiated and indorsement
26 of the transferor is essential for negotiation, the transferee may compel the
27 transferor to indorse the bill unless a contrary intention appears. The nego-
28 tiation is effective when the indorsement is made.

29 (c) EFFECT OF NOTIFICATION.—(1) When a transferee notifies the com-
30 mon carrier that a nonnegotiable bill of lading has been transferred under
31 subsection (a) of this section, the carrier is obligated directly to the trans-
32 feree for any obligations the carrier owed to the transferor immediately be-
33 fore the notification. However, before the carrier is notified, the transferee’s
34 title to the goods and right to acquire the obligations of the carrier may
35 be defeated by—

36 (A) garnishment, attachment, or execution on the goods by a creditor
37 of the transferor; or

38 (B) notice to the carrier by the transferor or a purchaser from the
39 transferor of a later purchase of the goods from the transferor.

40 (2) A common carrier has been notified under this subsection only if—

1 (A) an officer or agent of the carrier, whose actual or apparent au-
2 thority includes acting on the notification, has been notified; and

3 (B) the officer or agent has had time, exercising reasonable dili-
4 gence, to communicate with the agent having possession or control of
5 the goods.

6 **§ 80107. Warranties and liability**

7 (a) GENERAL RULE.—Unless a contrary intention appears, a person ne-
8 gotiating or transferring a bill of lading for value warrants that—

9 (1) the bill is genuine;

10 (2) the person has the right to transfer the bill and the title to the
11 goods described in the bill;

12 (3) the person does not know of a fact that would affect the validity
13 or worth of the bill; and

14 (4) the goods are merchantable or fit for a particular purpose when
15 merchantability or fitness would have been implied if the agreement of
16 the parties had been to transfer the goods without a bill of lading.

17 (b) SECURITY FOR DEBT.—A person holding a bill of lading as security
18 for a debt and in good faith demanding or receiving payment of the debt
19 from another person does not warrant by the demand or receipt—

20 (1) the genuineness of the bill; or

21 (2) the quantity or quality of the goods described in the bill.

22 (c) DUPLICATES.—A common carrier issuing a bill of lading, on the face
23 of which is the word “duplicate” or another word indicating that the bill
24 is not an original bill, is liable the same as a person that represents and
25 warrants that the bill is an accurate copy of an original bill properly issued.
26 The carrier is not otherwise liable under the bill.

27 (d) INDORSER LIABILITY.—Indorsement of a bill of lading does not make
28 the indorser liable for failure of the common carrier or a previous indorser
29 to fulfill its obligations.

30 **§ 80108. Alterations and additions**

31 An alteration or addition to a bill of lading after its issuance by a com-
32 mon carrier, without authorization from the carrier in writing or noted on
33 the bill, is void. However, the original terms of the bill are enforceable.

34 **§ 80109. Liens under negotiable bills**

35 A common carrier issuing a negotiable bill of lading has a lien on the
36 goods covered by the bill for—

37 (1) charges for storage, transportation, and delivery (including de-
38 murrage and terminal charges), and expenses necessary to preserve the
39 goods or incidental to transporting the goods after the date of the bill;
40 and

1 (2) other charges for which the bill expressly specifies a lien is
2 claimed to the extent the charges are allowed by law and the agreement
3 between the consignor and carrier.

4 **§ 80110. Duty to deliver goods**

5 (a) GENERAL RULES.—Except to the extent a common carrier establishes
6 an excuse provided by law, the carrier must deliver goods covered by a bill
7 of lading on demand of the consignee named in a nonnegotiable bill or the
8 holder of a negotiable bill for the goods when the consignee or holder—

- 9 (1) offers in good faith to satisfy the lien of the carrier on the goods;
10 (2) has possession of the bill and, if a negotiable bill, offers to in-
11 dorse and give the bill to the carrier; and
12 (3) agrees to sign, on delivery of the goods, a receipt for delivery if
13 requested by the carrier.

14 (b) PERSONS TO WHOM GOODS MAY BE DELIVERED.—Subject to section
15 80111 of this title, a common carrier may deliver the goods covered by a
16 bill of lading to—

- 17 (1) a person entitled to their possession;
18 (2) the consignee named in a nonnegotiable bill; or
19 (3) a person in possession of a negotiable bill if—
20 (A) the goods are deliverable to the order of that person; or
21 (B) the bill has been indorsed to that person or in blank by the
22 consignee or another indorsee.

23 (c) COMMON CARRIER CLAIMS OF TITLE AND POSSESSION.—A claim by
24 a common carrier that the carrier has title to goods or right to their posses-
25 sion is an excuse for nondelivery of the goods only if the title or right is
26 derived from—

- 27 (1) a transfer made by the consignor or consignee after the ship-
28 ment; or
29 (2) the carrier's lien.

30 (d) ADVERSE CLAIMS.—If a person other than the consignee or the per-
31 son in possession of a bill of lading claims title to or possession of goods
32 and the common carrier knows of the claim, the carrier is not required to
33 deliver the goods to any claimant until the carrier has had a reasonable time
34 to decide the validity of the adverse claim or to bring a civil action to re-
35 quire all claimants to interplead.

36 (e) INTERPLEADER.—If at least 2 persons claim title to or possession of
37 the goods, the common carrier may—

- 38 (1) bring a civil action to interplead all known claimants to the
39 goods; or
40 (2) require those claimants to interplead as a defense in an action
41 brought against the carrier for nondelivery.

1 (f) THIRD PERSON CLAIMS NOT A DEFENSE.—Except as provided in
2 subsections (b), (d), and (e) of this section, title or a right of a third person
3 is not a defense to an action brought by the consignee of a nonnegotiable
4 bill of lading or by the holder of a negotiable bill against the common car-
5 rier for failure to deliver the goods on demand unless enforced by legal proc-
6 ess.

7 **§ 80111. Liability for delivery of goods**

8 (a) GENERAL RULES.—A common carrier is liable for damages to a per-
9 son having title to, or right to possession of, goods when—

10 (1) the carrier delivers the goods to a person not entitled to their
11 possession unless the delivery is authorized under section 80110(b)(2)
12 or (3) of this title;

13 (2) the carrier makes a delivery under section 80110(b)(2) or (3) of
14 this title after being requested by or for a person having title to, or
15 right to possession of, the goods not to make the delivery; or

16 (3) at the time of delivery under section 80110(b)(2) or (3) of this
17 title, the carrier has information it is delivering the goods to a person
18 not entitled to their possession.

19 (b) EFFECTIVENESS OF REQUEST OR INFORMATION.—A request or infor-
20 mation is effective under subsection (a)(2) or (3) of this section only if—

21 (1) an officer or agent of the carrier, whose actual or apparent au-
22 thority includes acting on the request or information, has been given
23 the request or information; and

24 (2) the officer or agent has had time, exercising reasonable diligence,
25 to stop delivery of the goods.

26 (c) FAILURE TO TAKE AND CANCEL BILLS.—Except as provided in sub-
27 section (d) of this section, if a common carrier delivers goods for which a
28 negotiable bill of lading has been issued without taking and canceling the
29 bill, the carrier is liable for damages for failure to deliver the goods to a
30 person purchasing the bill for value in good faith whether the purchase was
31 before or after delivery and even when delivery was made to the person enti-
32 tled to the goods. The carrier also is liable under this paragraph if part of
33 the goods are delivered without taking and canceling the bill or plainly not-
34 ing on the bill that a partial delivery was made and generally describing the
35 goods or the remaining goods kept by the carrier.

36 (d) EXCEPTIONS TO LIABILITY.—A common carrier is not liable for fail-
37 ure to deliver goods to the consignee or owner of the goods or a holder of
38 the bill if—

39 (1) a delivery described in subsection (c) of this section was com-
40 pelled by legal process;

41 (2) the goods have been sold lawfully to satisfy the carrier's lien;

1 (3) the goods have not been claimed; or

2 (4) the goods are perishable or hazardous.

3 **§ 80112. Liability under negotiable bills issued in parts, sets,**
4 **or duplicates**

5 (a) PARTS AND SETS.—A negotiable bill of lading issued in a State for
6 the transportation of goods to a place in the 48 contiguous States or the
7 District of Columbia may not be issued in parts or sets. A common carrier
8 issuing a bill in violation of this subsection is liable for damages for failure
9 to deliver the goods to a purchaser of one part for value in good faith even
10 though the purchase occurred after the carrier delivered the goods to a hold-
11 er of one of the other parts.

12 (b) DUPLICATES.—When at least 2 negotiable bills of lading are issued
13 in a State for the same goods to be transported to a place in the 48 contig-
14 uous States or the District of Columbia, the word “duplicate” or another
15 word indicating that the bill is not an original must be put plainly on the
16 face of each bill except the original. A common carrier violating this sub-
17 section is liable for damages caused by the violation to a purchaser of the
18 bill for value in good faith as an original bill even though the purchase oc-
19 curred after the carrier delivered the goods to the holder of the original bill.

20 **§ 80113. Liability for nonreceipt, misdescription, and im-**
21 **proper loading**

22 (a) LIABILITY FOR NONRECEIPT AND MISDESCRIPTION.—Except as pro-
23 vided in this section, a common carrier issuing a bill of lading is liable for
24 damages caused by nonreceipt by the carrier of any part of the goods by
25 the date shown in the bill or by failure of the goods to correspond with the
26 description contained in the bill. The carrier is liable to the owner of goods
27 transported under a nonnegotiable bill (subject to the right of stoppage in
28 transit) or to the holder of a negotiable bill if the owner or holder gave value
29 in good faith relying on the description of the goods in the bill or on the
30 shipment being made on the date shown in the bill.

31 (b) NONLIABILITY OF CARRIERS.—A common carrier issuing a bill of lad-
32 ing is not liable under subsection (a) of this section—

33 (1) when the goods are loaded by the shipper;

34 (2) when the bill—

35 (A) describes the goods in terms of marks or labels, or in a
36 statement about kind, quantity, or condition; or

37 (B) is qualified by “contents or condition of contents of pack-
38 ages unknown”, “said to contain”, “shipper’s weight, load, and
39 count”, or words of the same meaning; and

40 (3) to the extent the carrier does not know whether any part of the
41 goods were received or conform to the description.

1 (c) LIABILITY FOR IMPROPER LOADING.—A common carrier issuing a bill
2 of lading is not liable for damages caused by improper loading if—

3 (1) the shipper loads the goods; and

4 (2) the bill contains the words “shipper’s weight, load, and count”,
5 or words of the same meaning indicating the shipper loaded the goods.

6 (d) CARRIER’S DUTY TO DETERMINE KIND, QUANTITY, AND NUMBER.—

7 (1) When bulk freight is loaded by a shipper that makes available to the
8 common carrier adequate facilities for weighing the freight, the carrier must
9 determine the kind and quantity of the freight within a reasonable time
10 after receiving the written request of the shipper to make the determination.
11 In that situation, inserting the words “shipper’s weight” or words of the
12 same meaning in the bill of lading has no effect.

13 (2) When goods are loaded by a common carrier, the carrier must count
14 the packages of goods, if package freight, and determine the kind and quan-
15 tity, if bulk freight. In that situation, inserting in the bill of lading or in
16 a notice, receipt, contract, rule, or tariff, the words “shipper’s weight, load,
17 and count” or words indicating that the shipper described and loaded the
18 goods, has no effect except for freight concealed by packages.

19 **§ 80114. Lost, stolen, and destroyed negotiable bills**

20 (a) DELIVERY ON COURT ORDER AND SURETY BOND.—If a negotiable
21 bill of lading is lost, stolen, or destroyed, a court of competent jurisdiction
22 may order the common carrier to deliver the goods if the person claiming
23 the goods gives a surety bond, in an amount approved by the court, to in-
24 demnify the carrier or a person injured by delivery against liability under
25 the outstanding original bill. The court also may order payment of reason-
26 able costs and attorney’s fees to the carrier. A voluntary surety bond, with-
27 out court order, is binding on the parties to the bond.

28 (b) LIABILITY TO HOLDER.—Delivery of goods under a court order under
29 subsection (a) of this section does not relieve a common carrier from liabil-
30 ity to a person to whom the negotiable bill has been or is negotiated for
31 value without notice of the court proceeding or of the delivery of the goods.

32 **§ 80115. Limitation on use of judicial process to obtain pos-
33 session of goods from common carriers**

34 (a) ATTACHMENT AND LEVY.—Except when a negotiable bill of lading
35 was issued originally on delivery of goods by a person that did not have the
36 power to dispose of the goods, goods in the possession of a common carrier
37 for which a negotiable bill has been issued may be attached through judicial
38 process or levied on in execution of a judgment only if the bill is surren-
39 dered to the carrier or its negotiation is enjoined.

1 (b) DELIVERY.—A common carrier may be compelled by judicial process
2 to deliver goods under subsection (a) of this section only when the bill is
3 surrendered to the carrier or impounded by the court.

4 **§ 80116. Criminal penalty**

5 A person shall be fined under title 18, imprisoned for not more than 5
6 years, or both, if the person—

7 (1) violates this chapter with intent to defraud; or

8 (2) knowingly or with intent to defraud—

9 (A) falsely makes, alters, or copies a bill of lading subject to
10 this chapter;

11 (B) utters, publishes, or issues a falsely made, altered, or copied
12 bill subject to this chapter; or

13 (C) negotiates or transfers for value a bill containing a false
14 statement.

15 **CHAPTER 803—CONTRABAND**

Sec.

80301. Definitions.

80302. Prohibitions.

80303. Seizure and forfeiture.

80304. Administrative.

80305. Availability of certain appropriations.

80306. Relationship to other laws.

16 **§ 80301. Definitions**

17 In this chapter—

18 (1) “aircraft” means a contrivance used, or capable of being used,
19 for transportation in the air.

20 (2) “vehicle” means a contrivance used, or capable of being used, for
21 transportation on, below, or above land, but does not include aircraft.

22 (3) “vessel” means a contrivance used, or capable of being used, for
23 transportation in water, but does not include aircraft.

24 **§ 80302. Prohibitions**

25 (a) DEFINITION.—In this section, “contraband” means—

26 (1) a narcotic drug (as defined in section 102 of the Comprehensive
27 Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)), in-
28 cluding marihuana (as defined in section 102 of that Act (21 U.S.C.
29 802)), that—

30 (A) is possessed with intent to sell or offer for sale in violation
31 of the laws and regulations of the United States;

32 (B) is acquired, possessed, sold, transferred, or offered for sale
33 in violation of those laws;

34 (C) is acquired by theft, robbery, or burglary and transported—

35 (i) in the District of Columbia or a territory or possession
36 of the United States; or

1 (ii) from a place in a State, the District of Columbia, or
2 a territory or possession of the United States, to a place in
3 another State, the District of Columbia, or a territory or pos-
4 session; or

5 (D) does not bear tax-paid internal revenue stamps required by
6 those laws or regulations;

7 (2) a firearm involved in a violation of chapter 53 of the Internal
8 Revenue Code of 1986 (26 U.S.C. 5801 et seq.);

9 (3) a forged, altered, or counterfeit—

10 (A) coin or an obligation or other security of the United States
11 Government (as defined in section 8 of title 18); or

12 (B) coin, obligation, or other security of the government of a
13 foreign country;

14 (4) material or equipment used, or intended to be used, in making
15 a coin, obligation, or other security referred to in clause (3) of this sub-
16 section; or

17 (5) a cigarette involved in a violation of chapter 114 of title 18 or
18 a regulation prescribed under chapter 114.

19 (b) PROHIBITIONS.—A person may not—

20 (1) transport contraband in an aircraft, vehicle, or vessel;

21 (2) conceal or possess contraband on an aircraft, vehicle, or vessel;
22 or

23 (3) use an aircraft, vehicle, or vessel to facilitate the transportation,
24 concealment, receipt, possession, purchase, sale, exchange, or giving
25 away of contraband.

26 **§ 80303. Seizure and forfeiture**

27 The Secretary of the Treasury or the Governor of Guam or of the North-
28 ern Mariana Islands as provided in section 80304 of this title, or a person
29 authorized by another law to enforce section 80302 of this title, shall seize
30 an aircraft, vehicle, or vessel involved in a violation of section 80302 and
31 place it in the custody of a person designated by the Secretary or appro-
32 priate Governor, as the case may be. The seized aircraft, vehicle, or vessel
33 shall be forfeited, except when the owner establishes that a person except
34 the owner committed the violation when the aircraft, vehicle, or vessel was
35 in the possession of a person who got possession by violating a criminal law
36 of the United States or a State. However, an aircraft, vehicle, or vessel used
37 by a common carrier to provide transportation for compensation may be for-
38 feited only when—

39 (1) the owner, conductor, driver, pilot, or other individual in charge
40 of the aircraft or vehicle (except a rail car or engine) consents to, or
41 knows of, the alleged violation when the violation occurs;

1 (2) the owner of the rail car or engine consents to, or knows of, the
2 alleged violation when the violation occurs; or

3 (3) the master or owner of the vessel consents to, or knows of, the
4 alleged violation when the violation occurs.

5 **§ 80304. Administrative**

6 (a) GENERAL.—Except as provided in subsections (b) and (c) of this sec-
7 tion, the Secretary of the Treasury—

8 (1) may designate officers, employees, agents, or other persons to
9 carry out this chapter; and

10 (2) shall prescribe regulations to carry out this chapter.

11 (b) IN GUAM.—The Governor of Guam—

12 (1) or officers of the government of Guam designated by the Gov-
13 ernor shall carry out this chapter in Guam;

14 (2) may carry out laws referred to in section 80306(b) of this title
15 with modifications the Governor decides are necessary to meet condi-
16 tions in Guam; and

17 (3) may prescribe regulations to carry out this chapter in Guam.

18 (c) IN NORTHERN MARIANA ISLANDS.—The Governor of the Northern
19 Mariana Islands—

20 (1) or officers of the government of the Northern Mariana Islands
21 designated by the Governor shall carry out this chapter in the Northern
22 Mariana Islands;

23 (2) may carry out laws referred to in section 80306(b) of this title
24 with modifications the Governor decides are necessary to meet condi-
25 tions in the Northern Mariana Islands; and

26 (3) may prescribe regulations to carry out this chapter in the North-
27 ern Mariana Islands.

28 (d) CUSTOMS LAWS ON SEIZURE AND FORFEITURE.—The Secretary, or
29 the Governor of Guam or of the Northern Mariana Islands as provided in
30 subsections (b) and (c) of this section, shall carry out the customs laws on
31 the seizure and forfeiture of aircraft, vehicles, and vessels under this chap-
32 ter.

33 **§ 80305. Availability of certain appropriations**

34 Appropriations for enforcing customs, narcotics, counterfeiting, or inter-
35 nal revenue laws are available to carry out this chapter.

36 **§ 80306. Relationship to other laws**

37 (a) CHAPTER AS ADDITIONAL LAW.—This chapter is in addition to an-
38 other law—

39 (1) imposing, or authorizing the compromise of, fines, penalties, or
40 forfeitures; or

1 (2) providing for seizure, condemnation, or disposition of forfeited
2 property, or the proceeds from the property.

3 (b) LAWS APPLICABLE TO SEIZURES AND FORFEITURES.—To the extent
4 applicable and consistent with this chapter, the following apply to a seizure
5 or forfeiture under this chapter:

6 (1) provisions of law related to the seizure, forfeiture, and condemna-
7 tion of vehicles and vessels violating the customs laws.

8 (2) provisions of law related to the disposition of those vehicles or
9 vessels or the proceeds from the sale of those vehicles or vessels.

10 (3) provisions of law related to the compromise of those forfeitures
11 or claims related to those forfeitures.

12 (4) provisions of law related to the award of compensation to an in-
13 former about those forfeitures.

14 **CHAPTER 805—MISCELLANEOUS**

Sec.

80501. Damage to transported property.

80502. Transportation of animals.

80503. Payments for inspection and quarantine services.

80504. Medals of honor.

15 **§ 80501. Damage to transported property**

16 (a) CRIMINAL PENALTY.—A person willfully damaging, or attempting to
17 damage, property in the possession of an air carrier, motor carrier, or rail
18 carrier and being transported in interstate or foreign commerce, shall be
19 fined under title 18, imprisoned for not more than 10 years, or both. In
20 a criminal proceeding under this section, a shipping document for the prop-
21 erty is prima facie evidence of the places to which and from which the prop-
22 erty was being transported.

23 (b) PROHIBITION AGAINST MULTIPLE PROSECUTIONS FOR SAME ACT.—
24 A person may not be prosecuted for an act under this section when the per-
25 son has been convicted or acquitted on the merits for the same act under
26 the laws of a State, the District of Columbia, or a territory or possession
27 of the United States.

28 **§ 80502. Transportation of animals**

29 (a) CONFINEMENT.—(1) Except as provided in this section, a rail carrier,
30 express carrier, or common carrier (except by air or water), a receiver,
31 trustee, or lessee of one of those carriers, or an owner or master of a vessel
32 transporting animals from a place in a State, the District of Columbia, or
33 a territory or possession of the United States through or to a place in an-
34 other State, the District of Columbia, or a territory or possession, may not
35 confine animals in a vehicle or vessel for more than 28 consecutive hours
36 without unloading the animals for feeding, water, and rest.

1 (2) Sheep may be confined for an additional 8 consecutive hours without
2 being unloaded when the 28-hour period of confinement ends at night. Ani-
3 mals may be confined for—

4 (A) more than 28 hours when the animals cannot be unloaded be-
5 cause of accidental or unavoidable causes that could not have been an-
6 ticipated or avoided when being careful; and

7 (B) 36 consecutive hours when the owner or person having custody
8 of animals being transported requests, in writing and separate from a
9 bill of lading or other rail form, that the 28-hour period be extended
10 to 36 hours.

11 (3) Time spent in loading and unloading animals is not included as part
12 of a period of confinement under this subsection.

13 (b) UNLOADING, FEEDING, WATERING, AND REST.—Animals being
14 transported shall be unloaded in a humane way into pens equipped for feed-
15 ing, water, and rest for at least 5 consecutive hours. The owner or person
16 having custody of the animals shall feed and water the animals. When the
17 animals are not fed and watered by the owner or person having custody,
18 the rail carrier, express carrier, or common carrier (except by air or water),
19 the receiver, trustee, or lessee of one of those carriers, or the owner or mas-
20 ter of a vessel transporting the animals—

21 (1) shall feed and water the animals at the reasonable expense of
22 the owner or person having custody, except that the owner or shipper
23 may provide food;

24 (2) has a lien on the animals for providing food, care, and custody
25 that may be collected at the destination in the same way that a trans-
26 portation charge is collected; and

27 (3) is not liable for detaining the animals for a reasonable period to
28 comply with subsection (a) of this section.

29 (c) NONAPPLICATION.—This section does not apply when animals are
30 transported in a vehicle or vessel in which the animals have food, water,
31 space, and an opportunity for rest.

32 (d) CIVIL PENALTY.—A rail carrier, express carrier, or common carrier
33 (except by air or water), a receiver, trustee, or lessee of one of those car-
34 riers, or an owner or master of a vessel that knowingly and willfully violates
35 this section is liable to the United States Government for a civil penalty of
36 at least \$100 but not more than \$500 for each violation. On learning of
37 a violation, the Attorney General shall bring a civil action to collect the pen-
38 alty in the district court of the United States for the judicial district in
39 which the violation occurred or the defendant resides or does business.

40 **§ 80503. Payments for inspection and quarantine services**

41 (a) GENERAL.—(1) In this subsection—

1 (A) “private aircraft” means a civilian aircraft not being used to
2 transport passengers or property for compensation.

3 (B) “private vessel” means a civilian vessel not being used—

4 (i) to transport passengers or property for compensation; or

5 (ii) in fishing or fish processing operations.

6 (2) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C.
7 1451), the owner, operator, or agent of a private aircraft or private vessel
8 may pay not more than \$25 for the services of an officer or employee of
9 the Department of Agriculture, the Customs Service, the Immigration and
10 Naturalization Service, or the Public Health Service (including an independ-
11 ent contractor performing an inspection service for the Public Health Ser-
12 vice) when the services are performed on a Sunday, holiday, or from 5 p.m.
13 through 8 a.m. on a weekday, and are related to the aircraft’s or vessel’s
14 arrival in, or departure from, the United States. However, the owner, opera-
15 tor, or agent does not have to pay for the services from 5 p.m. through 8
16 a.m. on a weekday when an officer or employee on regular duty is available
17 at the place of arrival or departure to perform services.

18 (3) The head of a department, agency, or instrumentality of the United
19 States Government providing services under paragraph (2) of this sub-
20 section shall collect the amount paid for the services and deposit the amount
21 in the Treasury. The amount shall be credited to the appropriation of the
22 department, agency, or instrumentality against which the expense of those
23 services was charged.

24 (b) LIMITATIONS ON REIMBURSEMENT.—(1) An owner or operator of an
25 aircraft is required to reimburse the head of a department, agency, or in-
26 strumentality of the Government for the expenses of performing an inspec-
27 tion or quarantine service related to the aircraft at a place of inspection
28 during regular service hours on a Sunday or holiday only to the same extent
29 that an owner or operator makes reimbursement for the service during regu-
30 lar service hours on a weekday. The head of the department, agency, or in-
31 strumentality may not assess an owner or operator of an aircraft for admin-
32 istrative overhead expenses for inspection or quarantine service provided by
33 the department, agency, or instrumentality at an entry airport.

34 (2) This subsection does not require reimbursement for costs incurred by
35 the Secretary of the Treasury in providing customs services described in sec-
36 tion 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of
37 1985 (19 U.S.C. 58c(e)(1)).

38 **§ 80504. Medals of honor**

39 (a) MEDALS.—The President may prepare and give a bronze medal of
40 honor with emblematic devices to an individual who by extreme daring en-
41 dangers that individual’s life in trying to prevent, or save the life of another

1 in, a grave accident in the United States involving a rail carrier providing
2 transportation in interstate commerce or involving a motor vehicle on the
3 public streets, roads, or highways. The President may give a medal only
4 when sufficient evidence that the individual deserves the medal has been
5 filed under regulations prescribed by the President.

6 (b) RIBBONS, KNOTS, AND ROSETTES.—The President may give an indi-
7 vidual who receives a medal a ribbon to be worn with the medal and a knot
8 or rosette to be worn in place of the medal. The President shall prescribe
9 the design for the ribbon, knot, and rosette. If the ribbon is lost, destroyed,
10 or made unfit for use and the individual receiving the medal is not neg-
11 ligent, the President shall issue a new ribbon without charge to the individ-
12 ual.

13 (c) AVAILABILITY OF APPROPRIATIONS.—Appropriations made to the
14 Secretary of Transportation are available to carry out this section.

15 PORTS OF ENTRY

16 Sec. 2. (a) The definitions in section 40102(a) of title 49, United States
17 Code, apply to this section.

18 (b)(1) The Secretary of the Treasury may—

19 (A) designate ports of entry in the United States for civil aircraft
20 arriving in the United States from a place outside the United States
21 and property transported on that aircraft;

22 (B) detail to ports of entry officers and employees of the United
23 States Customs Service the Secretary considers necessary;

24 (C) give an officer or employee of the United States Government sta-
25 tioned at a port of entry (with the consent of the head of the depart-
26 ment, agency, or instrumentality of the Government with jurisdiction
27 over the officer or employee) duties and powers of officers or employees
28 of the Customs Service;

29 (D) by regulation, apply to civil air navigation the laws and regula-
30 tions on carrying out the customs laws, to the extent and under condi-
31 tions the Secretary considers necessary; and

32 (E) by regulation, apply to civil aircraft the laws and regulations on
33 entry and clearance of vessels, to the extent and under conditions the
34 Secretary considers necessary.

35 (2) A person violating a customs regulation prescribed under paragraph
36 (1)(A)–(D) of this subsection or a public health or customs law or regula-
37 tion made applicable to aircraft by a regulation under paragraph (1)(A)–
38 (D) is liable to the Government for a civil penalty of \$5,000 for each viola-
39 tion. An aircraft involved in the violation may be seized and forfeited under
40 the customs laws. The Secretary of the Treasury may remit or mitigate a
41 penalty and forfeiture under this paragraph.

1 (3) A person violating a regulation made applicable under paragraph
2 (1)(E) of this subsection or an immigration regulation prescribed under
3 paragraph (1)(E) is liable to the Government for a civil penalty of \$5,000
4 for each violation. The Secretary of the Treasury or the Attorney General
5 may remit or mitigate a penalty under this paragraph.

6 (4) In addition to any other penalty, when a controlled substance de-
7 scribed in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found
8 on, or to have been unloaded from, an aircraft to which this subsection ap-
9 plies, the owner of, or individual commanding, the aircraft is liable to the
10 Government for the penalties provided in section 584 for each violation un-
11 less the owner or individual, by a preponderance of the evidence, dem-
12 onstrates that the owner or individual did not know, and by exercising the
13 highest degree of care and diligence, could not have known, that a controlled
14 substance was on the aircraft.

15 (5) If a violation under this subsection is by the owner or operator of,
16 or individual commanding, the aircraft, the aircraft is subject to a lien for
17 the penalty.

18 (c)(1) The Secretary of Agriculture by regulation may apply laws and
19 regulations on animal and plant quarantine (including laws and regulations
20 on importing, exporting, transporting, and quarantining animals, plants,
21 animal and plant products, insects, bacterial and fungus cultures, viruses,
22 and serums) to civil air navigation to the extent and under conditions the
23 Secretary considers necessary.

24 (2) A person violating a law or regulation made applicable under para-
25 graph (1) of this subsection is liable for the penalties provided under that
26 law or regulation.

27 (d) A decision to remit or mitigate a civil penalty under this section is
28 final. When libel proceedings are pending during a proceeding to remit or
29 mitigate a penalty, the appropriate Secretary shall notify the Attorney Gen-
30 eral of the remission or mitigation proceeding.

31 (e)(1) An aircraft subject to a lien under this section may be seized sum-
32 marily by and placed in the custody of a person authorized by regulations
33 of the appropriate Secretary or the Attorney General. A report of the case
34 shall be sent to the Attorney General. The Attorney General shall bring
35 promptly a civil action in rem to enforce the lien or notify the appropriate
36 Secretary that the action will not be brought.

37 (2) An aircraft seized under this section shall be released from custody
38 when—

39 (A) the civil penalty or amount not remitted or mitigated is paid;

40 (B) the aircraft is seized under process of a court in a civil action
41 in rem to enforce the lien;

1 (C) the Attorney General gives notice that a civil action will not be
2 brought under paragraph (1) of this subsection; or

3 (D) a bond is deposited with the appropriate Secretary or the Attor-
4 ney General in an amount and with a surety the appropriate Secretary
5 or the Attorney General prescribes, conditioned on payment of the pen-
6 alty or amount not remitted or mitigated.

7 (f) A civil penalty under this section may be collected by bringing a civil
8 action against the person subject to the penalty, a civil action in rem
9 against an aircraft subject to a lien for a penalty, or both. The action shall
10 conform as nearly as practicable to a civil action in admiralty, regardless
11 of the place an aircraft in a civil action in rem is seized. However, a party
12 may demand a trial by jury of an issue of fact if the value of the matter
13 in controversy is more than \$20. An issue of fact tried by jury may be reex-
14 amined only under common law rules.

15 (g) Necessary amounts may be appropriated to allow the head of a de-
16 partment, agency, or instrumentality of the Government to acquire space at
17 a public airport (as defined in section 47102 of title 49) when the head de-
18 cides the space is necessary to carry out inspections, clearance, collection
19 of taxes or duties, or a similar responsibility of the head, related to trans-
20 porting passengers or property in air commerce. The head must consult
21 with the Secretary of Transportation before making a decision on space.

22 MASS TRANSPORTATION EXEMPTION

23 Sec. 3. Chapter 105 of title 49, United States Code, is amended as fol-
24 lows:

25 (1) Insert immediately after section 10530 the following new section:

26 **“§ 10531. Mass transportation exemption**

27 “(a) DEFINITIONS.—The definitions in section 5302(a) of this title apply
28 to this section.

29 “(b) PETITION FOR GRANTING EXEMPTIONS.—A State or local govern-
30 mental authority may petition the Interstate Commerce Commission for an
31 exemption from the jurisdiction of the Commission under this subchapter
32 for mass transportation the authority provides or has provided to it by con-
33 tract. Not later than 180 days after the Commission receives a petition and
34 after notice and a reasonable opportunity for a proceeding, the Commission
35 shall exempt the State, local governmental authority, or contractor unless
36 the Commission finds that—

37 “(1) the public interest would not be served by an exemption;

38 “(2) the exemption would result in an unreasonable burden on inter-
39 state or foreign commerce; or

40 “(3) a State or local governmental authority may not regulate the
41 mass transportation to be exempt under this section.

1 “(c) APPLICATION OF OTHER LAWS.—All applicable laws of the United
2 States related to safety and to representation of employees for collective
3 bargaining purposes, retirement, annuities, and unemployment systems, and
4 all other laws related to employee–employer relations, apply to a State or
5 local governmental authority that was granted, or whose contractor was
6 granted, an exemption under this section.

7 “(d) CHANGING AND REVOKING EXEMPTIONS.—The Commission may
8 change or revoke an exemption if it finds that new evidence, material error,
9 or changed circumstances exist that materially affect the original order. The
10 Commission may act on its own initiative or on application of an interested
11 party.”

12 (2) Insert immediately below item 10530 in the analysis of the chap-
13 ter the following new item:

“10531. Mass transportation exemption.”

14 CONFORMING PROVISIONS

15 Sec. 4. (a) Section 401 of the Federal Election Campaign Act of 1971
16 (2 U.S.C. 451) is amended by striking “Civil Aeronautics Board” and
17 “Board or Commission” and substituting “Secretary of Transportation”
18 and “Secretary under subpart II of part A of subtitle VII of title 49, United
19 States Code, or such Commission,” respectively.

20 (b) Title 5, United States Code, is amended as follows:

21 (1) In section 5109, add at the end of the section the following new
22 subsection:

23 “(c)(1) The position held by a fully experienced and qualified railroad
24 safety inspector of the Department of Transportation shall be classified in
25 accordance with this chapter, but not lower than GS–12.

26 “(2) The position held by a railroad safety specialist of the Department
27 shall be classified in accordance with this chapter, but not lower than GS–
28 13.”

29 (2) In section 5315, strike—

30 “Administrator of the St. Lawrence Seaway Development Corpora-
31 tion.”

32 and substitute—

33 “Administrator of the Saint Lawrence Seaway Development Corpora-
34 tion.”

35 (3) In section 8172, strike “Secretary of the Treasury” and sub-
36 stitute “Secretary of Transportation”.

37 (c) Section 511(e) of the Motor Vehicle Information and Cost Savings Act
38 (15 U.S.C. 2011(e)) is amended to read as follows:

39 “(e) For purposes of this section—

1 “(1) ‘retrofit device’ means any component, equipment, or other de-
2 vice—

3 “(A) which is designed to be installed in or on an automobile
4 (as an addition to, as a replacement for, or through alteration or
5 modification of, any original component, equipment, or other de-
6 vice); and

7 “(B) which any manufacturer, dealer, or distributor of such de-
8 vice represents will provide higher fuel economy than would have
9 resulted with the automobile as originally equipped,

10 as determined under rules of the Administrator. Such term also in-
11 cludes a fuel additive for use in an automobile.

12 “(2) the definitions in section 32901(a) of title 49, United States
13 Code, apply.”.

14 (d) Section 6001(1) of title 18, United States Code, is amended by strik-
15 ing “the Civil Aeronautics Board,”.

16 (e) Chapter 33 of title 28, United States Code, is amended as follows:

17 (1) Insert immediately after section 537 the following new section:

18 **“§ 538. Investigation of aircraft piracy and related violations**

19 “The Federal Bureau of Investigation shall investigate any violation of
20 section 46314 or chapter 465 of title 49.”.

21 (2) In the analysis of chapter 33, insert immediately after item 537
22 the following new item:

“538. Investigation of aircraft piracy and related violations.”.

23 (f)(1) Title 31, United States Code, is amended as follows:

24 (A) In section 309, strike “section 2A(a)” and substitute “section
25 3(a)”.

26 (B) In section 503(b)(9), strike “perform” and substitute “Per-
27 form”.

28 (C) In the analysis of chapter 7, immediately above item 781,
29 strike—

“Sec.”.

30 (D) In section 782, strike “612a.” and substitute “612a).”.

31 (E) In section 1105(a), strike—

32 “(26) a separate”

33 and substitute—

34 “(27) a separate”.

35 (F) Section 1352 is amended as follows:

36 (i) Immediately below subsection (b)(7), strike—

37 “(C)(1) Any”

38 and substitute—

39 “(c)(1) Any”.

1 (ii) In subsection (e)(1)(C), strike “appropriated” and “law”
2 and substitute “appropriated” and “law.”, respectively.

3 (iii) In subsection (h)(7), strike “agency” and “guaranty” and
4 substitute “agency.” and “guaranty.”, respectively.

5 (G) The analysis of chapter 33 is amended by inserting below item
6 3333 the following new item:

“3334. Cancellation and proceeds distribution of Treasury checks.”.

7 (H) In section 3302(c)(1), strike the comma at the end and sub-
8 stitute a period.

9 (I) In section 3330(d)(1)(B), strike “Administrator” and substitute
10 “Secretary of Veterans Affairs”.

11 (J)(i) In section 3512(c)(1), strike “subsection (a)(3)” and sub-
12 stitute “subsection (b)(3)”.

13 (ii) In section 3512(d)(1) and (2), strike “subsection (b)” wherever
14 it appears and substitute “subsection (c)”.

15 (K) In section 3551(1), strike “an Federal” and substitute “a Fed-
16 eral”.

17 (L) In section 3552, strike “section 111(h)” and “(40 U.S.C.
18 759(h))” and substitute “section 111(f)” and “(40 U.S.C. 759(f))”, re-
19 spectively.

20 (M) In section 3718(b)(3)(A), strike “15 U.S.C. 6376(d)(3)(C)(i)”
21 and substitute “15 U.S.C. 637(d)(3)(C)(i)”.

22 (N) In section 3726(d), strike “miscellaneous receipt” and substitute
23 “miscellaneous receipts”.

24 (O) In section 3729(e), strike “1954” and substitute “1986”.

25 (P) In section 3730(e)(2)(B), strike “section paragraphs (1)” and
26 substitute “paragraphs (1)”.

27 (Q) In section 3801(a)(7)(B)(ii), strike “section 3803 of such title”
28 and substitute “section 3803 of this title”.

29 (R) In section 5112(h), strike “title 31, United States Code” and
30 substitute “this title”.

31 (S) In section 6101(4)(B), strike “agency” and substitute “agency.”.

32 (T) In the catchline of section 6202, strike “**form**” and substitute
33 “**form,**”.

34 (U)(i) At the end of the analysis of chapter 69, add the following
35 new item:

“6907. State legislation requiring reallocation or redistribution of payments to smaller units
of general purpose government.”.

36 (ii) Section 6907 is amended by adding before subsection (a) the fol-
37 lowing:

1 **“§ 6907. State legislation requiring reallocation or redis-**
 2 **tribution of payments to smaller units of general**
 3 **purpose government”.**

4 (V) In section 7102(3), strike “political” and substitute “political”.

5 (W) Section 7502 is amended as follows:

6 (i) In subsection (b)(2)(A), strike “the date of enactment of this
 7 chapter” and substitute “October 19, 1984”.

8 (ii) In subsection (b)(2)(B), strike “such date” and substitute
 9 “October 19, 1984”.

10 (iii) In subsection (d), strike paragraph (5) and redesignate
 11 paragraph (6) as paragraph (5).

12 (iv) In subsection (g), strike “section 3512(b)” and substitute
 13 “section 3512(c)”.

14 (X) In section 7503(a), strike “To the extend” and substitute “To
 15 the extent”.

16 (Y)(i) Subtitle V is amended by adding at the end of the subtitle
 17 the following new chapter:

18 **“CHAPTER 77—LOAN REQUIREMENTS**

“Sec.

“7701. Taxpayer identifying number.

19 **“§ 7701. Taxpayer identifying number**

20 “(a) In this section—

21 “(1) ‘included Federal loan program’ has the same meaning given
 22 that term in section 6103(l)(3)(C) of the Internal Revenue Code of
 23 1986 (26 U.S.C. 6103(l)(3)(C)).

24 “(2) ‘taxpayer identifying number’ means the identifying number re-
 25 quired under section 6109 of the Internal Revenue Code of 1986 (26
 26 U.S.C. 6109).

27 “(b) The head of an agency administering an included Federal loan pro-
 28 gram shall require a person applying for a loan under the program to pro-
 29 vide that person’s taxpayer identifying number.”.

30 (ii) The analysis of subtitle V is amended by adding immediately
 31 after item 75 the following new item:

“77. Loan Requirements 7701”.

32 (Z) In section 9101(2)(K), strike “The” and substitute “the”.

33 (AA) In section 9110(e)(1), strike “subparagraph” and substitute
 34 “section”.

35 (2) Effective December 22, 1987, section 407 of The Judiciary Appro-
 36 priation Act, 1988 (Public Law 100–202, 101 Stat. 1329–26), is amended
 37 to read as follows:

38 “Sec. 407. Section 1344 of title 31, United States Code, is amended as
 39 follows:

- 1 “(1) In subsection (b)—
2 “(A) redesignate clauses (2)–(8) as clauses (3)–(9), respectively;
3 “(B) insert below clause (1) the following:
4 “(2) the Chief Justice and the Associate Justices of the Su-
5 preme Court;”;
6 “(C) in clause (3)(B), as redesignated by clause (A) of this
7 paragraph, strike ‘subparagraph (A) of this paragraph’ and sub-
8 stitute ‘subclause (A) of this clause’; and
9 “(D) in the last sentence, strike ‘paragraph (8)’ and substitute
10 ‘clause (9)’.
- 11 “(2) In subsection (d)—
12 “(A) in paragraphs (1) and (2), strike ‘paragraph (8) of sub-
13 section (b)’ wherever it appears and substitute ‘subsection (b)(9)
14 of this section’;
15 “(B) in paragraph (3), strike ‘subsections (a)(2), (b)(2)(B), and
16 (b)(8)’ and ‘subsection (b)(8)’ and substitute ‘subsections (a)(2)
17 and (b)(3)(B) and (9)’ and ‘subsection (b)(9)’, respectively; and
18 “(C) in paragraph (4), strike ‘paragraphs (1), (2)(B), and (8)
19 of subsection (b)’ and ‘paragraph (8) of subsection (b), and the
20 expected duration of any authorization under such paragraph’ and
21 substitute ‘subsection (b)(1), (3)(B), and (9) of this section’ and
22 ‘subsection (b)(9), and the expected duration of any authorization
23 under subsection (b)(9)’, respectively.
- 24 “(3) In subsection (e)(1), strike ‘(b)(8)’ and substitute ‘(b)(9)’.”.
- 25 (3) Effective September 27, 1988, the last sentence of the paragraph
26 headed “PAYMENTS IN LIEU OF TAXES” in title I of the Act of Sep-
27 tember 27, 1988 (Public Law 100–446, 102 Stat. 1775), is amended to
28 read as follows: “Section 6901(2)(A) of title 31, United States Code, is
29 amended by striking ‘existing in Alaska on October 20, 1976’.”.
- 30 (g) Title 39, United States Code, is amended as follows:
31 (1) In section 5007—
32 (A) insert the subsection designation “(a)” at the beginning of
33 the text of the section; and
34 (B) add at the end of the section the following new subsection:
35 “(b)(1) In this subsection, ‘air carrier’ and ‘aircraft’ have the same mean-
36 ings given those terms in section 40102(a) of title 49.
37 “(2) An air carrier engaged in transporting mail shall carry without
38 charge on any plane it operates those agents and officers of the Postal Serv-
39 ice traveling on official business related to transporting mail by aircraft, as
40 prescribed by regulations of the Secretary of Transportation, on exhibiting
41 credentials.”.

- 1 (2) Amend section 5402 as follows:
- 2 (A) In subsection (a), strike “section 1302” and substitute
3 “section 40101(a)”.
- 4 (B) In subsection (b), strike “sections 1371(k) and 1386(b)”,
5 “sections 1301–1542”, and “sections 1371–1386” and substitute
6 “sections 40109(a) and (c)–(h) and 42112”, “part A of subtitle
7 VII”, and “chapters 411 and 413”, respectively.
- 8 (C) In subsection (d)—
- 9 (i) insert “determine rates and” after “may”; and
10 (ii) strike “and overseas”.
- 11 (D) In subsection (e)—
- 12 (i) strike “‘overseas air transportation’,”; and
13 (ii) strike “section 101 of the Federal Aviation Act of 1958
14 (49 U.S.C. 1301)” and substitute “section 40102(a) of title
15 49”.
- 16 (h) Section 382 of the Energy Policy and Conservation Act (42 U.S.C.
17 6362) is amended as follows:
- 18 (1) Strike subsection (a) and substitute the following:
19 “(a) In this section, ‘agency’ means—
20 “(1) the Department of Transportation with respect to part A of
21 subtitle VII of title 49, United States Code;
22 “(2) the Interstate Commerce Commission;
23 “(3) the Federal Maritime Commission; and
24 “(4) the Federal Power Commission.”
- 25 (2) In subsection (b), strike “subsection (a)(1)” and substitute “sub-
26 section (a)”.
- 27 (i) The Act of April 22, 1908 (45 U.S.C. 51 et seq.), is amended by in-
28 serting immediately after section 4 the following new section:
29 “SEC. 4A. A regulation, standard, or requirement in force, or prescribed
30 by the Secretary of Transportation under chapter 201 of title 49, United
31 States Code, or by a State agency that is participating in investigative and
32 surveillance activities under section 20105 of title 49, is deemed to be a
33 statute under sections 3 and 4 of this Act.”
- 34 (j) Title 49, United States Code, is amended as follows:
- 35 (1) In section 102, redesignate subsection (e), as enacted by section
36 1(b) of the Act of January 12, 1983 (Public Law 97–449, 96 Stat.
37 2414), as subsection (f).
- 38 (2) In section 104(b)(1), strike “Admininstrator” and substitute
39 “Administrator”.
- 40 (3) Amend section 106 as follows:

1 (A) In subsection (f), strike “Secretary shall” and substitute
2 “Secretary of Transportation shall”.

3 (B) Subsection (g) is amended to read as follows:

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

6 “(A) duties and powers of the Secretary of Transportation under
7 subsection (f) of this section related to aviation safety (except those re-
8 lated to transportation, packaging, marking, or description of hazard-
9 ous material) and stated in sections 308(b), 1132(c) and (d), 40101(c),
10 40103(b), 40106(a), 40108, 40109(b), 40113(a), (c), and (d),
11 40114(a), 40119, 44501(a) and (c), 44502(a)(1), (b), and (c), 44504,
12 44505, 44507, 44508, 44511–44513, 44701–44716, 44718(c),
13 44721(a), 44901, 44902, 44903(a)–(c) and (e), 44906, 44912, 44935–
14 44937, and 44938(a) and (b), chapter 451, sections 45302, 45303,
15 46104, 46301(d) and (h)(2), 46303(c), 46304–46308, 46310, 46311,
16 and 46313–46316, chapter 465, and sections 47504(b)(related to flight
17 procedures), 47508(a), and 48107 of this title; and

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

20 “(2) In carrying out sections 40119, 44901, 44903(a)–(c) and (e), 44906,
21 44912, 44935–44937, 44938(a) and (b), and 48107 of this title, paragraph
22 (1)(A) of this subsection does not apply to duties and powers vested in the
23 Director of Intelligence and Security by section 44931 of this title.”.

24 (C) In subsection (k), insert “to the Secretary of Transpor-
25 tation” immediately after “appropriated”.

26 (4) In section 108(a)—

27 (A) strike—

28 “(a) Except when operating as a service in the Navy, the”

29 and substitute—

30 “(a)(1) The”; and

31 (B) add at the end of subsection (a) the following new para-
32 graph:

33 “(2) Notwithstanding paragraph (1) of this subsection, the Coast Guard,
34 together with the duties and powers of the Coast Guard, shall operate as
35 a service in the Navy as provided under section 3 of title 14.”.

36 (5)(A) In section 110(a), strike “St. Lawrence” and substitute
37 “Saint Lawrence”.

38 (B) In the analysis of chapter 1, strike—

“110. St. Lawrence Seaway Development Corporation.

“110. Saint Lawrence Seaway Development Corporation.

“111. Bureau of Transportation Statistics.”.

39 and substitute—

“110. Saint Lawrence Seaway Development Corporation.

“111. Bureau of Transportation Statistics.”.

1 (6)(A) Chapter 3 is amended by inserting immediately after section
2 303 the following new section:

3 **“§ 303a. Development of water transportation**

4 “(a) POLICY.—It is the policy of Congress—

5 “(1) to promote, encourage, and develop water transportation, serv-
6 ice, and facilities for the commerce of the United States; and

7 “(2) to foster and preserve rail and water transportation.

8 “(b) DEFINITION.—In this section, ‘inland waterway’ includes the Great
9 Lakes.

10 “(c) REQUIREMENTS.—The Secretary of Transportation shall—

11 “(1) investigate the types of vessels suitable for different classes of
12 inland waterways to promote, encourage, and develop inland waterway
13 transportation facilities for the commerce of the United States;

14 “(2) investigate water terminals, both for inland waterway traffic
15 and for through traffic by water and rail, including the necessary
16 docks, warehouses, and equipment, and investigate railroad spurs and
17 switches connecting with those water terminals, to develop the types
18 most appropriate for different locations and for transferring passengers
19 or property between water carriers and rail carriers more expeditiously
20 and economically;

21 “(3) consult with communities, cities, and towns about the location
22 of water terminals, and cooperate with them in preparing plans for ter-
23 minal facilities;

24 “(4) investigate the existing status of water transportation on the
25 different inland waterways of the United States to learn the extent to
26 which—

27 “(A) the waterways are being used to their capacity and are
28 meeting the demands of traffic; and

29 “(B) water carriers using those waterways are interchanging
30 traffic with rail carriers;

31 “(5) investigate other matters that may promote and encourage in-
32 land water transportation; and

33 “(6) compile, publish, and distribute information about transpor-
34 tation on inland waterways that the Secretary considers useful to the
35 commercial interests of the United States.”.

36 (B) The analysis of chapter 3 is amended by inserting immediately
37 after item 303 the following new item:

“303a. Development of water transportation.”.

38 (7) Amend section 329 as follows:

39 (A) In subsection (b)(1)—

1 (i) strike “title VII of the Federal Aviation Act of 1958 (49
2 U.S.C. 1441 et seq.)” and substitute “chapter 11 of this
3 title”;

4 (ii) strike “and overseas” and “or overseas” wherever it ap-
5 pears; and

6 (iii) strike “section 419 of the Federal Aviation Act of
7 1958” and substitute “subchapter II of chapter 417 of this
8 title”.

9 (B) In subsection (d), strike “the Federal Aviation Act of 1958
10 (49 App. U.S.C. 1301 et seq.)” and substitute “part A of subtitle
11 VII of this title”.

12 (8) In section 331(b), strike “services, supplies, and facilities pro-
13 vided under subsection (a)(1), (2), and (3) of this section” and sub-
14 stitute “medical treatment provided under subsection (a)(1) of this sec-
15 tion and for supplies and services provided under subsection (a)(2) and
16 (3) of this section”.

17 (9)(A) Sections 334 and 335 are repealed.

18 (B) Items 334 and 335 in the analysis of chapter 3 are repealed.

19 (10)(A) Chapter 3 is amended by adding immediately after section
20 336 the following:

21 **“§ 337. Budget request for the Director of Intelligence and**
22 **Security**

23 “The annual budget the Secretary of Transportation submits shall in-
24 clude a specific request for the Office of the Director of Intelligence and
25 Security. In deciding on the budget request for the Office, the Secretary
26 shall consider recommendations in the annual report submitted under sec-
27 tion 44938(a) of this title.

28 “SUBCHAPTER III—MISCELLANEOUS

29 **“§ 351. Judicial review of actions in carrying out certain**
30 **transferred duties and powers**

31 “(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation
32 in carrying out a duty or power transferred under the Department of Trans-
33 portation Act (Public Law 89–670, 80 Stat. 931), or an action of the Ad-
34 ministrator of the Federal Railroad Administration, the Federal Highway
35 Administration, or the Federal Aviation Administration in carrying out a
36 duty or power specifically assigned to the Administrator by that Act, may
37 be reviewed judicially to the same extent and in the same way as if the ac-
38 tion had been an action by the department, agency, or instrumentality of
39 the United States Government carrying out the duty or power immediately
40 before the transfer or assignment.

1 “(b) APPLICATION OF PROCEDURAL REQUIREMENTS.—A statutory re-
 2 quirement related to notice, an opportunity for a hearing, action on the
 3 record, or administrative review that applied to a duty or power transferred
 4 by the Act applies to the Secretary or Administrator when carrying out the
 5 duty or power.

6 “(c) NONAPPLICATION.—This section does not apply to a duty or power
 7 transferred from the Interstate Commerce Commission to the Secretary
 8 under section 6(e)(1)–(4) and (6)(A) of the Act.

9 **“§ 352. Authority to carry out certain transferred duties and**
 10 **powers**

11 “In carrying out a duty or power transferred under the Department of
 12 Transportation Act (Public Law 89–670, 80 Stat. 931), the Secretary of
 13 Transportation and the Administrators of the Federal Railroad Administra-
 14 tion, the Federal Highway Administration, and the Federal Aviation Admin-
 15 istration have the same authority that was vested in the department, agen-
 16 cy, or instrumentality of the United States Government carrying out the
 17 duty or power immediately before the transfer. An action of the Secretary
 18 or Administrator in carrying out the duty or power has the same effect as
 19 when carried out by the department, agency, or instrumentality.

20 **“§ 353. Toxicological testing of officers and employees**

21 “(a) COLLECTING SPECIMENS.—When the Secretary of Transportation or
 22 the head of a component of the Department of Transportation conducts
 23 post-accident or post-incident toxicological testing of an officer or employee
 24 of the Department, the Secretary or head shall collect the specimen from
 25 the officer or employee as soon as practicable after the accident or incident.
 26 The Secretary or head shall try to collect the specimen not later than 4
 27 hours after the accident or incident.

28 “(b) REPORTS.—The head of each component shall submit a report to the
 29 Secretary on the circumstances about the amount of time required to collect
 30 the specimen for a toxicological test conducted on an officer or employee
 31 who is reasonably associated with the circumstances of an accident or inci-
 32 dent under the investigative jurisdiction of the National Transportation
 33 Safety Board.

34 “(c) NONCOMPLIANCE NOT A DEFENSE.—An officer or employee re-
 35 quired to submit to toxicological testing may not assert failure to comply
 36 with this section as a claim, cause of action, or defense in an administrative
 37 or judicial proceeding.”

38 (B) The analysis of chapter 3 is amended by adding immediately
 39 after item 336 the following:

“337. Budget request for the Director of Intelligence and Security.

“SUBCHAPTER III—MISCELLANEOUS

“351. Judicial review of actions in carrying out certain transferred duties and powers.

“352. Authority to carry out certain transferred duties and powers.

“353. Toxicological testing of officers and employees.”.

1 (11)(A) In section 501(a), strike clauses (4)–(9).

2 (B) Strike section 508.

3 (C) In the analysis of chapter 105, strike the item related to section
4 508.

5 (D) In section 521(b)(2)(A), strike “section 508” and substitute
6 “chapter 59”.

7 (12) In sections 502(e)(2) and 10321(d)(3), insert “judge” after
8 “United States magistrate”.

9 (13) Section 10362(b)(5) is amended to read as follows:

10 “(5) prescribe regulations that contain standards for the computa-
11 tion of subsidies for rail passenger transportation (except passenger
12 transportation compensation disputes subject to the jurisdiction of the
13 Commission under sections 24308(a) and 24903(c)(2) of this title) that
14 are consistent with the compensation principles described in the final
15 system plan established under the Regional Rail Reorganization Act of
16 1973 (45 U.S.C. 701 et seq.) and that avoid cross-subsidization among
17 commuter, intercity, and freight rail transportation;”.

18 (14) In sections 10363(c) and 10383(c), strike “rate for GS-18”
19 and substitute “maximum rate payable under section 5376 of title 5”.

20 (15) In section 10501(d)—

21 (A) strike “procedures of this title” and substitute “procedures
22 of this subtitle”; and

23 (B) strike “provided in this title” and substitute “provided in
24 this subtitle”.

25 (16) In section 10504—

26 (A) strike “local public body” wherever it appears and sub-
27 stitute “local governmental authority”;

28 (B) strike “rail mass transportation” wherever it appears and
29 substitute “mass transportation”;

30 (C) in subsection (a)(1)(A), strike “section 1608(c)(2)” and
31 substitute “section 5302(a)”; and

32 (D) in subsection (a)(2), strike “section 1608(c)(5)” and sub-
33 stitute “section 5302(a)”.

34 (17) In section 10526(a)—

35 (A) in clause (8)(B), strike “Civil Aeronautics Board or its suc-
36 cessor agency” and substitute “Secretary of Transportation”;

37 (B) in clause (10), strike “work.” and substitute “work;”;

38 (C) in clause (13), strike “or”; and

39 (D) in clause (14), strike “title.” and substitute “title; or”.

- 1 (18) In section 10530(i)(3), strike “notified” and substitute “noti-
2 fied”.
- 3 (19) In section 10701a(b)(3), strike “policy of this title” and sub-
4 stitute “policy of this subtitle”.
- 5 (20) In section 10705a(g)(3)—
6 (A) before clause (A), strike “provision of this title” and sub-
7 stitute “provision of this subtitle”; and
8 (B) in clause (A), strike “service over any rate” and substitute
9 “service over any route”.
- 10 (21) In section 10707(d)—
11 (A) in paragraph (2), strike “under this title” and substitute
12 “under this subtitle”; and
13 (B) in paragraph (3), strike “title” wherever it appears and
14 substitute “subtitle”.
- 15 (22) In section 10707a(b)(1), strike “paragraph (2)” and substitute
16 “paragraph (3)”.
- 17 (23) In section 10731(e), strike “provision of this title” and sub-
18 stitute “provision of this subtitle”.
- 19 (24) In section 10749(b)(2), strike “Civil Aeronautics Board under
20 the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)” and
21 substitute “Secretary of Transportation under part A of subtitle VII
22 of this title”.
- 23 (25) In section 10751(b), strike “purposes of this title” and sub-
24 stitute “purposes of this subtitle”.
- 25 (26) In section 10905(d)(1) and (e), strike “government authority”
26 and substitute “governmental authority”.
- 27 (27) In section 10910—
28 (A) in subsection (a)(1), strike “government authority” and
29 substitute “governmental authority”; and
30 (B) in subsection (g)(1), strike “provisions of this title” and
31 substitute “provisions of this subtitle”.
- 32 (28) In section 10924(e), insert “of” after “protection”.
- 33 (29) In the analysis of chapter 111—
34 (A) in item 11128, strike “Water” and substitute “War”; and
35 (B) in item 11142, strike “systems” and substitute “system”.
- 36 (30) In section 11162(a), strike “proceedings under this title” and
37 substitute “proceedings under this subtitle”.
- 38 (31) In section 11163, strike “purposes of this title” and substitute
39 “purposes of this subtitle”.
- 40 (32) In section 11166(a), strike “pursuant to this title” and sub-
41 stitute “under this subtitle”.

1 (33) In section 11167, strike “under this title” and substitute
2 “under this subtitle”.

3 (34) In section 11501(b)(3)(A), strike “title” and substitute “sub-
4 title”.

5 (35) In section 11909(b), strike “1966,,” and substitute “1966,”.

6 (k) Effective January 1, 1999, the following sections of title 49, United
7 States Code, as enacted by section 1 of this Act, are amended as follows:

8 (1) In sections 41107, 41901(b)(1), 41902(a), and 41903,
9 strike “transportation or between places in Alaska” wherever it
10 appears and substitute “transportation”.

11 (2) Strike section 41901(g).

12 (3) In section 41902(b)—

13 (A) strike clause (3); and

14 (B) in clause (4), strike “clauses (1)–(3)” and substitute
15 “clauses (1) and (2)”.

16 (l) The Act of June 29, 1940 (ch. 444, 54 Stat. 686), is amended as
17 follows:

18 (1) Except as provided in paragraphs (2) and (3) of this subsection,
19 strike “Administrator” wherever it appears and substitute “Secretary”.

20 (2) In subsection (a) of the first section, strike “‘Administrator’
21 means the Administrator of the Federal Aviation Agency” and sub-
22 stitute “‘Secretary’ means the Secretary of Transportation”.

23 (3) In section 4(a), strike “Administrator, and any Federal Aviation
24 Agency” and substitute “Secretary, and any Department of Transpor-
25 tation”.

26 (4) In section 6, strike “United States commissioner” wherever it
27 appears and substitute “United States magistrate judge”.

28 (m) The Act of September 7, 1950 (ch. 905, 64 Stat. 770), is amended
29 as follows:

30 (1) Except as provided in paragraph (2) of this subsection, strike
31 “Administrator” wherever it appears and substitute “Secretary”.

32 (2) In the first section, strike “Administrator of the Federal Aviation
33 Agency” and “‘Administrator’” and substitute “Secretary of Trans-
34 portation” and “‘Secretary’”, respectively.

35 (3) In sections 4 and 8(a), strike “Federal Aviation Agency” and
36 substitute “Department of Transportation”.

37 (4) In section 8(d), strike “United States Commissioner” wherever
38 it appears and substitute “United States magistrate judge”.

39 (n) Section 101(1st complete par. on p. 646) of the Act of August 30,
40 1964 (Public Law 88-507, 78 Stat. 646), is amended by striking “Adminis-

1 trator of the Federal Aviation Agency” and substituting “Secretary of
2 Transportation”.

3 (o) Section 9111 of the Anti-Drug Abuse Act of 1988 (Public Law 100–
4 690, 102 Stat. 4531) is amended as follows:

5 (1) In the introductory language of subsection (b)(1), strike “Sub-
6 section (b) of section 10530 of such title is amended by striking out
7 paragraph (1) and inserting in lieu thereof the following new para-
8 graph:” and substitute “Subsection (b)(1) of section 10530 of title 49
9 is amended to read as follows:”.

10 (2) In subsection (b)(2), strike “Such subsection” and substitute
11 “Subsection (b) of section 10530”.

12 (3) In the introductory language of subsection (f)(1), strike “Sub-
13 section (g) of such section is amended by striking out paragraph (1)
14 and inserting in lieu thereof the following:” and substitute “Subsection
15 (g)(1) of section 10530 of title 49 is amended to read as follows:”.

16 (4) In subsection (f)(2), strike “Such subsection” and substitute
17 “Subsection (g) of section 10530”.

18 (p) Section 4007(e) of the Intermodal Surface Transportation Efficiency
19 Act of 1991 (Public Law 102–240, 105 Stat. 2153) is amended by inserting
20 “and section 31307 of title 49, United States Code” immediately after “this
21 section”.

22 (q) The revision of regulations, referred to in section 32705(b)(2)(A) of
23 title 49, United States Code, as enacted by section 1 of this Act, that is
24 required by section 7 of the Independent Safety Board Act Amendments of
25 1990 (Public Law 101–641, 104 Stat. 4657) shall be prescribed not later
26 than May 28, 1991.

27 (r) Section 165 of the Surface Transportation Assistance Act of 1982
28 (Public Law 97–424, 96 Stat. 2136) is amended as follows:

29 (1) In subsections (a) and (d), strike “the Urban Mass Transpor-
30 tation Act of 1964,”.

31 (2) In subsection (b)—

32 (A) after the semicolon at the end of clause (2), add “or”; and

33 (B) strike clause (3).

34 (s) Effective on the date the regulations required under section 60101(b)
35 of title 49, United States Code, as enacted by section 1 of this Act, are ef-
36 fective, section 60101(a)(21) and (22) of title 49, as enacted by section 1,
37 is amended to read as follows:

38 “(21) ‘transporting gas’—

39 “(A) means—

1 “(i) the gathering, transmission, or distribution of gas by
2 pipeline, or the storage of gas, in interstate or foreign com-
3 merce; and

4 “(ii) the movement of gas through regulated gathering
5 lines; but

6 “(B) does not include gathering gas (except through regulated
7 gathering lines) in a rural area outside a populated area des-
8 ignated by the Secretary as a nonrural area.

9 “(22) ‘transporting hazardous liquid’—

10 “(A) means—

11 “(i) the movement of hazardous liquid by pipeline, or the
12 storage of hazardous liquid incidental to the movement of
13 hazardous liquid by pipeline, in or affecting interstate or for-
14 eign commerce; and

15 “(ii) the movement of hazardous liquid through regulated
16 gathering lines; but

17 “(B) does not include moving hazardous liquid through—

18 “(i) gathering lines (except regulated gathering lines) in a
19 rural area;

20 “(ii) onshore production, refining, or manufacturing facili-
21 ties; or

22 “(iii) storage or in-plant piping systems associated with on-
23 shore production, refining, or manufacturing facilities.”.

24 (t)(1) Not later than March 3, 1995, the Secretary of Transportation
25 shall complete a regulatory proceeding to consider prescribing regulations to
26 improve the safety and working conditions of locomotive cabs. The proceed-
27 ing shall assess—

28 (A) the adequacy of Locomotive Crashworthiness Requirements
29 Standard S-580, or any successor standard, adopted by the Association
30 of American Railroads in 1989 in improving the safety of locomotive
31 cabs; and

32 (B) the extent to which environmental, sanitary, and other working
33 conditions in locomotive cabs affect productivity, health, and the safe
34 operation of locomotives.

35 (2) SUPPORTING RESEARCH AND ANALYSIS.—In support of the proceed-
36 ing required under paragraph (1) of this subsection, the Secretary shall con-
37 duct research and analysis, including computer modeling and full-scale crash
38 testing, as appropriate, to consider—

39 (A) the costs and benefits associated with equipping locomotives
40 with—

41 (i) braced collision posts;

- 1 (ii) rollover protection devices;
 2 (iii) deflection plates;
 3 (iv) shatterproof windows;
 4 (v) readily accessible crash refuges;
 5 (vi) uniform sill heights;
 6 (vii) anticlimbers, or other equipment designed to prevent over-
 7 rides resulting from head-on locomotive collisions;
 8 (viii) equipment to deter post-collision entry of flammable liq-
 9 uids into locomotive cabs;
 10 (ix) any other devices intended to provide crash protection for
 11 occupants of locomotive cabs; and
 12 (x) functioning and regularly maintained sanitary facilities; and
 13 (B) the effects on train crews of the presence of asbestos in loco-
 14 motive components.

15 (3) REPORT.—If, on the basis of the proceeding required under para-
 16 graph (1) of this subsection, the Secretary decides not to prescribe regula-
 17 tions, the Secretary shall report to Congress on the reasons for that deci-
 18 sion.

19 (u) Not later than April 25, 1993, the Attorney General shall prescribe
 20 the regulations required under section 33110(c) of title 49, United States
 21 Code, as enacted by section 1 of this Act. Section 33110(b) of title 49 is
 22 effective not later than 3 months after those regulations are prescribed but
 23 not before the date on which the National Stolen Passenger Motor Vehicle
 24 Information System established under section 33109 of title 49 is oper-
 25 ational.

26 (v) Section 33111 of title 49, United States Code, as enacted by section
 27 1 of this Act, is effective on the date on which the National Stolen Pas-
 28 senger Motor Vehicle Information System is established under section
 29 33109 of title 49.

30 CONFORMING CROSS-REFERENCES

31 Sec. 5. (a) Sections 551(1)(H) and 701(b)(1)(H) of title 5, United States
 32 Code, are amended by striking “or sections 1622,” and substituting “sub-
 33 chapter II of chapter 471 of title 49; or sections”.

34 (b) Title 10, United States Code, is amended as follows:

35 (1) In section 2640—

36 (A) in subsections (a)(1)(A) and (d)(1)(B)(i), strike “title VI of
 37 the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)”
 38 and substitute “chapter 447 of title 49”; and

39 (B) in subsection (i), strike “sections 101(3), 101(5), 101(10),
 40 and 101(15), respectively, of the Federal Aviation Act of 1958 (49

1 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15))” and
2 substitute “section 40102(a) of title 49”.

3 (2) In section 9511(1), strike “section 101 of the Federal Aviation
4 Act of 1958 (49 U.S.C. 1301)” and substitute “section 40102(a) of
5 title 49”.

6 (3) In section 9512(b)(4), strike “section 501 of the Federal Avia-
7 tion Act of 1958 (49 U.S.C. App. 1401)” and substitute “section
8 44103 of title 49”.

9 (c) Section 1110(a) of title 11, United States Code, is amended by strik-
10 ing “section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)”,
11 “subsection B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4))”, and
12 “Civil Aeronautics Board” and substituting “section 40102(a) of title 49”,
13 “section 30101 of title 46”, and “Secretary of Transportation”, respectively.

14 (d) The last sentence of section 82 of title 14, United States Code, is
15 amended to read as follows: “Nothing in this title shall be deemed to limit
16 the authority granted by chapter 167 of title 10 or part A of subtitle VII
17 of title 49.”.

18 (e) Title 18, United States Code, is amended as follows:

19 (1) In section 31, strike “the Federal Aviation Act of 1958, as
20 amended” and substitute “sections 40102(a) and 46501 of title 49”.

21 (2) In the last sentence of sections 112(e), 878(d), 1116(c), and
22 1201(e), strike “section” and all that follows and substitute “section
23 46501(2) of title 49.”.

24 (3) In section 511(c)—

25 (A) in clause (1), strike “the National Traffic and Motor Vehi-
26 cle Safety Act of 1966, or the Motor Vehicle Information and Cost
27 Savings Act” and substitute “chapter 301 and part C of subtitle
28 VI of title 49”; and

29 (B) in clause (2), strike “section 2 of the Motor Vehicle Infor-
30 mation and Cost Savings Act” and substitute “section 32101 of
31 title 49”.

32 (4) In section 512(a)(2)(A), strike “the National Traffic and Motor
33 Vehicle Safety Act of 1966” and substitute “chapter 301 of title 49”.

34 (5) In section 553(c)—

35 (A) in clause (1), strike “section 2 of the Motor Vehicle Infor-
36 mation and Cost Savings Act” and substitute “section 32101 of
37 title 49”; and

38 (B) in clause (4), strike “section 101 of the Federal Aviation
39 Act of 1958 (49 U.S.C. App. 1301)” and substitute “section
40 40102(a) of title 49”.

1 (6) In section 831(c)(1), strike “section 101 of the Federal Aviation
2 Act of 1958 (49 U.S.C. 1301)” and substitute “section 46501 of title
3 49”.

4 (7) In section 844(g)(2)(B), strike “the Hazardous Materials Trans-
5 portation Act (49 App. U.S.C. 1801, et seq.)” and substitute “chapter
6 51 of title 49”.

7 (8) In section 1201(a)(3), strike “section” and all that follows and
8 substitute “section 46501 of title 49;”.

9 (9) In section 1366(c), strike “interstate transmission facilities, as
10 defined in section 2 of the Natural Gas Pipeline Safety Act of 1968”
11 and substitute “an interstate gas pipeline facility as defined in section
12 60101 of title 49”.

13 (10) In section 2318(c)(1), strike “section 101 of the Federal Avia-
14 tion Act of 1958” and substitute “section 46501 of title 49”.

15 (11) In section 2516(1)(j), strike “section” and all that follows and
16 substitute “section 60123(b) (relating to destruction of a natural gas
17 pipeline) or 46502 (relating to aircraft piracy) of title 49;”.

18 (12) In section 3663(a)(1), strike “under subsection (h), (i), (j), or
19 (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C.
20 1472)” and substitute “section 46312, 46502, or 46504 of title 49”.

21 (f) Title 23, United State Code, is amended as follows:

22 (1) In section 103(e)(4)(L)—

23 (A) in clause (i), strike “the Urban Mass Transportation Act
24 of 1964” and substitute “chapter 53 of title 49”; and

25 (B) in clause (ii), strike “section 3(e)(4) of the Urban Mass
26 Transportation Act of 1964” and substitute “section
27 5323(a)(1)(D) of title 49”.

28 (2) In section 142—

29 (A) in subsection (a)(2), strike “the Federal Transit Act” and
30 substitute “chapter 53 of title 49”;

31 (B) in subsection (h), strike “the Urban Mass Transportation
32 Act of 1964, as amended” and substitute “chapter 53 of title 49”;
33 and

34 (C) in subsection (i), strike “section 3(e)(4) of the Urban Mass
35 Transportation Act of 1964, as amended,” and substitute “section
36 5323(a)(1)(D) of title 49”.

37 (3) In section 157(a)(2) and (3)(A), strike “section 404 of the Sur-
38 face Transportation Assistance Act of 1982” and substitute “section
39 31104 of title 49”.

40 (g) The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended
41 as follows:

1 (1) In section 4064(b)(1)(B), strike “section 501 of the Motor Vehi-
2 cle Information and Cost Savings Act (15 U.S.C. 2001)” and sub-
3 stitute “section 32901 of title 49, United States Code,”.

4 (2) In section 4261(e) and (f)(2), strike “the Airport and Airway
5 Improvement Act of 1982” and substitute “section 44509 or 44913(b)
6 or subchapter I of chapter 471 of title 49, United States Code,”.

7 (3) In section 9502(d)(1)(B), strike “the Federal Aviation Act of
8 1958, as amended (49 U.S.C. 1301 et seq.),” and substitute “part A
9 of subtitle VII of title 49, United States Code,”.

10 (h) Section 2342(7) of title 28, United States Code, is amended by strik-
11 ing “section 202(f) of the Federal Railroad Safety Act of 1970” and sub-
12 stituting “section 20114(c) of title 49”.

13 (i) Title 31, United States Code, is amended as follows:

14 (1) In section 3711(c)(2), strike “section 6 of the Act of March 2,
15 1893 (45 U.S.C. 6), section 4 of the Act of April 14, 1910 (45 U.S.C.
16 13), section 9 of the Act of February 17, 1911 (45 U.S.C. 34), and
17 section 25(h) of the Interstate Commerce Act (49 App. U.S.C. 26(h))”
18 and substitute “section 21302 of title 49 for a violation of chapter 203,
19 205, or 207 of title 49 or a regulation or requirement prescribed or
20 order issued under any of those chapters”.

21 (2) In section 3726(b)(1), strike “the Federal Aviation Act of 1958”
22 and substitute “section 40102(a) of title 49”.

23 (j) Section 210(a)(4) of title 35, United States Code, is amended by strik-
24 ing “section 106(c) of the National Traffic and Motor Vehicle Safety Act
25 of 1966 (15 U.S.C. 1395(c); 80 Stat. 721)” and substituting “section
26 30168(e) of title 49”.

27 (k) Title 39, United States Code, is amended as follows:

28 (1) In section 3401(b) and (c), strike “section 1376” and substitute
29 “section 41901”.

30 (2) In section 5005(b)(3), strike “section 101 of the Federal Avia-
31 tion Act of 1958” and substitute “section 40102(a) of title 49”.

32 (3) In section 5401(b), strike “sections 1301–1542” and substitute
33 “part A of subtitle VII”.

34 (l) Section 2101(14)(C) of title 46, United States Code, is amended by
35 striking “section 104 of the Hazardous Materials Transportation Act (49
36 App. U.S.C. 1803)” and substituting “section 5103(a) of title 49”.

37 (m) Title 49, United States Code, is amended as follows:

38 (1) In section 103(c)(1), strike “section 6(e)(1), (2), and (6)(A) of
39 the Department of Transportation Act (49 App. U.S.C. 1655(e)(1),
40 (2), and (6)(A))” and substitute “section 20134(c) and chapters 203–

1 211 of this title, and chapter 213 of this title in carrying out chapters
2 203–211”.

3 (2) In section 104(c)(2), strike “31” and substitute “315”.

4 (3) In section 105(d), strike “the National Traffic and Motor Vehicle
5 Safety Act of 1966 (15 U.S.C. 1381 et seq.)” and substitute “chapter
6 301 of this title”.

7 (4) In section 106—

8 (A) in subsection (h), strike “Section 103 of the Federal Avia-
9 tion Act of 1958 (49 App. U.S.C. 1303)” and substitute “Section
10 40101(d) of this title”; and

11 (B) in subsection (j), strike “section 312(e) of the Federal Avia-
12 tion Act of 1958” and substitute “section 44507 of this title”.

13 (5) In section 109(a) and (b), insert “App.” immediately after
14 “(46”.

15 (6) In section 302(b), strike “Subtitle I and chapter 31 of subtitle
16 II of this title and the Department of Transportation Act (49 App.
17 U.S.C. 1651 et seq.)” and substitute “This subtitle and chapters 221
18 and 315 of this title”.

19 (7) In section 306(b), strike “section 332 or 333 of this title, section
20 211 or 216 of the Regional Rail Reorganization Act of 1973 (45
21 U.S.C. 721, 726), title V or VII of the Railroad Revitalization and
22 Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq., 851 et seq.),
23 or section 4(i) or 5 of the Department of Transportation Act (49 App.
24 U.S.C. 1653(i), 1654)” and substitute “section 332 or 333 or chapter
25 221 or 249 of this title, section 211 or 216 of the Regional Rail Reor-
26 ganization Act of 1973 (45 U.S.C. 721, 726), or title V of the Railroad
27 Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et
28 seq.)”.

29 (8) In section 321, strike “section 101(2), (4), and (8) of the Fed-
30 eral Aviation Act of 1958 (49 App. U.S.C. 1301(2), (4), (8))” and sub-
31 stitute “section 40102(a) of this title”.

32 (9) In section 501—

33 (A) in subsection (a)(2), strike “section 3101” and substitute
34 “section 31501”;

35 (B) in subsection (a)(3), strike “section 3102(c)” and substitute
36 “section 31502(c)”; and

37 (C) strike subsection (b) and substitute the following:

38 “(b) APPLICATION.—This chapter only applies in carrying out sections
39 20302(a)(1)(B) and (C), (2), and (3), (c), and (d)(1) and 20303 and chap-
40 ters 205 (except section 20504(b)), 211, 213 (in carrying out those sections
41 and chapters), and 315 of this title.”.

1 (10) In section 507(c), strike “section 3102 of this title or the Motor
2 Carrier Safety Act of 1984” and “such section or Act” and substitute
3 “subchapter III of chapter 311 (except sections 31138 and 31139) or
4 section 31502 of this title” and “any of those provisions”, respectively.

5 (11) In section 521(b)—

6 (A) in paragraph (1)(A), strike “section 3102 of this title or the
7 Motor Carrier Safety Act of 1984 or section 12002, 12003,
8 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle
9 Safety Act of 1986” and “such sections or Act” and substitute “a
10 provision of subchapter III of chapter 311 (except sections 31138
11 and 31139) or section 31302, 31303, 31304, 31305(b),
12 31310(g)(1)(A), or 31502 of this title” and “any of those provi-
13 sions”, respectively;

14 (B) in paragraph (2)(A), strike “pursuant to section 3102 of
15 this title or the Motor Carrier Safety Act of 1984” and substitute
16 “under subchapter III of chapter 311 (except sections 31138 and
17 31139) or section 31502 of this title”;

18 (C) in paragraph (2)(B), strike “section 12002, 12003, 12004,
19 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety
20 Act of 1986” and substitute “section 31302, 31303, 31304,
21 31305(b), or 31310(g)(1)(A) of this title”;

22 (D) in paragraph (3), strike “section 3102 of this title or the
23 Motor Carrier Safety Act of 1984 or section 12002, 12003,
24 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act
25 of 1986” and substitute “subchapter III of chapter 311 (except
26 sections 31138 and 31139) or section 31302, 31303, 31304,
27 31305(b), or 31502 of this title”;

28 (E) in paragraph (5)(A), strike “section 3102 of this title or the
29 Motor Carrier Safety Act of 1984 or section 12002, 12003,
30 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act
31 of 1986” and “such sections or Act” and substitute “a provision
32 of subchapter III of chapter 311 (except sections 31138 and
33 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of
34 this title” and “any of those provisions”, respectively;

35 (F) in paragraph (6)(A), strike “section 3102 of this title, the
36 Motor Carrier Safety Act of 1984”, “such section or Act”, and
37 “liable” and substitute “subchapter III of chapter 311 (except sec-
38 tions 31138 and 31139) or section 31502 of this title”, “any of
39 those provisions”, and “subject”, respectively;

40 (G) in paragraph (6)(B)(i), strike “section 12002, 12003(b),
41 12003(c), 12004, 12005(b), or 12008(d)(2) of the Commercial

1 Motor Vehicle Safety Act of 1986” and substitute “section 31302,
2 31303(b) or (c), 31304, 31305(b), or 31310(g)(1)(A) of this
3 title”;

4 (H) in paragraph (6)(B)(ii), strike “section 12019 of such Act”,
5 “section 12003(a) of such Act”, and “such section 12003(a)” and
6 substitute “section 31301 of this title”, “section 31303(a) of this
7 title”, and “section 31303(a)”, respectively;

8 (I) in paragraph (12), strike “any provision of the Hazardous
9 Materials Transportation Act (49 U.S.C. App. 1801–1812)” and
10 “such Act” and substitute “chapter 51 of this title” and “chapter
11 51”, respectively; and

12 (J) in paragraph (13), strike “section 204 of the Motor Carrier
13 Safety Act of 1984” and substitute “section 31132 of this title”.

14 (12) In section 526, strike “this chapter, section 3102 of this title,
15 or the Motor Carrier Safety Act of 1984, a person that knowingly and
16 willfully violates a provision of this chapter or such section or Act, or
17 a regulation or order of the Secretary of Transportation under this
18 chapter or such section or Act” and substitute “a provision of this
19 chapter, subchapter III of chapter 311 (except sections 31138 and
20 31139), or section 31502 of this title, a person that knowingly and
21 willfully violates any of those provisions or a regulation or order of the
22 Secretary of Transportation under any of those provisions”.

23 (13) In section 10102(9), strike “the Federal Aviation Act of 1958”
24 and substitute “part A of subtitle VII of this title”.

25 (14) In section 10322(a), strike “subtitle” wherever it appears and
26 substitute “title”.

27 (15) In sections 10364(a) and 10385(a), strike “section 5 of title
28 41” and substitute “section 3709 of the Revised Statutes (41 U.S.C.
29 5)”.

30 (16) In sections 10527(a), strike “subchapter” and substitute
31 “title”.

32 (17) In section 10528, strike “subchapter” and “subtitle” wherever
33 either word appears and substitute “title”.

34 (18) In section 10529(a), strike “(12 U.S.C. 1141j(a))” and sub-
35 stitute “(12 U.S.C. 1141j(a))”.

36 (19) In sections 10542(a)(2) and 10544(d)(1)(B), insert “App.” im-
37 mediately after “(46” wherever it appears.

38 (20) In section 10561(b)(1), strike “chapter 20” and substitute
39 “part A of subtitle VII”.

40 (21) In section 10703(a)(4)—

1 (A) in paragraph (D)(ii), insert “App.” immediately after “(46”
2 wherever it appears; and

3 (B) in paragraph (E), strike “(46 U.S.C. 801 et seq.)” and
4 “(46 U.S.C. 843–848)” and substitute “(46 App. U.S.C. 801 et
5 seq.)” and “(46 App. U.S.C. 843 et seq.)”, respectively.

6 (22) In section 10721(a)(1), strike “Section 5 of title 41” and sub-
7 stitute “Section 3709 of the Revised Statutes (41 U.S.C. 5)”.

8 (23) In section 10735(b)(1), strike “under this title” and substitute
9 “under this subtitle”.

10 (24) In section 10903(b)(2), strike “section 11347 of this title and
11 section 405(b) of the Rail Passenger Service Act (45 U.S.C. 565(b))”
12 and substitute “sections 11347 and 24706(c) of this title”.

13 (25) In section 10922—

14 (A) in subsection (c)(1)(E), strike “provisions of section 12(f)
15 of the Urban Mass Transportation Act of 1964” and substitute
16 “section 10531 of this title”;

17 (B) in subsection (c)(2)(D), strike “subtitle” wherever it ap-
18 pears and substitute “title”;

19 (C) in subsection (c)(4)(C) and (j)(1), strike “subchapter”
20 wherever it appears and substitute “title”; and

21 (D) in subsection (j)(2)(C), strike “subtitle” and substitute
22 “title”.

23 (26) In section 10927(a)(1), insert “section” before “10923”.

24 (27) In section 10935(a) and (e)(3), strike “subchapter” and sub-
25 stitute “title”.

26 (28) In section 11125(b)(2)(A), strike “the Federal Railroad Safety
27 Act of 1970 (45 U.S.C. 431 et seq.)” and substitute “chapter 201 of
28 this title”.

29 (29) In section 11126(a), strike “11501(c)” and substitute
30 “11501(f)”.

31 (30) In section 11303(a), strike “the Ship Mortgage Act, 1920”
32 wherever it appears and substitute “chapter 313 of title 46”.

33 (31) In section 11347, strike “section 405 of the Rail Passenger
34 Service Act (45 U.S.C. 565)” and substitute “sections 24307(c),
35 24312, and 24706(c) of this title”.

36 (32) In section 11348(a), strike “section 504(f),” and substitute
37 “sections 504(f) and”.

38 (33) In section 11504(b)(2), strike “section 204 of the Motor Car-
39 rier Safety Act of 1984 (49 App. U.S.C. 2503)” and substitute “sec-
40 tion 31132 of this title”.

1 (34) In section 11701(a), strike “section 10530 of this subtitle” and
 2 substitute “section 10530 of this title”.

3 LEGISLATIVE PURPOSE AND CONSTRUCTION

4 Sec. 6. (a) Sections 1–4 of this Act restate, without substantive change,
 5 laws enacted before July 1, 1993, that were replaced by those sections.
 6 Those sections may not be construed as making a substantive change in the
 7 laws replaced. Laws enacted after June 30, 1993, that are inconsistent with
 8 this Act supersede this Act to the extent of the inconsistency.

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

12 (c) An order, rule, or regulation in effect under a law replaced by sections
 13 1–4 of this Act continues in effect under the corresponding provision en-
 14 acted by this Act until repealed, amended, or superseded.

15 (d) An action taken or an offense committed under a law replaced by sec-
 16 tions 1–4 of this Act is deemed to have been taken or committed under the
 17 corresponding provision enacted by this Act.

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

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

26 REPEALS

27 Sec. 7. (a) The repeal of a law by this Act may not be construed as a
 28 legislative implication that the provision was or was not in effect before its
 29 repeal.

30 (b) The laws specified in the following schedule are repealed, except for
 31 rights and duties that matured, penalties that were incurred, and proceed-
 32 ings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed
 Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Vol- ume	Page	Title	Section
1864 July 2	216	15	13	362	45	83
1873 Mar. 3	226	2(words after 2d semicolon)	17	508

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1874						
June 20	331	18	111	45	83
June 22	414	18	200	45	89
1879						
Mar. 3	183	1(4th par. on p. 420)	20	420	45	90
1887						
Feb. 4	104	25	24	379	49	26
Mar. 3	345 .....	.....	24	488	App. 45	94, 95
1893						
Mar. 2	196 .....	.....	27	531	45	1-7
1896						
Apr. 1	87 .....	.....	29	85	45	6
1897						
Mar. 3	386	(proviso under heading "Transportation and Recruiting, Marine Corps").	29	663	45	91
1901						
Mar. 3	831	(last proviso of last par. under heading "Pay Department").	31	1023	45	92
1903						
Mar. 2	976 .....	.....	32	943	45	10
1905						
Feb. 23	744 .....	.....	33	743	49 App.	1201-1203
1906						
June 29	3594 .....	.....	34	607	45	71-74
June 30	P.R. 46 .....	.....	34	838	45	35
1907						
Mar. 4	2939 .....	.....	34	1415	45	61-64b
1908						
May 27	200	1(6th par. last sentence under heading "Interstate Commerce Commission", 1st complete par. on p. 325).	35	325	45	36, 37
1909						
Mar. 4	299	1(6th par. last sentence under heading "Interstate Commerce Commission").	35	965	45	37
1910						
Apr. 14	160 .....	.....	36	298	45	11-16
May 6	208 .....	.....	36	350	45	38-43
1911						
Feb. 17	103 .....	.....	36	913	45	22-29, 31-34
1915						
Mar. 4	169 .....	.....	38	1192	45	23, 30
1916						
May 4	109 .....	.....	39	61	45	63
Aug. 29	415 .....	.....	39	538	49 App.	81-124
1920						
Feb. 28	91	441, 500	41	498, 499	49 App.	26, 142
1921						
Mar. 4	161	1(last proviso in par. under heading "Transportation Facilities on Inland and Coastal Waterways").	41	1392	49 App.	141
Dec. 15	1	1(last par. under heading "Board of Mediation and Conciliation").	42	328	45	126
1924						
June 7	355	43	659	45	22, 23, 25, 27
1927						
Mar. 4	510	44	1446	49 App.	102

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1929 Feb. 28	369	45	1404	49 App.	173
1931 Feb. 14	189	46	1162	49 App.	231
1934 June 13	498	48	954	49 App.	264
June 19	654 .....	.....	48	1113	49 App.	171-173a, 175, 179-184
	656	2	48	1116	49 App.	181
1935 Aug. 7	455 .....	.....	49	540	49 App.	231
1937 Aug. 26	818 .....	.....	50	835	49 App.	26
1939 June 27	244 .....	.....	53	855	49 App.	751-757
Aug. 9	618 .....	.....	53	1291	49 App.	781-789
	633	1(1st. par. under heading "Civil Aeronautics Authority.")	53	1302	49 App.	682
1940 Apr. 22	124 .....	.....	54	148	45	24-34
July 2	526 .....	.....	54	735	49 App.	485
Sept. 18	722	14(b)	54	919	49 App.	26
1941 June 28	258	201(last par. under heading "Civil Aeronautics Board").	55	282	49 App.	422a
1942 July 24	522 .....	.....	56	704	49 App.	752
1943 May 7	94	(par. under heading "Office of Administrator of Civil Aeronautics").	57	80	49 App.	758
June 10	121 .....	.....	57	150	49 App.	752
1944 June 30	333 .....	.....	58	648	49 App.	757
July 1	373	813(5th, 6th complete pars. on p. 718)	58	718	49 App.	177, 181
Oct. 3	479	13(g) .....	.....	.....	50 App.	1622
1946 Aug. 8	911 .....	.....	60	944	49 App.	603
1947 May 27	85 .....	.....	61	120	45	24-26
July 30	404	2	61	678	50 App.	1622
Aug. 4	471 .....	.....	61	743	49 App.	643
1948 Apr. 17	192 .....	.....	62	173	49 App.	1101, 1102, 1106, 1108, 1109
June 16	473 .....	.....	62	450	49 App.	1151, 1151(note), 1152-1159a, 1160
	482	62	470	49 App.	524
June 19	523	62	493	49 App.	401, 523
June 25	646	4	62	986	45 App.	87

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June 29	713	62	1093	49 App.	452
	738	62	1111	49 App.	1116
July 1	792	62	1216	49 App.	452, 459, 551
1949						
July 25	359 .....	.....	63	478	49 App.	1111
July 26	362 .....	.....	63	480	49 App.	622
	363 .....	.....	63	480	49 App.	1114
Aug. 12	423 .....	.....	63	603	49 App.	1113
Aug. 15	426 .....	.....	63	605	49 App.	1109
Aug. 30	520 .....	.....	63	678	49 App.	427
Oct. 1	589 .....	.....	63	700	50 App.	1622-1622c
Oct. 25	724 .....	.....	63	903	49 App.	1105
Oct. 26	751 .....	.....	63	925	49 App.	1104
1950						
Feb. 9	5 .....	.....	64	4	49 App.	1107
Mar. 18	72	6, 7	64	28	49 App.	1102, 1108
Aug. 3	517 .....	.....	64	395	49 App.	622
Aug. 5	591 .....	.....	64	414	49 App.	177, 181
Aug. 8	643 .....	.....	64	417	49 App.	457
Aug. 9	655 .....	.....	64	427	49 App.	781
Sept. 9	938 .....	.....	64	825	49 App.	701-705
Sept. 27	1055 .....	.....	64	1071	49 App.	1104
Sept. 29	1107 .....	.....	64	1079	49 App.	460
Sept. 30	1117 .....	.....	64	1090	49 App.	1181-1185
1951						
Jan. 9	1214 .....	.....	64	1237	49 App.	1109
June 14	123 .....	.....	65	65	49 App.	401, 711-722
Oct. 11	495	3, 4	65	407	49 App.	177, 560
Oct. 31	655	55(b)	65	729	49 App.	787
1952						
June 28	485	1(5)	66	286	49 App.	485
July 14	740 .....	.....	66	628	49 App.	401, 491, 622
1953						
July 8	181 .....	.....	67	140	49 App.	1116
Aug. 8	379 .....	.....	67	489	49 App.	176
1955						
May 19	41 .....	.....	69	49	49 App.	481
Aug. 3	494	69	441	49 App.	1101-1103, 1104, 1105, 1107, 1108, 1111
1956						
July 20	650	70	591	49 App.	481
	655	70	594	49 App.	722

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Aug. 1	816	70	784	49	483
	852	22	70	911	App. 49	789
1957					App.	
June 13	85-50	71	69	49	1201-1203
Aug. 14	85-135 .....	.....	71	352	App. 45	6, 13, 34, 63
Aug. 26	85-166 .....	.....	71	415	49	481
Sept. 7	85-307 .....	.....	71	629	App.	1324(note)
					49	
1958					App.	
Apr. 9	85-373 .....	.....	72	84	49	486
Apr. 11	85-375 .....	.....	72	86	App. 45	9
					49	457, 603
July 7	85-507	21(b)(3), (c)	72	337, 338	49	
Aug. 23	85-726	(less 613(a), (b), 1402(a), (e)-(g), 1404, 1406, 1411).	72	731	App.	1301-1308, 1321-1325, 1341-1346, 1347-1356, 1357-1359, 1371, 1372- 1376, 1377- 1389, 1401- 1406, 1421- 1434, 1441- 1443, 1461- 1463, 1471- 1474, 1481, 1482, 1483- 1490, 1501- 1515, 1516- 1518, 1531- 1542, 1551
					49	
1959					App.	
Mar. 18	86-3	21	73	13	49	1324(note)
June 25	86-70	39	73	150	App. 49	1324(note)
					49	
June 29	86-72 .....	.....	73	155	App. 49	1101, 1102, 1104, 1106, 1108, 1109, 1112
July 8	86-81 .....	.....	73	180	49	1403, 1404
Aug. 11	86-154 .....	.....	73	333	App. 49	1743
Aug. 25	86-199 .....	.....	73	427	App. 49	1485
Sept. 21	86-295 .....	.....	73	572	App. 49	1105
					49	
1960					App.	
June 29	86-546	1	74	255	49	1486
July 12	86-624	37	74	421	App. 49	1324(note)
					49	
	86-627 .....	.....	74	445	App. 49	1373
July 14	86-661 .....	.....	74	527 .....	.....	.....
Sept. 13	86-758 .....	.....	74	901	App. 49	1378,
					45	1378(note)
	86-762 .....	.....	74	903	49	38, 42, 43
1961					App.	
July 20	87-89 .....	.....	75	210	49	1542
Sept. 5	87-197 .....	.....	75	466	App. 49	1301, 1472,
					15	1511
Sept. 13	87-221 .....	.....	75	494	App. 49	1281, 1282
					49	1486
Sept. 20	87-225 .....	.....	75	497	App.	
					49	
Sept. 20	87-255	75	523	App. 49	1101-1106, 1108-1110, 1112, 1509
					49	1322, 1343, 1343(note)
Oct. 4	87-367	103(2), (6), (15), 205	75	787, 788, 791	App. 49	

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1962 July 10	87-528	76	143	49 App.	1301, 1371, 1371(note), 1376, 1387, 1471, 1472
Oct. 15	87-810	76	921	49 App.	1323, 1441, 1472, 1505
	87-820 .....	.....	76	936	49 App.	1324(note), 1380
1964 Mar. 11	88-280 .....	.....	78	158	49 App.	1101-1106, 1107a, 1108- 1111, 1113, 1120
June 30	88-346 .....	.....	78	236	49 App.	1403, 1406, 1406(note)
July 2	88-349	2	78	239	49 App.	1114
July 9	88-365 .....	.....	78	302	49 App.	1601, 1601(note), 1602, 1603, 1604, 1605- 1625
Aug. 14	88-426	305(16)	78	424	49 App.	1321, 1341, 1342
1965 Aug. 10	89-117	304(b), 1109	79	475, 507	49 App.	1605, 1608
Sept. 30	89-220	13 .....	.....	.....	49 App.	1643
Nov. 8	89-348	1(6)	79	1310	49 App.	1539
1966 June 13	89-447 .....	.....	80	199	49 App.	1542
Sept. 8	89-562 .....	.....	80	715	49 App.	1602, 1603, 1605, 1607a(note), 1607b, 1607c, 1608-1611
Sept. 9	89-563	(less 401)	80	718	15	1301-1303, 1321-1323, 1381, 1381(note), 1391-1403, 1403(note), 1404-1431
Oct. 13	89-647 .....	.....	80	894	49 App.	1104, 1105
Oct. 15	89-670	1-8(a), (f), (i), 9, 10(e), 13-16	80	931, 943, 944, 948, 949.	15	1404
.....	.....	.....	.....	.....	49 App.	1376, 1651, 1651(note), 1652, 1653, 1654, 1655- 1657, 1659
.....	.....	.....	.....	.....	50	123
1967 May 25	90-19	20	81	25	49 App.	1602, 1603, 1605, 1606, 1608-1610
June 28	90-34 .....	.....	81	81	49 App.	1604
Dec. 1	90-169 .....	.....	81	526	49 App.	1604
1968 Apr. 10	90-283 .....	.....	82	72	15	1410
July 21	90-411 .....	.....	82	395	49 App.	1431
July 24	90-423	1(f)	82	424	49 App.	1642
Aug. 1	90-448	701-704	82	534	49 App.	1603, 1604, 1605, 1608
Aug. 12	90-481	82	720	49 App.	1671, 1671(note), 1672-1686
Sept. 26	90-514	82	867	49 App.	1301, 1371, 1371(note)

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Oct. 12	90-568	82	1003	49 App.	1324(note)
1969 Aug. 20	91-62	83	103	49 App.	1377, 1377(note), 1378
Dec. 24	91-152	306	83	392	49 App.	1603, 1604
Dec. 26	91-169 .....	.....	83	463	45	61, 61(note), 62-64b
1970 May 21	91-258	31, 51, 52(a), (b)(4), (6), (c), (d), 53, 209.	84	234, 235, 236, 252.	49 App.	1101-1103, 1104-1106, 1107a-1120, 1354, 1430, 1430(note), 1432, 1509, 1622, 1701(note), 1731, 1741, 1742(note)
May 22	91-265 .....	.....	84	262	15	1381(note), 1391, 1401, 1408, 1409, 1426, 1431 1542
Sept. 8	91-399 .....	.....	84	837	49 App.	1642
Oct. 13	91-444	1(b)	84	915	49 App.	1301, 1472
Oct. 14	91-449 .....	.....	84	921	49 App.	1601(note), 1601a, 1602, 1602(note), 1603-1605, 1610-1612
Oct. 15	91-453	1-9, 13, 14	84	962, 969	49 App.	421, 421(note), 431-441, 443, 444 787
Oct. 16	91-458 .....	.....	84	971	45	501, 501(note), 501a, 502, 521, 522, 541-545, 546, 547, 548, 561-566, 581-591, 601, 602, 642-644, 646-649, 651-658 1512, 1512(notes)
Oct. 27	91-513	1102(r)	84	1294	49 App.	1421
Oct. 30	91-518	(less 404(f), 814, 815, 901)	84	1327	45	1421, 1430
Dec. 23	91-569 .....	.....	84	1499	49 App.	1429
Dec. 29	91-596	31	84	1619	49 App.	1429, 1430(note), 1432, 1711- 1713, 1714, 1715, 1717
Dec. 31	91-604	11(b)	84	1705	49 App.	1374, 1461, 1482, 1482(note)
1971 Nov. 18	92-159	2	85	481	49 App.	543, 543(note), 545, 546, 548, 562, 563, 565, 601, 602, 602(note), 644, 645
Nov. 27	92-174 .....	.....	85	491	49 App.	1674, 1674(note), 1682, 1684
1972 Mar. 22	92-259	86	95	49 App.	
June 22	92-316	86	227	45	
Aug. 22	92-401	86	616	49 App.	

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Oct. 20	92-513	(less 511)	86	947	15	1901, 1901(note), 1911-1922, 1941-1949, 1961-1964, 1981, 1981(note), 1982-1991, 2001-2010, 2012, 2021- 2034
Oct. 25	92-548 .....	.....	86	1159	15	1381(note), 1409, 1410
	92-556 .....	.....	86	1170	49	1324(note)
Oct. 27	92-574	7(b)	86	1239	App. 49	1431
1973 June 18	93-44 .....	.....	87	88	App. 49	1513, 1701(note), 1711, 1712, 1714, 1716, 1717
Aug. 13	93-87	138, 164, 301	87	270, 281, 295	App. 49	1602a, 1603, 1603(note), 1607d(note), 1608(note), 1612
Aug. 14	93-90 .....	.....	87	305	45	421(note), 441(note)
	.....	.....	.....	.....	App. 49	1762
Nov. 3	93-146 .....	.....	87	548	45	501(note), 502, 543, 543(note), 545, 546, 548, 561-564, 601, 602, 641
1974 Jan. 2	93-236	303(e)(words "title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 or of ⁷⁵ "), 711(words "the National Railroad Passenger Corporation, or the Amtrak Commuter Services Corporation").	.....	.....	45	743, 797j
	93-239	4	87	1048	App. 49	1421
Aug. 5	93-366 .....	.....	88	409	App. 49	1301(note), 1301, 1356, 1357, 1471, 1472, 1473, 1487, 1511, 1514-1516
Aug. 22	93-383	813	88	737	App. 49	1602, 1602a, 1602a(note)
Aug. 30	93-403 .....	.....	88	802	App. 49	1671(note), 1674, 1684
Oct. 27	93-492	(less 108)	88	1470	App. 15	1381(note), 1391, 1392, 1393, 1397- 1399, 1401, 1402, 1408, 1409, 1409(note), 1410-1411, 1411(note), 1412-1420, 1424, 1961- 1964
Oct. 28	93-496 .....	.....	88	1526	45	501(note), 544, 545, 563, 564, 601, 602, 641, 644, 645(note)
	.....	.....	.....	.....	App. 49	302, 1643, 1653
Nov. 26	93-503	(less 105)	88	1565	App. 49	1601b, 1601b(note), 1602-1604b, 1605(note), 1611

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	93-608	1(20), (21)	88	1970	49 App.	1151(note), 1159a, 1159b, 1373, 1376, 1377, 1472, 1517
Jan. 3	93-623	(less 6)	88	2102	49 App.	39, 421(note), 437, 438, 440, 440(note) 1471, 1472, 1653, 1761, 1762, 1801, 1801(note), 1802-1813, 1901, 1901(note), 1902-1907
	93-633 .....	.....	88	2156	45 App.	1602, 1602a, 1602a(note)
1974 Jan. 4	93-650 .....	.....	89	2-1	49 App.	501(note), 543, 545, 548, 563, 564, 601, 602, 621 1653
1975 May 26	94-25 .....	.....	89	90	45 App.	421(note), 440 1812
July 19	94-56 .....	.....	89	263	45 App.	1531(note), 1536, 1542
Aug. 9	94-90 .....	.....	89	439	49 App.	2001-2010, 2012
Dec. 22	94-163	301(less "Sec. 511")	89	901	15	
1976 Feb. 5	94-210	701-706(a), (c)-(i), 707, 803, 808, 901-904.	90	119, 124, 130, 143, 147.	45 App.	543, 545, 546, 562-564, 743, 745(note), 851-855 1613, 1653, 1654, 1654(note)
July 8	94-346 .....	.....	90	815	15	1392, 1409
	94-348 .....	.....	90	817	45 App.	6, 13, 34, 61- 63a, 64a, 421(note), 431, 431(note), 26, 1653
July 12	94-353 .....	.....	90	871	49 App.	1346a, 1348(note), 1356a, 1358, 1371, 1432, 1701, 1701(note), 1702(note), 1704, 1711- 1715, 1715(note), 1716-1720, 1724(note), 1728-1730, 1742
July 14	94-364 .....	.....	90	981	15	1901(note), 1921, 1941, 1949, 1963, 1982-1985, 1987, 1988, 1990-1991 1542
July 31	94-374 .....	.....	90	1065	49 App.	743
Sept. 30	94-436	5(related to title VII)	90	1399	45	1801(note),
Oct. 11	94-474	90	2068	49 App.	1805, 1812

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	94-481	90	2080	49 App.	501(note), 543, 545, 546, 563, 601, 602, 641, 641(note), 854 1653, 1654(note)
Oct. 19	94-555	101-108, 216(e), 217, 219(a), 220(h), 301.	90	2613, 2627, 2629, 2630.	45	
	49 App.	
1977 Aug. 4	95-91	305, 306, 402(b)	91	580, 584	15	2002
Nov. 9	95-163	(less 19)	91	1278	42 49 App.	7155, 7172 1301, 1302, 1371, 1373, 1373(note), 1376(note), 1388, 1401, 1421, 1421(note), 1430, 1482, 1531-1533, 1535, 1537, 1542 1613
Nov. 16	95-187	91	1385	49 App.	
1978 Mar. 8	95-241	92	119	49 App.	1401
Mar. 14	95-245	92	156	49 App.	1388, 1388(note)
Mar. 27	95-251	2(a)(12)	92	183	49 App.	1655
Sept. 11	95-363	92	597	49 App.	1901(note), 1907
Sept. 30	95-403	92	863	49 App.	1812
Oct. 5	95-421	92	923	45	501(note), 521(note), 541, 541(note), 545, 545a, 546a, 562, 563, 601, 602, 646, 853, 854 1653
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Attest: DONNALD K. ANDERSON,
Clerk.

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