

Union Calendar No. 102

103D CONGRESS
1ST SESSION

H. R. 1758

[Report No. 103-1801]

A BILL

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.

JULY 15, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered printed

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IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 1993

Mr. BROOKS introduced the following bill; which was referred to the Committee on the Judiciary

JULY 15, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 21, 1993]

A BILL

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.

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

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

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

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

<i>SUBTITLE</i>	<i>Sec.</i>
“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”.

12 (c) Title 49, United States Code, is amended by striking subtitle II, except
13 that chapter 31 (comprising sections 3101–3104) of subtitle II is redesignated
14 and restated as chapter 315 (comprising sections 31501–31504) of subtitle VI
15 of title 49, as enacted by subsection (e) of this section.

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

18 **SUBTITLE II—OTHER GOVERNMENT AGENCIES**

<i>CHAPTER</i>	<i>Sec.</i>
11. NATIONAL TRANSPORTATION SAFETY BOARD	1101

19 **CHAPTER 11—NATIONAL TRANSPORTATION SAFETY**
20 **BOARD**

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SUBCHAPTER I—GENERAL

§ 1101. Definitions

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.

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

3 (g) *OFFICES, BUREAUS, AND DIVISIONS.*—The Board shall establish offices
4 necessary to carry out this chapter, including an office to investigate and re-
5 port on the safe transportation of hazardous material. The Board shall estab-
6 lish distinct and appropriately staffed bureaus, divisions, or offices to inves-
7 tigate and report on accidents involving each of the following modes of trans-
8 portation:

9 (1) aviation.

10 (2) highway and motor vehicle.

11 (3) rail and tracked vehicle.

12 (4) pipeline.

13 (h) *SEAL.*—The Board shall have a seal that shall be judicially recognized.

14 **§ 1112. Special boards of inquiry on air transportation safety**

15 (a) *ESTABLISHMENT.*—If an accident involves a substantial question about
16 public safety in air transportation, the National Transportation Safety Board
17 may establish a special board of inquiry composed of—

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

19 (2) 2 members representing the public, appointed by the President on
20 notification of the establishment of the special board of inquiry.

21 (b) *QUALIFICATIONS AND CONFLICTS OF INTEREST.*—The public members
22 of a special board of inquiry must be qualified by training and experience
23 to participate in the inquiry and may not have a pecuniary interest in an
24 aviation enterprise involved in the accident to be investigated.

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

27 **§ 1113. Administrative**

28 (a) *GENERAL AUTHORITY.*—(1) The National Transportation Safety
29 Board, and when authorized by it, a member of the Board, an administrative
30 law judge employed by or assigned to the Board, or an officer or employee
31 designated by the Chairman of the Board, may conduct hearings to carry out
32 this chapter, administer oaths, and require, by subpoena or otherwise, nec-
33 essary witnesses and evidence.

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

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

1 (4) *If a person disobeys a subpoena, order, or inspection notice of the Board,*
2 *the Board may bring a civil action in a district court of the United States*
3 *to enforce the subpoena, order, or notice. An action under this paragraph may*
4 *be brought in the judicial district in which the person against whom the ac-*
5 *tion is brought resides, is found, or does business. The court may punish a*
6 *failure to obey an order of the court to comply with the subpoena, order, or*
7 *notice as a contempt of court.*

8 (b) *ADDITIONAL POWERS.—(1) The Board may—*

9 (A) *procure the temporary or intermittent services of experts or con-*
10 *sultants under section 3109 of title 5;*

11 (B) *make agreements and other transactions necessary to carry out*
12 *this chapter without regard to section 3709 of the Revised Statutes (41*
13 *U.S.C. 5);*

14 (C) *use, when appropriate, available services, equipment, personnel,*
15 *and facilities of a department, agency, or instrumentality of the United*
16 *States Government on a reimbursable or other basis;*

17 (D) *confer with employees and use services, records, and facilities of*
18 *State and local governmental authorities;*

19 (E) *appoint advisory committees composed of qualified private citizens*
20 *and officials of the Government and State and local governments as ap-*
21 *propriate;*

22 (F) *accept voluntary and uncompensated services notwithstanding an-*
23 *other law;*

24 (G) *accept gifts of money and other property;*

25 (H) *make contracts with nonprofit entities to carry out studies related*
26 *to duties and powers of the Board; and*

27 (I) *require that the departments, agencies, and instrumentalities of the*
28 *Government, State and local governments, and governments of foreign*
29 *countries provide appropriate consideration for the reasonable costs of*
30 *goods and services supplied by the Board.*

31 (2) *The Board shall deposit in the Treasury amounts received under para-*
32 *graph (1)(I) of this subsection to be credited to the appropriation of the*
33 *Board.*

34 (c) *SUBMISSION OF CERTAIN COPIES TO CONGRESS.—When the Board sub-*
35 *mits to the President or the Director of the Office of Management and Budget*
36 *a budget estimate, budget request, supplemental budget estimate, other budget*
37 *information, a legislative recommendation, prepared testimony for congress-*
38 *ional hearings, or comments on legislation, the Board must submit a copy*
39 *to Congress at the same time. An officer, department, agency, or instrumen-*
40 *tality of the Government may not require the Board to submit the estimate,*
41 *request, information, recommendation, testimony, or comments to another of-*

1 *ficer, department, agency, or instrumentality of the Government for approval,*
 2 *comment, or review before being submitted to Congress.*

3 *(d) LIAISON COMMITTEES.—The Chairman may determine the number of*
 4 *committees that are appropriate to maintain effective liaison with other de-*
 5 *partments, agencies, and instrumentalities of the Government, State and local*
 6 *governmental authorities, and independent standard-setting authorities that*
 7 *carry out programs and activities related to transportation safety. The Board*
 8 *may designate representatives to serve on or assist those committees.*

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

20 *(f) REGULATIONS.—The Board may prescribe regulations to carry out this*
 21 *chapter.*

22 **§1114. Disclosure, availability, and use of information**

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

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

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

34 *(B) to a committee of Congress having jurisdiction over the subject*
 35 *matter to which the information is related, when requested by that com-*
 36 *mittee;*

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

39 *(D) to the public to protect health and safety after giving notice to*
 40 *any interested person to whom the information is related and an oppor-*
 41 *tunity for that person to comment in writing, or orally in closed session,*

1 on the proposed disclosure, if the delay resulting from notice and oppor-
2 tunity for comment would not be detrimental to health and safety.

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

5 (c) *COCKPIT VOICE RECORDINGS AND TRANSCRIPTS.*—(1) The Board may
6 not disclose publicly any part of a cockpit voice recorder recording or tran-
7 script of oral communications by and between flight crew members and
8 ground stations related to an accident or incident investigated by the Board.
9 However, the Board shall make public any part of a transcript the Board
10 decides is relevant to the accident or incident—

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

13 (B) if the Board does not hold a public hearing, at the time a majority
14 of the other factual reports on the accident or incident are placed in the
15 public docket.

16 (2) This subsection does not prevent the Board from referring at any time
17 to cockpit voice recorder information in making safety recommendations.

18 (d) *DRUG TESTS.*—(1) Notwithstanding section 503(e) of the Supplemental
19 Appropriations Act, 1987 (Public Law 100–71, 101 Stat. 471), the Secretary
20 of Transportation shall provide the following information to the Board when
21 requested in writing by the Board:

22 (A) any report of a confirmed positive toxicological test, verified as
23 positive by a medical review officer, conducted on an officer or employee
24 of the Department of Transportation under post-accident, unsafe prac-
25 tice, or reasonable suspicion toxicological testing requirements of the De-
26 partment, when the officer or employee is reasonably associated with the
27 circumstances of an accident or incident under the investigative jurisdic-
28 tion of the Board.

29 (B) any laboratory record documenting that the test is confirmed posi-
30 tive.

31 (2) Except as provided by paragraph (3) of this subsection, the Board shall
32 maintain the confidentiality of, and exempt from disclosure under section
33 552(b)(3) of title 5—

34 (A) a laboratory record provided the Board under paragraph (1) of
35 this subsection that reveals medical use of a drug allowed under applica-
36 ble regulations; and

37 (B) medical information provided by the tested officer or employee re-
38 lated to the test or a review of the test.

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

1 (A) the fitness of the tested officer or employee is at issue in the inves-
2 tigation; and

3 (B) the use of that record is necessary to develop the evidentiary
4 record.

5 **§ 1115. Training**

6 (a) *DEFINITION.*—In this section, “Institute” means the Transportation
7 Safety Institute of the Department of Transportation and any successor orga-
8 nization of the Institute.

9 (b) *USE OF INSTITUTE SERVICES.*—The National Transportation Safety
10 Board may use, on a reimbursable basis, the services of the Institute. The Sec-
11 retary of Transportation shall make the Institute available to—

12 (1) the Board for safety training of employees of the Board in carry-
13 ing out their duties and powers; and

14 (2) other safety personnel of the United States Government, State and
15 local governments, governments of foreign countries, interstate authori-
16 ties, and private organizations the Board designates in consultation with
17 the Secretary.

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

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

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

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

31 **§ 1116. Reports and studies**

32 (a) *PERIODIC REPORTS.*—The National Transportation Safety Board shall
33 report periodically to Congress, departments, agencies, and instrumentalities
34 of the United States Government and State and local governmental authori-
35 ties concerned with transportation safety, and other interested persons. The
36 report shall—

37 (1) advocate meaningful responses to reduce the likelihood of transpor-
38 tation accidents similar to those investigated by the Board; and

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

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

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

5 (2) examine techniques and methods of accident investigation and pe-
6 riodically publish recommended procedures for accident investigations;

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

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

10 (B) involve public aircraft (except aircraft of the armed forces
11 and the intelligence agencies);

12 (4) evaluate, examine the effectiveness of, and publish the findings of
13 the Board about the transportation safety consciousness of other depart-
14 ments, agencies, and instrumentalities of the Government and their effec-
15 tiveness in preventing accidents; and

16 (5) evaluate the adequacy of safeguards and procedures for the trans-
17 portation of hazardous material and the performance of other depart-
18 ments, agencies, and instrumentalities of the Government responsible for
19 the safe transportation of that material.

20 **§ 1117. Annual report**

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

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

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

29 (3) a detailed appraisal of the accident investigation and accident pre-
30 vention activities of other departments, agencies, and instrumentalities
31 of the United States Government and State and local governmental au-
32 thorities having responsibility for those activities under a law of the
33 United States or a State; and

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

36 **§ 1118. Authorization of appropriations**

37 (a) *GENERAL.*—Not more than \$38,800,000 may be appropriated to the
38 National Transportation Safety Board for the fiscal year ending September
39 30, 1993, to carry out this chapter.

40 (b) *EMERGENCY FUND.*—The Board has an emergency fund of \$1,000,000
41 available for necessary expenses of the Board, not otherwise provided for, for

1 accident investigations. The following amounts may be appropriated to the
2 fund:

3 (1) \$1,000,000 to establish the fund.

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

5 (c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section
6 remain available until expended.

7 SUBCHAPTER III—AUTHORITY

8 **§ 1131. General authority**

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

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

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

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

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

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

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

27 (i) the accident is catastrophic;

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

29 (iii) the investigation of the accident would carry out this chap-
30 ter.

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

38 (3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)–
39 (e) of this title do not affect the authority of another department, agency, or
40 instrumentality of the Government to investigate an accident under applica-
41 ble law or to obtain information directly from the parties involved in, and

1 witnesses to, the accident. The Board and other departments, agencies, and
 2 instrumentalities shall ensure that appropriate information developed about
 3 the accident is exchanged in a timely manner.

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

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

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

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

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

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

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

25 **§ 1132. Civil aircraft accident investigations**

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

28 (A) each accident involving civil aircraft; and

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

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

34 (b) NOTIFICATION AND REPORTING.—The Board shall prescribe regulations
 35 governing the notification and reporting of accidents involving civil aircraft.

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

1 (d) *ACCIDENTS INVOLVING ONLY MILITARY AIRCRAFT.*—If an accident in-
 2 volves 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 Guard*
 15 *is operating on an appeal from the decision of an administrative law*
 16 *judge denying, revoking, or suspending a license, certificate, document,*
 17 *or register in a proceeding under section 6101, 6301, or 7503, chapter*
 18 *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, control,*
 29 *or facility related to an accident investigation under this chapter.*

30 (b) *INSPECTION, TESTING, PRESERVATION, AND MOVING OF AIRCRAFT AND*
 31 *PARTS.*—(1) *In investigating an aircraft accident under this chapter, the*
 32 *Board may inspect and test, to the extent necessary, any civil aircraft, air-*
 33 *craft engine, propeller, appliance, or property on an aircraft involved in an*
 34 *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 pipeline*
 41 *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, track,
3 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 authority
8 to decide on the way in which testing under this section will be conducted,
9 including decisions on the person that will conduct the test, the type of test
10 that will be conducted, and any individual who will witness the test. Those
11 decisions are committed to the discretion of the Board. The Board shall make
12 any of those decisions based on the needs of the investigation being conducted
13 and, when applicable, subsections (a), (c), and (e) of this section.

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

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

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

26 **§ 1135. Secretary of Transportation's responses to safety rec-**
27 **ommendations**

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

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

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

35 or

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

37 (b) *TIMETABLE FOR COMPLETING PROCEDURES AND REASONS FOR REFUS-*
38 *ALS.*—A response under subsection (a)(1) or (2) of this section shall include
39 a copy of a proposed timetable for completing the procedures. A response
40 under subsection (a)(2) of this section shall detail the reasons for the refusal
41 to carry out procedures on the remainder of the recommendation. A response

1 under subsection (a)(3) of this section shall detail the reasons for the refusal
2 to carry out procedures.

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

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

9 *SUBCHAPTER IV—ENFORCEMENT AND PENALTIES*

10 **§ 1151. Aviation enforcement**

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

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

19 (1) to enforce section 1132, 1134(b) or (f)(1)(related to an aircraft ac-
20 cident), or 1155(a) of this title or a regulation prescribed or order issued
21 under any of those sections; and

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

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

27 **§ 1152. Joinder and intervention in aviation proceedings**

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

33 **§ 1153. Judicial review**

34 (a) *GENERAL.*—The appropriate court of appeals of the United States or
35 the United States Court of Appeals for the District of Columbia Circuit may
36 review a final order of the National Transportation Safety Board under this
37 chapter. A person disclosing a substantial interest in the order may apply
38 for review by filing a petition not later than 60 days after the order of the
39 Board is issued.

40 (b) *PERSONS SEEKING JUDICIAL REVIEW OF AVIATION MATTERS.*—(1) A
41 person disclosing a substantial interest in an order related to an aviation

1 matter issued by the Board under this chapter may apply for review of the
2 order by filing a petition for review in the United States Court of Appeals
3 for the District of Columbia Circuit or in the court of appeals of the United
4 States for the circuit in which the person resides or has its principal place
5 of business. The petition must be filed not later than 60 days after the order
6 is issued. The court may allow the petition to be filed after the 60 days only
7 if there was a reasonable ground for not filing within that 60-day period.

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

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

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

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

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

32 **§ 1154. Discovery and use of cockpit voice and other material**

33 (a) TRANSCRIPTS AND RECORDINGS.—(1) Except as provided by this sub-
34 section, a party in a judicial proceeding may not use discovery to obtain—

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

38 (B) a cockpit voice recorder recording.

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

1 (i) the part of the transcript made available to the public under sec-
2 tion 1114(c) of this title does not provide the party with sufficient infor-
3 mation for the party to receive a fair trial; and

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

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

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

14 (A) the parts of the transcript made available to the public under sec-
15 tion 1114(c) of this title and to the party through discovery under para-
16 graph (2) of this subsection do not provide the party with sufficient in-
17 formation for the party to receive a fair trial; and

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

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

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

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

30 (B) A court may allow a part of a cockpit voice recorder transcript not
31 made available to the public under section 1114(c) of this title or a cockpit
32 voice recorder recording to be admitted into evidence in a judicial proceeding,
33 only if the court places the part of the transcript or the recording under seal
34 to prevent the use of the part of the transcript or the recording for purposes
35 other than for the proceeding.

36 (5) This subsection does not prevent the Board from referring at any time
37 to cockpit voice recorder information in making safety recommendations.

38 (b) *REPORTS.*—No part of a report of the Board, related to an accident
39 or an investigation of an accident, may be admitted into evidence or used
40 in a civil action for damages resulting from a matter mentioned in the report.

1 **§1155. Aviation penalties**

2 (a) *CIVIL PENALTY.—(1) A person violating section 1132 or 1134(b) or*
 3 *(f)(1)(related to an aircraft accident) of this title or a regulation prescribed*
 4 *or order issued under either of those sections is liable to the United States*
 5 *Government for a civil penalty of not more than \$1,000. A separate violation*
 6 *occurs for each day a violation continues.*

7 (2) *This subsection does not apply to a member of the armed forces of the*
 8 *United States or an employee of the Department of Defense subject to the Uni-*
 9 *form Code of Military Justice when the member or employee is performing*
 10 *official duties. The appropriate military authorities are responsible for taking*
 11 *necessary disciplinary action and submitting to the National Transportation*
 12 *Safety Board a timely report on action taken.*

13 (3) *The Board may compromise the amount of a civil penalty imposed*
 14 *under this subsection.*

15 (4) *The Government may deduct the amount of a civil penalty imposed or*
 16 *compromised under this subsection from amounts it owes the person liable for*
 17 *the penalty.*

18 (5) *A civil penalty under this subsection may be collected by bringing a*
 19 *civil action against the person liable for the penalty. The action shall conform*
 20 *as nearly as practicable to a civil action in admiralty.*

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

25 **SUBTITLE III—GENERAL AND INTERMODAL**
 26 **PROGRAMS**

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27 **CHAPTER 51—TRANSPORTATION OF HAZARDOUS**
 28 **MATERIAL**

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1 **§ 5101. Purpose**

2 *The purpose of this chapter is to provide adequate protection against the*
 3 *risks to life and property inherent in the transportation of hazardous mate-*
 4 *rial in commerce by improving the regulatory and enforcement authority of*
 5 *the Secretary of Transportation.*

6 **§ 5102. Definitions**

7 *In this chapter—*

8 (1) *“commerce” means trade or transportation in the jurisdiction of*
 9 *the United States—*

10 (A) *between a place in a State and a place outside of the State;*

11 *or*

12 (B) *that affects trade or transportation between a place in a*
 13 *State and a place outside of the State.*

14 (2) *“hazardous material” means a substance or material the Secretary*
 15 *of Transportation designates under section 5103(a) of this title.*

16 (3) *“hazmat employee”—*

17 (A) *means an individual—*

18 (i) *employed by a hazmat employer; and*

19 (ii) *who during the course of employment directly affects*
 20 *hazardous material transportation safety as the Secretary de-*
 21 *cedes by regulation;*

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

24 (C) *includes an individual, employed by a hazmat employer, who*
 25 *during the course of employment—*

26 (i) *loads, unloads, or handles hazardous material;*

27 (ii) *manufactures, reconditions, or tests containers, drums,*
 28 *and packages represented as qualified for use in transporting*
 29 *hazardous material;*

30 (iii) *prepares hazardous material for transportation;*

1 (iv) is responsible for the safety of transporting hazardous
2 material; or

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

4 (4) “hazmat employer”—

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

7 (i) transporting hazardous material in commerce;

8 (ii) causing hazardous material to be transported in com-
9 merce; or

10 (iii) manufacturing, reconditioning, or testing containers,
11 drums, and packages represented as qualified for use in trans-
12 porting hazardous material;

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

15 (C) includes a department, agency, or instrumentality of the
16 United States Government, or an authority of a State, political sub-
17 division of a State, or Indian tribe, carrying out an activity de-
18 scribed in subclause (A)(i), (ii), or (iii) of this clause (4).

19 (5) “imminent hazard” means the existence of a condition that pre-
20 sents a substantial likelihood that death, serious illness, severe personal
21 injury, or a substantial endangerment to health, property, or the envi-
22 ronment may occur before the reasonably foreseeable completion date of
23 a formal proceeding begun to lessen the risk of that death, illness, injury,
24 or endangerment.

25 (6) “Indian tribe” has the same meaning given that term in section
26 4 of the Indian Self-Determination and Education Assistance Act (25
27 U.S.C. 450b).

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

31 (8) “national response team” means the national response team estab-
32 lished under the national contingency plan established under section 105
33 of the Comprehensive Environmental Response, Compensation, and Li-
34 ability Act of 1980 (42 U.S.C. 9605).

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

36 (A) includes a government, Indian tribe, or authority of a gov-
37 ernment or tribe offering hazardous material for transportation in
38 commerce or transporting hazardous material to further a commer-
39 cial enterprise; but

40 (B) does not include—

41 (i) the United States Postal Service; and

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

3 (10) “public sector employee”—

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

8 (B) includes an individual employed by a State, political sub-
9 division of a State, or Indian tribe as a firefighter or law enforce-
10 ment officer; and

11 (C) includes an individual who volunteers to serve as a firefighter
12 for a State, political subdivision of a State, or Indian tribe.

13 (11) “State” means—

14 (A) except in section 5119 of this title, a State of the United
15 States, the District of Columbia, Puerto Rico, the Northern Mariana
16 Islands, the Virgin Islands, American Samoa, Guam, and any other
17 territory or possession of the United States designated by the Sec-
18 retary; and

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

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

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

24 **§5103. General regulatory authority**

25 (a) DESIGNATING MATERIAL AS HAZARDOUS.—The Secretary of Transpor-
26 tation shall designate material (including an explosive, radioactive material,
27 etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or
28 corrosive material, and compressed gas) or a group or class of material as
29 hazardous when the Secretary decides that transporting the material in com-
30 merce in a particular amount and form may pose an unreasonable risk to
31 health and safety or property.

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

35 (A) apply to a person—

36 (i) transporting hazardous material in commerce;

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

38 or

39 (iii) manufacturing, fabricating, marking, maintaining, recondi-
40 tioning, repairing, or testing a package or container that is rep-

1 resented, marked, certified, or sold by that person as qualified for
2 use in transporting hazardous material in commerce; and

3 (B) shall govern safety aspects of the transportation of hazardous ma-
4 terial the Secretary considers appropriate.

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

7 **§ 5104. Representation and tampering**

8 (a) REPRESENTATION.—A person may represent, by marking or otherwise,
9 that—

10 (1) a container or package for transporting hazardous material is safe,
11 certified, or complies with this chapter only if the container or package
12 meets the requirements of each regulation prescribed under this chapter;
13 or

14 (2) hazardous material is present in a package, container, motor vehi-
15 cle, rail freight car, aircraft, or vessel only if the material is present.

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

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

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

22 **§ 5105. Transporting certain highly radioactive material**

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

26 (b) TRANSPORTATION SAFETY STUDY.—In consultation with the Secretary
27 of Energy, the Nuclear Regulatory Commission, potentially affected States
28 and Indian tribes, representatives of the rail transportation industry, and
29 shippers of high-level radioactive waste and spent nuclear fuel, the Secretary
30 of Transportation shall conduct a study comparing the safety of using trains
31 operated only to transport high-level radioactive waste and spent nuclear fuel
32 with the safety of using other methods of rail transportation for transporting
33 that waste and fuel. The Secretary of Transportation shall submit to Congress
34 not later than November 16, 1991, a report on the results of the study.

35 (c) SAFE RAIL TRANSPORTATION REGULATIONS.—Not later than November
36 16, 1992, after considering the results of the study conducted under subsection
37 (b) of this section, the Secretary of Transportation shall prescribe amend-
38 ments to existing regulations that the Secretary considers appropriate to pro-
39 vide for the safe rail transportation of high-level radioactive waste and spent
40 nuclear fuel, including trains operated only for transporting high-level radio-
41 active waste and spent nuclear fuel.

1 (d) *ROUTES AND MODES STUDY.*—Not later than November 16, 1991, the
 2 Secretary of Transportation shall conduct a study to decide which factors, if
 3 any, shippers and carriers should consider when selecting routes and modes
 4 that would enhance overall public safety related to the transportation of high-
 5 level radioactive waste and spent nuclear fuel. The study shall include—

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

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

9 (A) population densities.

10 (B) types and conditions of modal infrastructures (including
 11 highways, railbeds, and waterways).

12 (C) quantities of high-level radioactive waste and spent nuclear
 13 fuel.

14 (D) emergency response capabilities.

15 (E) exposure and other risk factors.

16 (F) terrain considerations.

17 (G) continuity of routes.

18 (H) available alternative routes.

19 (I) environmental impact factors.

20 (e) *INSPECTIONS OF MOTOR VEHICLES TRANSPORTING CERTAIN MATE-*
 21 *RIAL.*—(1) Not later than November 16, 1991, the Secretary of Transportation
 22 shall require by regulation that before each use of a motor vehicle to transport
 23 a highway-route-controlled quantity of radioactive material in commerce, the
 24 vehicle shall be inspected and certified as complying with this chapter and
 25 applicable United States motor carrier safety laws and regulations. The Sec-
 26 retary may require that the inspection be carried out by an authorized United
 27 States Government inspector or according to appropriate State procedures.

28 (2) The Secretary of Transportation may allow a person, transporting or
 29 causing to be transported a highway-route-controlled quantity of radioactive
 30 material, to inspect the motor vehicle used to transport the material and to
 31 certify that the vehicle complies with this chapter. The inspector qualification
 32 requirements the Secretary prescribes for an individual inspecting a motor ve-
 33 hicle apply to an individual conducting an inspection under this paragraph.

34 **§5106. Handling criteria**

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

37 (1) a minimum number of personnel;

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

39 (3) the kind and frequency of inspections;

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

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

3 (6) a system of monitoring safety procedures for transporting the haz-
4 ardous material.

5 **§ 5107. Hazmat employee training requirements and grants**

6 (a) *TRAINING REQUIREMENTS.*—The Secretary of Transportation shall pre-
7 scribe by regulation requirements for training that a hazmat employer must
8 give hazmat employees of the employer on the safe loading, unloading, han-
9 dling, storing, and transporting of hazardous material and emergency pre-
10 paredness for responding to an accident or incident involving the transpor-
11 tation of hazardous material. The regulations—

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

14 (2) may provide for different training for different classes or categories
15 of hazardous material and hazmat employees.

16 (b) *BEGINNING AND COMPLETING TRAINING.*—A hazmat employer shall
17 begin the training of hazmat employees of the employer not later than 6
18 months after the Secretary of Transportation prescribes the regulations under
19 subsection (a) of this section. The training shall be completed within a reason-
20 able period of time after—

21 (1) 6 months after the regulations are prescribed; or

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

25 (c) *CERTIFICATION OF TRAINING.*—After completing the training, each
26 hazmat employer shall certify, with documentation the Secretary of Transpor-
27 tation may require by regulation, that the hazmat employees of the employer
28 have received training and have been tested on appropriate transportation
29 areas of responsibility, including at least one of the following:

30 (1) recognizing and understanding the Department of Transportation
31 hazardous material classification system.

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

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

37 (4) health, safety, and risk factors associated with hazardous material
38 and the transportation of hazardous material.

39 (5) appropriate emergency response and communication procedures for
40 dealing with an accident or incident involving hazardous material trans-
41 portation.

1 (6) the use of the Department Emergency Response Guidebook and rec-
2 ognition of its limitations or the use of equivalent documents and rec-
3 ognition of the limitations of those documents.

4 (7) applicable hazardous material transportation regulations.

5 (8) personal protection techniques.

6 (9) preparing a shipping document for transporting hazardous mate-
7 rial.

8 (d) *COORDINATION OF TRAINING REQUIREMENTS.*—In consultation with
9 the Administrator of the Environmental Protection Agency and the Secretary
10 of Labor, the Secretary of Transportation shall ensure that the training re-
11 quirements prescribed under this section do not conflict with—

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

15 (2) the regulations the Agency prescribes related to worker protection
16 standards for hazardous waste operations that are contained in part 311
17 of title 40, Code of Federal Regulations.

18 (e) *TRAINING GRANTS.*—In consultation with the Secretaries of Transpor-
19 tation and Labor and the Administrator, the Director of the National Insti-
20 tute of Environmental Health Sciences may make grants to train hazmat em-
21 ployees under this section. A grant under this subsection shall be made to a
22 nonprofit organization that demonstrates—

23 (1) expertise in conducting a training program for hazmat employees;
24 and

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

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

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

35 **§ 5108. Registration**

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

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

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

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

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

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

12 (2) The Secretary of Transportation may require any of the following per-
13 sons to file a registration statement with the Secretary under this subsection:

14 (A) a person transporting or causing to be transported hazardous ma-
15 terial in commerce and not required to file a registration statement
16 under paragraph (1) of this subsection.

17 (B) a person manufacturing, fabricating, marking, maintaining, re-
18 conditioning, repairing, or testing a package or container the person rep-
19 resents, marks, certifies, or sells for use in transporting in commerce haz-
20 ardous material the Secretary designates.

21 (3) A person required to file a registration statement under this subsection
22 may transport or cause to be transported, or manufacture, fabricate, mark,
23 maintain, recondition, repair, or test a package or container for use in trans-
24 porting, hazardous material, only if the person has a statement on file as re-
25 quired by this subsection.

26 (b) *FORM, CONTENTS, AND LIMITATION ON FILINGS.*—(1) A registration
27 statement under subsection (a) of this section shall be in the form and contain
28 information the Secretary of Transportation requires by regulation. The Sec-
29 retary may use existing forms of the Department of Transportation and the
30 Environmental Protection Agency to carry out this subsection. The statement
31 shall include—

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

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

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

36 (2) A person carrying out more than one activity, or an activity at more
37 than one location, for which filing is required only has to file one registration
38 statement to comply with subsection (a) of this section.

39 (c) *FILING DEADLINES AND AMENDMENTS.*—(1) Each person required to
40 file a registration statement under subsection (a) of this section must file the
41 first statement not later than March 31, 1992. The Secretary of Transpor-

1 tation may extend that date to September 30, 1992, for activities referred to
2 in subsection (a)(1) of this section. A person shall renew the statement peri-
3 odically consistent with regulations the Secretary prescribes, but not more
4 than once each year and not less than once every 5 years.

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

8 (d) *SIMPLIFYING THE REGISTRATION PROCESS.*—The Secretary of Trans-
9 portation may take necessary action to simplify the registration process under
10 subsections (a)–(c) of this section and to minimize the number of applica-
11 tions, documents, and other information a person is required to file under this
12 chapter and other laws of the United States.

13 (e) *COOPERATION WITH ADMINISTRATOR.*—The Administrator of the Envi-
14 ronmental Protection Agency shall assist the Secretary of Transportation in
15 carrying out subsections (a)–(g)(1) and (h) of this section by providing the
16 Secretary with information the Secretary requests to carry out the objectives
17 of subsections (a)–(g)(1) and (h).

18 (f) *AVAILABILITY OF STATEMENTS.*—The Secretary of Transportation shall
19 make a registration statement filed under subsection (a) of this section avail-
20 able for inspection by any person for a fee the Secretary establishes. However,
21 this subsection does not require the release of information described in section
22 552(f) of title 5 or otherwise protected by law from disclosure to the public.

23 (g) *FEES.*—(1) The Secretary of Transportation may establish, impose, and
24 collect from a person required to file a registration statement under subsection
25 (a) of this section a fee necessary to pay for the costs of the Secretary in proc-
26 essing the statement.

27 (2)(A) In addition to a fee established under paragraph (1) of this sub-
28 section, the Secretary of Transportation shall establish and impose by regula-
29 tion and collect an annual fee. Subject to subparagraph (B) of this para-
30 graph, the fee shall be at least \$250 but not more than \$5,000 from each per-
31 son required to file a registration statement under this section. The Secretary
32 shall determine the amount of the fee under this paragraph on at least one
33 of the following:

34 (i) gross revenue from transporting hazardous material.

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

37 (iii) the amount of hazardous material transported or caused to be
38 transported.

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

40 (v) the number of activities that the person carries out for which filing
41 a registration statement is required under this section.

1 (vi) the threat to property, individuals, and the environment from an
2 accident or incident involving the hazardous material transported or
3 caused to be transported.

4 (vii) the percentage of gross revenue derived from transporting hazard-
5 ous material.

6 (viii) the amount to be made available to carry out sections 5107(e),
7 5108(g)(2), 5115, and 5116 of this title.

8 (ix) other factors the Secretary considers appropriate.

9 (B) The Secretary of Transportation shall adjust the amount being collected
10 under this paragraph to reflect any unexpended balance in the account estab-
11 lished under section 5116(i) of this title. However, the Secretary is not re-
12 quired to refund any fee collected under this paragraph.

13 (C) The Secretary of Transportation shall transfer to the Secretary of the
14 Treasury amounts the Secretary of Transportation collects under this para-
15 graph for deposit in the account the Secretary of the Treasury establishes
16 under section 5116(i) of this title.

17 (h) MAINTAINING PROOF OF FILING AND PAYMENT OF FEES.—The Sec-
18 retary of Transportation may prescribe regulations requiring a person re-
19 quired to file a registration statement under subsection (a) of this section to
20 maintain proof of the filing and payment of fees imposed under subsection
21 (g) of this section.

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

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

26 (B) Subsections (a)–(h) of this section do not apply to a department, agen-
27 cy, or instrumentality of the United States Government, an authority of a
28 State or political subdivision of a State, or an employee of a department,
29 agency, instrumentality, or authority carrying out official duties.

30 **§ 5109. Motor carrier safety permits**

31 (a) REQUIREMENT.—A motor carrier may transport or cause to be trans-
32 ported by motor vehicle in commerce hazardous material only if the carrier
33 holds a safety permit the Secretary of Transportation issues under this section
34 authorizing the transportation and keeps a copy of the permit, or other proof
35 of its existence, in the vehicle. The Secretary shall issue a permit if the Sec-
36 retary finds the carrier is fit, willing, and able—

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

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

1 (3) to comply with applicable United States motor carrier safety laws
2 and regulations and applicable minimum financial responsibility laws
3 and regulations.

4 (b) *APPLICABLE TRANSPORTATION.*—The Secretary shall prescribe by regu-
5 lation the hazardous material and amounts of hazardous material to which
6 this section applies. However, this section shall apply at least to transpor-
7 tation by a motor carrier, in amounts the Secretary establishes, of—

8 (1) a class A or B explosive;

9 (2) liquefied natural gas;

10 (3) hazardous material the Secretary designates as extremely toxic by
11 inhalation; and

12 (4) a highway-route-controlled quantity of radioactive material, as de-
13 fined by the Secretary.

14 (c) *APPLICATIONS.*—A motor carrier shall file an application with the Sec-
15 retary for a safety permit to provide transportation under this section. The
16 Secretary may approve any part of the application or deny the application.
17 The application shall be under oath and contain information the Secretary
18 requires by regulation.

19 (d) *AMENDMENTS, SUSPENSIONS, AND REVOCATIONS.*—(1) After notice and
20 an opportunity for a hearing, the Secretary may amend, suspend, or revoke
21 a safety permit, as provided by procedures prescribed under subsection (e) of
22 this section, when the Secretary decides the motor carrier is not complying
23 with a requirement of this chapter, a regulation prescribed under this chapter,
24 or an applicable United States motor carrier safety law or regulation or min-
25 imum financial responsibility law or regulation.

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

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

29 (1) application procedures, including form, content, and fees necessary
30 to recover the complete cost of carrying out this section;

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

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

34 (4) other procedures the Secretary considers appropriate to carry out
35 this section.

36 (f) *SHIPPER RESPONSIBILITY.*—A person offering hazardous material for
37 motor vehicle transportation in commerce may offer the material to a motor
38 carrier only if the carrier has a safety permit issued under this section au-
39 thorizing the transportation.

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

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

6 **§5110. Shipping papers and disclosure**

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

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

14 (1) a description of the hazardous material, including the proper ship-
15 ping name;

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

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

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

21 (5) a telephone number for obtaining more specific handling and miti-
22 gation information about the hazardous material at any time during
23 which the material is transported.

24 (c) *KEEPING SHIPPING PAPERS ON THE VEHICLE.*—(1) A motor carrier,
25 and the person offering the hazardous material for transportation if a private
26 motor carrier, shall keep the shipping paper on the vehicle transporting the
27 material.

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

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

32 (B) the documents are made available to a representative of a depart-
33 ment, agency, or instrumentality of the United States Government or a
34 State or local authority responding to an accident or incident involving
35 the motor vehicle, train, vessel, aircraft, or facility.

36 (d) *DISCLOSURE TO EMERGENCY RESPONSE AUTHORITIES.*—When an in-
37 cident involving hazardous material being transported in commerce occurs,
38 the person transporting the material, immediately on request of appropriate
39 emergency response authorities, shall disclose to the authorities information
40 about the material.

1 **§5111. Rail tank cars**

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

7 **§5112. Highway routing of hazardous material**

8 (a) *APPLICATION.—(1) This section applies to a motor vehicle only if the*
9 *vehicle is transporting hazardous material in commerce for which placarding*
10 *of the vehicle is required under regulations prescribed under this chapter.*
11 *However, the Secretary of Transportation by regulation may extend applica-*
12 *tion of this section or a standard prescribed under subsection (b) of this sec-*
13 *tion to—*

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

16 (B) *any motor vehicle used to transport hazardous material in com-*
17 *merce.*

18 (2) *Except as provided by subsection (d) of this section and section 5125(c)*
19 *of this title, each State and Indian tribe may establish, maintain, and en-*
20 *force—*

21 (A) *designations of specific highway routes over which hazardous ma-*
22 *terial may and may not be transported by motor vehicle; and*

23 (B) *limitations and requirements related to highway routing.*

24 (b) *STANDARDS FOR STATES AND INDIAN TRIBES.—(1) The Secretary, in*
25 *consultation with the States, shall prescribe by regulation standards for States*
26 *and Indian tribes to use in carrying out subsection (a) of this section. The*
27 *standards shall include—*

28 (A) *a requirement that a highway routing designation, limitation, or*
29 *requirement of a State or Indian tribe shall enhance public safety in the*
30 *area subject to the jurisdiction of the State or tribe and in areas of the*
31 *United States not subject to the jurisdiction of the State or tribe and di-*
32 *rectly affected by the designation, limitation, or requirement;*

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

36 (C) *a requirement that, in establishing a highway routing designation,*
37 *limitation, or requirement, a State or Indian tribe consult with appro-*
38 *priate State, local, and tribal officials having jurisdiction over areas of*
39 *the United States not subject to the jurisdiction of that State or tribe*
40 *establishing the designation, limitation, or requirement and with affected*
41 *industries;*

1 (D) a requirement that a highway routing designation, limitation, or
2 requirement of a State or Indian tribe shall ensure through highway
3 routing for the transportation of hazardous material between adjacent
4 areas;

5 (E) a requirement that a highway routing designation, limitation, or
6 requirement of one State or Indian tribe affecting the transportation of
7 hazardous material in another State or tribe may be established, main-
8 tained, and enforced by the State or tribe establishing the designation,
9 limitation, or requirement only if—

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

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

15 (F) a requirement that establishing a highway routing designation,
16 limitation, or requirement of a State or Indian tribe be completed in a
17 timely way;

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

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

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

28 (ii) for resolving a dispute between political subdivisions; and

29 (I) a requirement that, in carrying out subsection (a) of this section,
30 a State or Indian tribe shall consider—

31 (i) population densities;

32 (ii) the types of highways;

33 (iii) the types and amounts of hazardous material;

34 (iv) emergency response capabilities;

35 (v) the results of consulting with affected persons;

36 (vi) exposure and other risk factors;

37 (vii) terrain considerations;

38 (viii) the continuity of routes;

39 (ix) alternative routes;

40 (x) the effects on commerce;

41 (xi) delays in transportation; and

1 (xii) other factors the Secretary considers appropriate.

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

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

8 (d) *DISPUTE RESOLUTION.*—(1) The Secretary shall prescribe regulations
9 for resolving a dispute related to through highway routing or to an agreement
10 with a proposed highway route designation, limitation, or requirement be-
11 tween or among States, political subdivisions of different States, or Indian
12 tribes.

13 (2) A State or Indian tribe involved in a dispute under this subsection may
14 petition the Secretary to resolve the dispute. The Secretary shall resolve the
15 dispute not later than one year after receiving the petition. The resolution
16 shall provide the greatest level of highway safety without being an unreason-
17 able burden on commerce and shall ensure compliance with standards pre-
18 scribed under subsection (b) of this section.

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

22 (i) the day the Secretary issues a final decision; or

23 (ii) the last day of the one-year period beginning on the day the Sec-
24 retary receives the petition.

25 (B) A State or Indian tribe adversely affected by a decision of the Secretary
26 under this subsection may bring a civil action for judicial review of the deci-
27 sion in an appropriate district court of the United States not later than 89
28 days after the day the decision becomes final.

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

32 (f) *EXISTING RADIOACTIVE MATERIAL ROUTING REGULATIONS.*—The Sec-
33 retary is not required to amend or again prescribe regulations related to high-
34 way routing designations over which radioactive material may and may not
35 be transported by motor vehicles, and limitations and requirements related to
36 the routing, that were in effect on November 16, 1990.

37 **§ 5113. Unsatisfactory safety rating**

38 (a) *PROHIBITED TRANSPORTATION.*—A motor carrier receiving an unsatis-
39 factory safety rating from the Secretary of Transportation has 45 days to im-
40 prove the rating to conditional or satisfactory. Beginning on the 46th day
41 and until the motor carrier receives a conditional or satisfactory rating, a

1 *motor carrier not having received a conditional or satisfactory rating during*
 2 *the 45-day period may not operate a commercial motor vehicle (as defined*
 3 *in section 31132 of this title)—*

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

6 *(2) to transport more than 15 individuals.*

7 *(b) RATING REVIEW.—The Secretary shall review the factors that resulted*
 8 *in a motor carrier receiving an unsatisfactory rating not later than 30 days*
 9 *after the motor carrier requests a review.*

10 *(c) PROHIBITED GOVERNMENT USE.—A department, agency, or instrumen-*
 11 *tality of the United States Government may not use a motor carrier that has*
 12 *an unsatisfactory rating from the Secretary—*

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

15 *(2) to transport more than 15 individuals.*

16 *(d) PUBLIC AVAILABILITY AND UPDATING OF RATINGS.—The Secretary, in*
 17 *consultation with the Interstate Commerce Commission, shall prescribe regu-*
 18 *lations amending the motor carrier safety regulations in subchapter B of*
 19 *chapter III of title 49, Code of Federal Regulations, to establish a system to*
 20 *make readily available to the public, and update periodically, the safety rat-*
 21 *ings of motor carriers that have unsatisfactory ratings from the Secretary.*

22 **§5114. Air transportation of ionizing radiation material**

23 *(a) TRANSPORTING IN AIR COMMERCE.—Material that emits ionizing radi-*
 24 *ation spontaneously may be transported on a passenger-carrying aircraft in*
 25 *air commerce (as defined in section 40102(a) of this title) only if the material*
 26 *is intended for a use in, or incident to, research or medical diagnosis or treat-*
 27 *ment and does not present an unreasonable hazard to health and safety when*
 28 *being prepared for, and during, transportation.*

29 *(b) PROCEDURES.—The Secretary of Transportation shall prescribe proce-*
 30 *dures for monitoring and enforcing regulations prescribed under this section.*

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

34 **§5115. Training curriculum for the public sector**

35 *(a) DEVELOPMENT AND UPDATING.—Not later than November 16, 1992, in*
 36 *coordination with the Director of the Federal Emergency Management Agen-*
 37 *cy, Chairman of the Nuclear Regulatory Commission, Administrator of the*
 38 *Environmental Protection Agency, Secretaries of Labor, Energy, and Health*
 39 *and Human Services, and Director of the National Institute of Environ-*
 40 *mental Health Sciences, and using the existing coordinating mechanisms of*
 41 *the national response team and, for radioactive material, the Federal Radio-*

1 *logical Preparedness Coordinating Committee, the Secretary of Transpor-*
2 *tation shall develop and update periodically a curriculum consisting of a list*
3 *of courses necessary to train public sector emergency response and prepared-*
4 *ness teams. Only in developing the curriculum, the Secretary of Transpor-*
5 *tation shall consult with regional response teams established under the na-*
6 *tional contingency plan established under section 105 of the Comprehensive*
7 *Environmental Response, Compensation, and Liability Act of 1980 (42*
8 *U.S.C. 9605), representatives of commissions established under section 301 of*
9 *the Emergency Planning and Community Right-To-Know Act of 1986 (42*
10 *U.S.C. 11001), persons (including governmental entities) that provide train-*
11 *ing for responding to accidents and incidents involving the transportation of*
12 *hazardous material, and representatives of persons that respond to those acci-*
13 *dents and incidents.*

14 *(b) REQUIREMENTS.—The curriculum developed under subsection (a) of*
15 *this section—*

16 *(1) shall include—*

17 *(A) a recommended course of study to train public sector employ-*
18 *ees to respond to an accident or incident involving the transpor-*
19 *tation of hazardous material and to plan for those responses;*

20 *(B) recommended basic courses and minimum number of hours*
21 *of instruction necessary for public sector employees to be able to re-*
22 *spond safely and efficiently to an accident or incident involving the*
23 *transportation of hazardous material and to plan those responses;*
24 *and*

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

30 *(2) may include recommendations on material appropriate for use in*
31 *a recommended basic course described in clause (1)(B) of this subsection.*

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

35 *(1) regulations related to hazardous waste operations and emergency*
36 *response contained in part 1910 of title 29, Code of Federal Regulations,*
37 *prescribed by the Secretary of Labor;*

38 *(2) regulations related to worker protection standards for hazardous*
39 *waste operations contained in part 311 of title 40, Code of Federal Regu-*
40 *lations, prescribed by the Administrator; and*

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

3 (d) *DISTRIBUTION AND PUBLICATION.*—With the national response team—

4 (1) the Director of the Federal Emergency Management Agency shall
5 distribute the curriculum and any updates to the curriculum to the re-
6 gional response teams and all committees and commissions established
7 under section 301 of the Emergency Planning and Community Right-
8 To-Know Act of 1986 (42 U.S.C. 11001); and

9 (2) the Secretary of Transportation may publish a list of programs
10 that uses a course developed under this section for training public sector
11 employees to respond to an accident or incident involving the transpor-
12 tation of hazardous material.

13 **§5116. Planning and training grants, monitoring, and re-**
14 **view**

15 (a) *PLANNING GRANTS.*—(1) The Secretary of Transportation shall make
16 grants to States—

17 (A) to develop, improve, and carry out emergency plans under the
18 Emergency Planning and Community Right-To-Know Act of 1986 (42
19 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazardous
20 material in a State and between States; and

21 (B) to decide on the need for a regional hazardous material emergency
22 response team.

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

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

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

33 (b) *TRAINING GRANTS.*—(1) The Secretary of Transportation shall make
34 grants to States and Indian tribes to train public sector employees to respond
35 to accidents and incidents involving hazardous material.

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

38 (A) to a State or Indian tribe only if the State or tribe certifies that
39 the total amount the State or tribe expends (except amounts of the Gov-
40 ernment) to train public sector employees to respond to an accident or

1 *incident involving hazardous material will at least equal the average*
2 *level of expenditure for the last 2 fiscal years;*

3 *(B) to a State or Indian tribe only if the State or tribe makes an*
4 *agreement with the Secretary that the State or tribe will use in that fis-*
5 *cal year, for training public sector employees to respond to an accident*
6 *or incident involving hazardous material—*

7 *(i) a course developed or identified under section 5115 of this*
8 *title; or*

9 *(ii) another course the Secretary decides is consistent with the ob-*
10 *jectives of this section; and*

11 *(C) to a State only if the State agrees to make available at least 75*
12 *percent of the amount of the grant under paragraph (1) of this subsection*
13 *in the fiscal year for training public sector employees a political subdivi-*
14 *sion of the State employs or uses.*

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

16 *(A) to pay—*

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

18 *(ii) travel expenses of those employees to and from the training*
19 *facility;*

20 *(iii) room and board of those employees when at the training fa-*
21 *cility; and*

22 *(iv) travel expenses of individuals providing the training;*

23 *(B) by the State, political subdivision, or Indian tribe to provide the*
24 *training; and*

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

28 *(i) if the agreement allows the Secretary and the State or tribe*
29 *to conduct random examinations, inspections, and audits of the*
30 *training without prior notice; and*

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

33 *(4) The Secretary of Transportation shall allocate amounts made available*
34 *for grants under this subsection for a fiscal year among eligible States and*
35 *Indian tribes based on the needs of the States and tribes for emergency re-*
36 *sponse training. In making a decision about those needs, the Secretary shall*
37 *consider—*

38 *(A) the number of hazardous material facilities in the State or on land*
39 *under the jurisdiction of the tribe;*

40 *(B) the types and amounts of hazardous material transported in the*
41 *State or on that land;*

1 (C) whether the State or tribe imposes and collects a fee on transport-
2 ing hazardous material;

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

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

7 (c) *COMPLIANCE WITH CERTAIN LAW.*—The Secretary of Transportation
8 may make a grant to a State under this section in a fiscal year only if the
9 State certifies that the State complies with sections 301 and 303 of the Emer-
10 gency Planning and Community Right-To-Know Act of 1986 (42 U.S.C.
11 11001, 11003).

12 (d) *APPLICATIONS.*—A State or Indian tribe interested in receiving a grant
13 under this section shall submit an application to the Secretary of Transpor-
14 tation. The application must be submitted at the time, and contain informa-
15 tion, the Secretary requires by regulation to carry out the objectives of this
16 section.

17 (e) *GOVERNMENT'S SHARE OF COSTS.*—A grant under this section is for
18 80 percent of the cost the State or Indian tribe incurs in the fiscal year to
19 carry out the activity for which the grant is made. Amounts of the State or
20 tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not part
21 of the non-Government share under this subsection.

22 (f) *MONITORING AND TECHNICAL ASSISTANCE.*—In coordination with the
23 Secretaries of Transportation and Energy, Administrator of the Environ-
24 mental Protection Agency, and Director of the National Institute of Environ-
25 mental Health Sciences, the Director of the Federal Emergency Management
26 Agency shall monitor public sector emergency response planning and training
27 for an accident or incident involving hazardous material. Considering the re-
28 sults of the monitoring, the Secretaries, Administrator, and Directors each
29 shall provide technical assistance to a State, political subdivision of a State,
30 or Indian tribe for carrying out emergency response training and planning
31 for an accident or incident involving hazardous material and shall coordinate
32 the assistance using the existing coordinating mechanisms of the national re-
33 sponse team and, for radioactive material, the Federal Radiological Prepared-
34 ness Coordinating Committee.

35 (g) *DELEGATION OF AUTHORITY.*—To minimize administrative costs and
36 to coordinate Government grant programs for emergency response training
37 and planning, the Secretary of Transportation may delegate to the Directors
38 of the Federal Emergency Management Agency and National Institute of En-
39 vironmental Health Sciences, Chairman of the Nuclear Regulatory Commis-
40 sion, Administrator of the Environmental Protection Agency, and Secretaries
41 of Labor and Energy any of the following:

1 (1) authority to receive applications for grants under this section.

2 (2) authority to review applications for technical compliance with this
3 section.

4 (3) authority to review applications to recommend approval or dis-
5 approval.

6 (4) any other ministerial duty associated with grants under this sec-
7 tion.

8 (h) *MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.*—The Secretar-
9 ies of Transportation, Labor, and Energy, Directors of the Federal Emergency
10 Management Agency and National Institute of Environmental Health
11 Sciences, Chairman of the Nuclear Regulatory Commission, and Adminis-
12 trator of the Environmental Protection Agency shall review periodically, with
13 the head of each department, agency, or instrumentality of the Government,
14 all emergency response and preparedness training programs of that depart-
15 ment, agency, or instrumentality to minimize duplication of effort and ex-
16 pense of the department, agency, or instrumentality in carrying out the pro-
17 grams and shall take necessary action to minimize duplication.

18 (i) *ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.*—The Secretary
19 of the Treasury shall establish an account in the Treasury into which the Sec-
20 retary of the Treasury shall deposit amounts the Secretary of Transportation
21 collects under section 5108(g)(2)(A) of this title and transfers to the Secretary
22 of the Treasury under section 5108(g)(2)(C) of this title. Without further ap-
23 propriation, amounts in the account are available—

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

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

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

31 **§5117. Exemptions and exclusions**

32 (a) *AUTHORITY TO EXEMPT.*—(1) As provided under procedures prescribed
33 by regulation, the Secretary of Transportation may issue an exemption from
34 this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or
35 5112 of this title to a person transporting, or causing to be transported, haz-
36 ardous material in a way that achieves a safety level—

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

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

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

1 (b) *APPLICATIONS.*—When applying for an exemption or renewal of an ex-
 2 emption under this section, the person must provide a safety analysis pre-
 3 scribed by the Secretary that justifies the exemption. The Secretary shall pub-
 4 lish in the Federal Register notice that an application for an exemption has
 5 been filed and shall give the public an opportunity to inspect the safety anal-
 6 ysis and comment on the application. This subsection does not require the re-
 7 lease of information protected by law from public disclosure.

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

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

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

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

15 (2) This chapter and regulations prescribed under this chapter do not pro-
 16 hibit—

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

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

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

24 **§5118. Inspectors**

25 (a) *GENERAL REQUIREMENT.*—The Secretary of Transportation shall
 26 maintain the employment of 30 hazardous material safety inspectors more
 27 than the total number of safety inspectors authorized for the fiscal year that
 28 ended September 30, 1990, for the Federal Railroad Administration, the Fed-
 29 eral Highway Administration, and the Research and Special Programs Ad-
 30 ministration.

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

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

38 (B) to the maximum extent practicable shipments of radioactive mate-
 39 rial that are not high-level radioactive waste or nuclear spent material.

1 (2) *In carrying out their duties, those 10 additional inspectors shall cooperate to the greatest extent possible with safety inspectors of the Nuclear Regulatory Commission and appropriate State and local government officials.*

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

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

4 (B) *3 to the Federal Railroad Administration.*

5 (C) *3 to the Federal Highway Administration.*

6 (D) *the other 3 among the administrations referred to in clauses (A)–*

7 *(C) of this paragraph as the Secretary decides.*

8 (c) *ALLOCATION OF OTHER INSPECTORS.—The Secretary shall allocate, as the Secretary decides, the 20 additional inspectors authorized under this section and not allocated under subsection (b) of this section among the administrations referred to in subsection (b)(3)(A)–(C) of this section.*

9 **§ 5119. Uniform forms and procedures**

10 (a) *WORKING GROUP.—The Secretary of Transportation shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Conference of State Legislatures. The purposes of the working group are—*

11 (1) *to establish uniform forms and procedures for a State—*

12 (A) *to register persons that transport or cause to be transported hazardous material by motor vehicle in the State; and*

13 (B) *to allow the transportation of hazardous material in the State; and*

14 (2) *to decide whether to limit the filing of any State registration and permit forms and collection of filing fees to the State in which the person resides or has its principal place of business.*

15 (b) *CONSULTATION AND REPORTING.—The working group—*

16 (1) *shall consult with persons subject to registration and permit requirements described in subsection (a) of this section; and*

17 (2) *not later than November 16, 1993, shall submit to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Public Works and Transportation of the House of Representatives a final report that contains—*

18 (A) *a detailed statement of its findings and conclusions; and*

19 (B) *its joint recommendations on the matters referred to in subsection (a) of this section.*

20 (c) *REGULATIONS ON RECOMMENDATIONS.—(1) The Secretary shall prescribe regulations to carry out the recommendations contained in the report submitted under subsection (b) of this section with which the Secretary agrees.*

1 *The regulations shall be prescribed by the later of the last day of the 3-year*
 2 *period beginning on the date the working group submitted its report or the*
 3 *last day of the 90-day period beginning on the date on which at least 26*
 4 *States adopt all of the recommendations of the report. A regulation prescribed*
 5 *under this subsection may not define or limit the amount of a fee a State*
 6 *may impose or collect.*

7 *(2) A regulation prescribed under this subsection takes effect one year after*
 8 *it is prescribed. The Secretary may extend the one-year period for an addi-*
 9 *tional year for good cause. After a regulation is effective, a State may estab-*
 10 *lish, maintain, or enforce a requirement related to the same subject matter*
 11 *only if the requirement is the same as the regulation.*

12 *(3) In consultation with the working group, the Secretary shall develop a*
 13 *procedure to eliminate differences in how States carry out a regulation pre-*
 14 *scribed under this subsection.*

15 *(d) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee*
 16 *Act (5 App. U.S.C.) does not apply to the working group.*

17 **§5120. International uniformity of standards and require-**
 18 **ments**

19 *(a) PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance and*
 20 *direction from the Secretary of State, the Secretary of Transportation shall*
 21 *participate in international forums that establish or recommend mandatory*
 22 *standards and requirements for transporting hazardous material in inter-*
 23 *national commerce.*

24 *(b) CONSULTATION.—The Secretary of Transportation may consult with in-*
 25 *terested authorities to ensure that, to the extent practicable, regulations the*
 26 *Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of this title*
 27 *are consistent with standards related to transporting hazardous material that*
 28 *international authorities adopt.*

29 *(c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIRE-*
 30 *MENTS.—This section—*

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

34 *(2) does not prohibit the Secretary from prescribing a safety require-*
 35 *ment more stringent than a requirement included in a standard adopted*
 36 *by an international authority if the Secretary decides the requirement*
 37 *is necessary in the public interest.*

38 **§5121. Administrative**

39 *(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of*
 40 *Transportation may investigate, make reports, issue subpoenas, conduct hear-*
 41 *ings, require the production of records and property, take depositions, and*

1 conduct research, development, demonstration, and training activities. After
2 notice and an opportunity for a hearing, the Secretary may issue an order
3 requiring compliance with this chapter or a regulation prescribed under this
4 chapter.

5 (b) *RECORDS, REPORTS, AND INFORMATION.*—A person subject to this
6 chapter shall—

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

9 (2) make the records, reports, and information available when the Sec-
10 retary requests.

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

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

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

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

20 (d) *FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES,*
21 *AND ACTIONS.*—(1) The Secretary shall—

22 (A) maintain a facility and technical staff sufficient to provide, with-
23 in the United States Government, the capability of evaluating a risk re-
24 lated to the transportation of hazardous material and material alleged
25 to be hazardous;

26 (B) maintain a central reporting system and information center capa-
27 ble of providing information and advice to law enforcement and fire-
28 fighting personnel, other interested individuals, and officers and employ-
29 ees of the Government and State and local governments on meeting an
30 emergency related to the transportation of hazardous material; and

31 (C) conduct a continuous review on all aspects of transporting hazard-
32 ous material to decide on and take appropriate actions to ensure safe
33 transportation of hazardous material.

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

37 (e) *ANNUAL REPORT.*—The Secretary shall submit to the President, for sub-
38 mission to Congress, not later than June 15th of each year, a report about
39 the transportation of hazardous material during the prior calendar year. The
40 report shall include—

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

3 (2) a list and summary of applicable Government regulations, criteria,
4 orders, and exemptions;

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

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

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

10 (6) recommendations for appropriate legislation.

11 **§ 5122. Enforcement**

12 (a) *GENERAL.*—At the request of the Secretary of Transportation, the At-
13 torney General may bring a civil action in an appropriate district court of
14 the United States to enforce this chapter or a regulation prescribed or order
15 issued under this chapter. The court may award appropriate relief, including
16 punitive damages.

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

20 (A) to suspend or restrict the transportation of the hazardous material
21 responsible for the hazard; or

22 (B) to eliminate or ameliorate the hazard.

23 (2) On request of the Secretary, the Attorney General shall bring an action
24 under paragraph (1) of this subsection.

25 **§ 5123. Civil penalty**

26 (a) *PENALTY.*—(1) A person that knowingly violates this chapter or a regu-
27 lation prescribed or order issued under this chapter is liable to the United
28 States Government for a civil penalty of at least \$250 but not more than
29 \$25,000 for each violation. A person acts knowingly when—

30 (A) the person has actual knowledge of the facts giving rise to the vio-
31 lation; or

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

34 (2) A separate violation occurs for each day the violation, committed by
35 a person that transports or causes to be transported hazardous material, con-
36 tinues.

37 (b) *HEARING REQUIREMENT.*—The Secretary of Transportation may find
38 that a person has violated this chapter or a regulation prescribed under this
39 chapter only after notice and an opportunity for a hearing. The Secretary
40 shall impose a penalty under this section by giving the person written notice
41 of the amount of the penalty.

1 (c) *PENALTY CONSIDERATIONS.*—*In determining the amount of a civil pen-*
 2 *alty under this section, the Secretary shall consider—*

3 (1) *the nature, circumstances, extent, 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 the ability to*
 6 *continue to do business; and*

7 (3) *other matters that justice requires.*

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

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

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

16 (g) *DEPOSITING AMOUNTS COLLECTED.*—*Amounts collected under this sec-*
 17 *tion shall be deposited in the Treasury as miscellaneous receipts.*

18 **§ 5124. Criminal penalty**

19 *A person knowingly violating section 5104(b) of this title or willfully vio-*
 20 *lating this chapter or a regulation prescribed or order issued under this chap-*
 21 *ter shall be fined under title 18, imprisoned for not more than 5 years, or*
 22 *both.*

23 **§ 5125. Preemption**

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

27 (1) *complying with a requirement of the State, political subdivision,*
 28 *or tribe and a requirement of this chapter or a regulation prescribed*
 29 *under this chapter is not possible; or*

30 (2) *the requirement of the State, political subdivision, or tribe, as ap-*
 31 *plied or enforced, is an obstacle to accomplishing and carrying out this*
 32 *chapter or a regulation prescribed under this chapter.*

33 (b) *SUBSTANTIVE DIFFERENCES.*—*(1) Except as provided in subsection (c)*
 34 *of this section, a law, regulation, order, or other requirement of a State, polit-*
 35 *ical subdivision of a State, or Indian tribe about any of the following subjects,*
 36 *that is not substantively the same as a provision of this chapter or a regula-*
 37 *tion prescribed under this chapter, is preempted:*

38 (A) *the designation, description, and classification of hazardous mate-*
 39 *rial.*

40 (B) *the packing, repacking, handling, labeling, marking, and*
 41 *placarding of hazardous material.*

1 (C) the preparation, execution, and use of shipping documents related
2 to hazardous material and requirements related to the number, contents,
3 and placement of those documents.

4 (D) the written notification, recording, and reporting of the unintentional
5 release in transportation of hazardous material.

6 (E) the design, manufacturing, fabricating, marking, maintenance, re-
7 conditioning, repairing, or testing of a package or container represented,
8 marked, certified, or sold as qualified for use in transporting hazardous
9 material.

10 (2) If the Secretary of Transportation prescribes or has prescribed under
11 section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provi-
12 sion of law a regulation or standard related to a subject referred to in para-
13 graph (1) of this subsection, a State, political subdivision of a State, or In-
14 dian tribe may prescribe, issue, maintain, and enforce only a law, regulation,
15 standard, or order about the subject that is substantively the same as a provi-
16 sion of this chapter or a regulation prescribed or order issued under this
17 chapter. The Secretary shall decide on and publish in the Federal Register
18 the effective date of section 5103(b) of this title for any regulation or standard
19 about any of those subjects that the Secretary prescribes after November 16,
20 1990. However, the effective date may not be earlier than 90 days after the
21 Secretary prescribes the regulation or standard nor later than the last day
22 of the 2-year period beginning on the date the Secretary prescribes the regula-
23 tion or standard.

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

28 (c) COMPLIANCE WITH SECTION 5112(b) REGULATIONS.—(1) Except as
29 provided in paragraph (2) of this subsection, after the last day of the 2-year
30 period beginning on the date a regulation is prescribed under section 5112(b)
31 of this title, a State or Indian tribe may establish, maintain, or enforce a
32 highway routing designation over which hazardous material may or may not
33 be transported by motor vehicles, or a limitation or requirement related to
34 highway routing, only if the designation, limitation, or requirement complies
35 with section 5112(b).

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

39 (B) This subsection and section 5112 of this title do not require a State
40 or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing

1 designation, limitation, or requirement was established before November 16,
2 1990.

3 (C) The Secretary may allow a highway routing designation, limitation,
4 or requirement to continue in effect until a dispute related to the designation,
5 limitation, or requirement is resolved under section 5112(d) of this title.

6 (d) DECISIONS ON PREEMPTION.—(1) A person (including a State, politi-
7 cal subdivision of a State, or Indian tribe) directly affected by a requirement
8 of a State, political subdivision, or tribe may apply to the Secretary, as pro-
9 vided by regulations prescribed by the Secretary, for a decision on whether
10 the requirement is preempted by subsection (a), (b)(1), or (c) of this section.
11 The Secretary shall publish notice of the application in the Federal Register.
12 After notice is published, an applicant may not seek judicial relief on the
13 same or substantially the same issue until the Secretary takes final action
14 on the application or until 180 days after the application is filed, whichever
15 occurs first.

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

19 (3) Subsection (a) of this section does not prevent a State, political subdivi-
20 sion of a State, or Indian tribe, or another person directly affected by a re-
21 quirement, from seeking a decision on preemption from a court of competent
22 jurisdiction instead of applying to the Secretary under paragraph (1) of this
23 subsection.

24 (e) WAIVER OF PREEMPTION.—A State, political subdivision of a State, or
25 Indian tribe may apply to the Secretary for a waiver of preemption of a re-
26 quirement the State, political subdivision, or tribe acknowledges is preempted
27 by subsection (a), (b)(1), or (c) of this section. Under a procedure the Sec-
28 retary prescribes by regulation, the Secretary may waive preemption on de-
29 ciding the requirement—

30 (1) provides the public at least as much protection as do requirements
31 of this chapter and regulations prescribed under this chapter; and

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

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

37 (g) FEES.—A State, political subdivision of a State, or Indian tribe may
38 impose a fee related to transporting hazardous material only if the fee is fair
39 and used for a purpose related to transporting hazardous material, including
40 enforcement and planning, developing, and maintaining a capability for
41 emergency response.

§5126. Relationship to other laws

(a) *CONTRACTS.*—A person under contract with a department, agency, or instrumentality of the United States Government that transports or causes to be transported hazardous material, or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container that the person represents, marks, certifies, or sells as qualified for use in transporting hazardous material must comply with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing that is in or affects commerce must comply with the provision, regulation, order, or requirement.

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

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

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

§5127. Authorization of appropriations

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

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

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

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

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

(2) Not more than \$7,800,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each

1 of the fiscal years ending September 30, 1993–1998, to carry out section
2 5116(b) of this title.

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

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

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

11 (e) UNIFORM FORMS AND PROCEDURES.—Not more than \$400,000 may be
12 appropriated to the Secretary of Transportation for the fiscal year ending
13 September 30, 1993, to carry out section 5119 of this title.

14 (f) CREDITS TO APPROPRIATIONS.—The Secretary of Transportation may
15 credit to any appropriation to carry out this chapter an amount received
16 from a State, Indian tribe, or other public authority or private entity for ex-
17 penses the Secretary incurs in providing training to the State, authority, or
18 entity.

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

21 **CHAPTER 53—MASS TRANSPORTATION**

Sec.

5301. Policies, findings, and purposes.

5302. Definitions.

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5308. Mass Transit Account block grants.

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ities.

5311. Financial assistance for other than urbanized areas.

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 5338. Authorizations.

1 **§5301. Policies, findings, and purposes**

2 (a) *DEVELOPMENT OF TRANSPORTATION SYSTEMS.*—It is in the interest of
 3 the United States to encourage and promote the development of transportation
 4 systems that embrace various modes of transportation and efficiently maxi-
 5 mize mobility of individuals and goods in and through urbanized areas and
 6 minimize transportation-related fuel consumption and air pollution.

7 (b) *GENERAL FINDINGS.*—Congress finds that—

8 (1) more than 70 percent of the population of the United States is lo-
 9 cated in rapidly expanding urban areas that generally cross the bound-
 10 ary lines of local jurisdictions and often extend into at least 2 States;

11 (2) the welfare and vitality of urban areas, the satisfactory movement
 12 of people and goods within those areas, and the effectiveness of programs
 13 aided by the United States Government are jeopardized by deteriorating
 14 or inadequate urban transportation service and facilities, the intensifica-
 15 tion of traffic congestion, and the lack of coordinated, comprehensive,
 16 and continuing development planning;

17 (3) transportation is the lifeblood of an urbanized society, and the
 18 health and welfare of an urbanized society depend on providing efficient,
 19 economical, and convenient transportation in and between urban areas;

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

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

28 (6) some urban areas were developing preliminary plans for, or carry-
 29 ing out, projects in the early 1970's to revitalize their mass transpor-
 30 tation operations;

31 (7) significant mass transportation improvements are necessary to
 32 achieve national goals for improved air quality, energy conservation,
 33 international competitiveness, and mobility for elderly individuals, indi-

1 *viduals with disabilities, and economically disadvantaged individuals in*
2 *urban and rural areas of the United States;*

3 *(8) financial assistance by the Government to develop efficient and co-*
4 *ordinated mass transportation systems is essential to solve the urban*
5 *transportation problems referred to in clause (2) of this subsection; and*

6 *(9) immediate substantial assistance by the Government is needed to*
7 *enable mass transportation systems to continue providing vital transpor-*
8 *tation service.*

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

13 *(d) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.—It is*
14 *the policy of the Government that elderly individuals and individuals with*
15 *disabilities have the same right as other individuals to use mass transpor-*
16 *tation service and facilities. Special efforts shall be made in planning and*
17 *designing mass transportation service and facilities to ensure that mass*
18 *transportation can be used by elderly individuals and individuals with dis-*
19 *abilities. All programs of the Government assisting mass transportation shall*
20 *carry out this policy.*

21 *(e) PRESERVING THE ENVIRONMENT.—It is the policy of the Government*
22 *that special effort shall be made to preserve the natural beauty of the country-*
23 *side, public park and recreation lands, wildlife and waterfowl refuges, and*
24 *important historical and cultural assets when planning, designing, and car-*
25 *rying out an urban mass transportation capital project with assistance from*
26 *the Government under sections 5309 and 5310 of this title.*

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

28 *(1) to assist in developing improved mass transportation equipment,*
29 *facilities, techniques, and methods with the cooperation of public and*
30 *private mass transportation companies;*

31 *(2) to encourage the planning and establishment of areawide urban*
32 *mass transportation systems needed for economical and desirable urban*
33 *development with the cooperation of public and private mass transpor-*
34 *tation companies;*

35 *(3) to assist States and local governments and their authorities in fi-*
36 *nancing areawide urban mass transportation systems that are to be op-*
37 *erated by public or private mass transportation companies as decided by*
38 *local needs;*

39 *(4) to provide financial assistance to State and local governments and*
40 *their authorities to help carry out national goals related to mobility for*

1 elderly individuals, individuals with disabilities, and economically dis-
2 advantaged individuals; and

3 (5) to establish a partnership that allows a community, with financial
4 assistance from the Government, to satisfy its urban mass transportation
5 requirements.

6 **§ 5302. Definitions**

7 (a) *GENERAL.*—In this chapter—

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

9 (A) acquiring, constructing, supervising, or inspecting equipment
10 or a facility for use in mass transportation, expenses incidental to
11 the acquisition or construction (including designing, engineering, lo-
12 cation surveying, mapping, and acquiring rights of way), relocation
13 assistance, acquiring replacement housing sites, and acquiring, con-
14 structing, relocating, and rehabilitating replacement housing;

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

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

19 (D) overhauling rail rolling stock.

20 (2) “chief executive officer of a State” includes the designee of the chief
21 executive officer.

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

23 (A) that is effective temporarily before the expiration of the other-
24 wise specified periods of time for public notice and comment under
25 section 5334(b) of this title; and

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

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

29 (ii) would frustrate substantially legislative policy and in-
30 tent; or

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

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

34 (A) using and occupying a separate right of way or rail for the
35 exclusive use of mass transportation and other high occupancy vehi-
36 cles; or

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

39 (5) “handicapped individual” means an individual who, because of
40 illness, injury, age, congenital malfunction, or other incapacity or tem-
41 porary or permanent disability (including an individual who is a wheel-

1 chair user or has semiambulatory capability), cannot use effectively,
 2 without special facilities, planning, or design, mass transportation serv-
 3 ice or a mass transportation facility.

4 (6) “local governmental authority” includes—

5 (A) a political subdivision of a State;

6 (B) an authority of at least one State or political subdivision of
 7 a State;

8 (C) an Indian tribe; and

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

11 (7) “mass transportation” means transportation by a conveyance that
 12 provides regular and continuing general or special transportation to the
 13 public, but does not include schoolbus, charter, or sightseeing transpor-
 14 tation.

15 (8) “net project cost” means the part of a project that reasonably can-
 16 not be financed from revenues.

17 (9) “new bus model” means a bus model (including a model using al-
 18 ternative fuel)—

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

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

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

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

29 (12) “urban area” means an area that includes a municipality or
 30 other built-up place that the Secretary of Transportation, after consider-
 31 ing local patterns and trends of urban growth, decides is appropriate for
 32 a local mass transportation system to serve individuals in the locality.

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

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

36 (B) designated an urbanized area within boundaries fixed by
 37 State and local officials and approved by the Secretary of Transpor-
 38 tation.

39 (b) *AUTHORITY TO MODIFY “HANDICAPPED INDIVIDUAL”*.—The Secretary
 40 of Transportation by regulation may modify the definition of subsection
 41 (a)(5) of this section as it applies to section 5307(d)(1)(D) of this title.

1 **§5303. Metropolitan planning**

2 (a) *DEVELOPMENT REQUIREMENTS.*—To carry out section 5301(a) of this
3 title, metropolitan planning organizations designated under subsection (c) of
4 this section, in cooperation with States, shall develop transportation plans
5 and programs for State urbanized areas. The plans and programs for each
6 area shall provide for developing transportation facilities (including pedes-
7 trian walkways and bicycle transportation facilities) that will function as an
8 intermodal transportation system for the State, metropolitan area, and Unit-
9 ed States. The development process shall provide for consideration of all modes
10 of transportation and shall be continuing, cooperative, and comprehensive to
11 the degree appropriate, based on the complexity of the transportation prob-
12 lems.

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

16 (1) *preserving existing transportation facilities and, where practical,*
17 *ways to meet transportation needs by using existing transportation fa-*
18 *cilities more efficiently.*

19 (2) *the consistency of transportation planning with United States*
20 *Government, State, and local energy conservation programs, goals, and*
21 *objectives.*

22 (3) *the need to relieve congestion and prevent congestion from occur-*
23 *ring.*

24 (4) *the likely effect of transportation policy decisions on land use and*
25 *development and the consistency of transportation plans and programs*
26 *with short- and long-term land use and development plans.*

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

29 (6) *the effects of all transportation projects to be undertaken in the*
30 *metropolitan area, without regard to whether the projects are publicly fi-*
31 *nanced.*

32 (7) *international border crossings and access to ports, airports, inter-*
33 *modal transportation facilities, major freight distribution routes, na-*
34 *tional parks, recreation areas, monuments and historic sites, and mili-*
35 *tary installations.*

36 (8) *the need for connecting roads in the metropolitan area with roads*
37 *outside the area.*

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

40 (10) *preserving rights of way for constructing future transportation*
41 *projects, including identifying—*

1 (A) unused rights of way that may be needed for future transpor-
2 tation corridors; and

3 (B) corridors where action is needed most to prevent destruction
4 or loss.

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

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

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

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

12 (15) capital investments that will result in increased security in mass
13 transportation systems.

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

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

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

23 (2) In a metropolitan area designated as a transportation management
24 area, the designated metropolitan planning organization, if redesignated after
25 December 18, 1991, shall include local elected officials, officials of authorities
26 that administer or operate major modes of transportation in the metropolitan
27 area (including all transportation authorities included in the organization on
28 June 1, 1991), and appropriate State officials.

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

33 (4) A designation is effective until—

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

36 (B) revoked—

37 (i) by agreement of the chief executive officer and units of general
38 local government representing at least 75 percent of the affected pop-
39 ulation; or

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

1 (5)(A) *The chief executive officer and units of general local government rep-*
2 *resenting at least 75 percent of the affected population (including the central*
3 *city as defined by the Secretary of Commerce) may redesignate by agreement*
4 *a metropolitan planning organization when appropriate to carry out this sec-*
5 *tion.*

6 (B) *A metropolitan planning organization shall be redesignated on request*
7 *of one or more units of general local government representing at least 25 per-*
8 *cent of the affected population (including the central city as defined by the*
9 *Secretary of Commerce) in an urbanized area with a population of more than*
10 *5,000,000, but less than 10,000,000 or that is an extreme nonattainment area*
11 *for ozone or carbon monoxide (as defined in the Clean Air Act (42 U.S.C.*
12 *7401 et seq.)).*

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

15 (6) *This subsection does not affect the authority, under State law in effect*
16 *on December 18, 1991, of a public authority with multimodal transportation*
17 *responsibilities—*

18 (A) *to develop plans and programs for a metropolitan planning orga-*
19 *nization to adopt; and*

20 (B) *to develop long-range capital plans, coordinate mass transpor-*
21 *tation services and projects, and carry out other activities under State*
22 *law.*

23 (d) *METROPOLITAN AREA BOUNDARIES.—To carry out this section, the*
24 *metropolitan planning organization and the chief executive officer shall decide*
25 *by agreement on the boundaries of a metropolitan area. The area shall cover*
26 *at least the existing urbanized area and the contiguous area expected to be-*
27 *come urbanized within the 20-year forecast period and may include the Met-*
28 *ropolitan Statistical Area or Consolidated Metropolitan Statistical Area, as*
29 *defined by the Secretary of Commerce. An area designated as an nonattain-*
30 *ment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C.*
31 *7401 et seq.) shall include at least the boundaries of the nonattainment area,*
32 *except as the chief executive officer and metropolitan planning organization*
33 *otherwise agree.*

34 (e) *COORDINATION.—(1) The Secretary of Transportation shall establish re-*
35 *quirements the Secretary considers appropriate to encourage chief executive*
36 *officers and metropolitan planning organizations with responsibility for part*
37 *of a multi-State metropolitan area to provide coordinated transportation*
38 *planning for the entire area.*

39 (2) *Congress consents to at least 2 States making an agreement, not in con-*
40 *flict with a law of the United States, for cooperative efforts and mutual assist-*
41 *ance in support of activities authorized under this section related to interstate*

1 areas and localities in the States and establishing authorities the States con-
2 sider desirable for making the agreement effective.

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

9 (f) *DEVELOPING LONG-RANGE PLANS.*—(1) Each metropolitan planning
10 organization shall prepare and update periodically, according to a schedule
11 the Secretary of Transportation decides is appropriate, a long-range plan for
12 its metropolitan area under the requirements of this section. The plan shall
13 be in the form the Secretary considers appropriate and at least shall—

14 (A) identify transportation facilities (including major roadways, mass
15 transportation, and multimodal and intermodal facilities) that should
16 function as an integrated metropolitan transportation system, emphasizing
17 transportation facilities that serve important United States and re-
18 gional transportation functions;

19 (B) include a financial plan that—

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

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

23 (iii) recommends innovative financing techniques, including
24 value capture, tolls, and congestion pricing, to finance needed
25 projects and programs;

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

27 (i) to ensure the preservation of the existing metropolitan trans-
28 portation system, including requirements for operational improve-
29 ments, resurfacing, restoration, and rehabilitation of existing and
30 future major roadways, and operations, maintenance, moderniza-
31 tion, and rehabilitation of existing and future mass transportation
32 facilities; and

33 (ii) to use existing transportation facilities most efficiently to re-
34 lieve vehicular congestion and maximize the mobility of individuals
35 and goods; and

36 (D) indicate appropriate proposed transportation enhancement activi-
37 ties.

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

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

6 (4) *Before approving a long-range plan, each metropolitan planning orga-*
7 *nization shall provide citizens, affected public agencies, representatives of*
8 *mass transportation authority employees, private providers of transportation,*
9 *and other interested parties with a reasonable opportunity to comment on the*
10 *plan in a way the Secretary of Transportation considers appropriate.*

11 (5) *A long-range plan shall be—*

12 (A) *made readily available for public review; and*

13 (B) *submitted for information purposes to the chief executive officer*
14 *of the State at the time and in the way the Secretary of Transportation*
15 *establishes.*

16 (g) *GRANTS.—Under criteria the Secretary of Transportation establishes,*
17 *the Secretary may make contracts for, and grants to, States, local govern-*
18 *mental authorities, and authorities of the States and governmental authori-*
19 *ties, or may make agreements with other departments, agencies, and instru-*
20 *mentalities of the Government, to plan, engineer, design, and evaluate a mass*
21 *transportation project and for other technical studies, including—*

22 (1) *studies related to management, operations, capital requirements,*
23 *and economic feasibility;*

24 (2) *evaluating previously financed projects; and*

25 (3) *other similar and related activities preliminary to and in prepa-*
26 *ration for constructing, acquiring, or improving the operation of facili-*
27 *ties and equipment.*

28 (h) *BALANCED AND COMPREHENSIVE PLANNING.—(1) To the extent prac-*
29 *ticable, the Secretary of Transportation shall ensure that amounts made*
30 *available under section 5338(g)(1) of this title to carry out this section and*
31 *sections 5304–5306 of this title are used to support balanced and comprehen-*
32 *sive transportation planning that considers the relationships among land use*
33 *and all transportation modes, without regard to the programmatic source of*
34 *the planning amounts.*

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

1 (B) Amounts apportioned to a State under subparagraph (A) of this para-
 2 graph shall be allocated to metropolitan planning organizations in the State
 3 designated under this section under a formula—

4 (i) the State develops in cooperation with the metropolitan planning
 5 organizations;

6 (ii) the Secretary of Transportation approves; and

7 (iii) that considers population in urbanized areas and provides an ap-
 8 propriate distribution for urbanized areas to carry out the cooperative
 9 processes described in this section.

10 (C) A State shall make amounts available promptly to eligible metropolitan
 11 planning organizations according to procedures the Secretary of Transpor-
 12 tation approves.

13 (3)(A) The Secretary of Transportation shall apportion 20 percent of the
 14 amount made available under section 5338(g)(1) of this title to States to sup-
 15 plement allocations made under paragraph (2)(B) of this subsection for met-
 16 ropolitan planning organizations.

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

21 (4) To the maximum extent practicable, the Secretary of Transportation
 22 shall ensure that no metropolitan planning organization is allocated less than
 23 the amount it received by administrative formula under this section in the
 24 fiscal year that ended September 30, 1991. To carry out this subsection, the
 25 Secretary may make a proportionate reduction in other amounts made avail-
 26 able to carry out section 5338(g)(1) of this title.

27 (5) Amounts available for an activity under this subsection are for 80 per-
 28 cent of the cost of the activity unless the Secretary of Transportation decides
 29 it is in the interests of the Government not to require a State or local match.

30 (6) An amount apportioned under this subsection—

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

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

35 **§ 5304. Transportation improvement program**

36 (a) DEVELOPMENT AND UPDATE.—In cooperation with the State and af-
 37 fected mass transportation operators, a metropolitan planning organization
 38 designated for a metropolitan area shall develop a transportation improve-
 39 ment program for the area. In developing the program, the organization shall
 40 provide citizens, affected public agencies, representatives of transportation au-
 41 thority employees, other affected employee representatives, private providers of

1 transportation, and other interested parties with a reasonable opportunity to
2 comment on the proposed program. The program shall be updated at least
3 once every 2 years and shall be approved by the organization and the chief
4 executive officer of the State.

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

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

9 (2) a financial plan that—

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

11 (B) indicates resources from public and private sources that rea-
12 sonably are expected to be made available to carry out the plan; and

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

15 (c) PROJECT SELECTION.—(1) Except as provided in section 5305(d)(1) of
16 this title, the State, in cooperation with the metropolitan planning organiza-
17 tion, shall select projects in a metropolitan area that involves United States
18 Government participation. Selection shall comply with the transportation im-
19 provement program for the area.

20 (2) A transportation improvement program for a metropolitan area shall
21 include—

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

25 (B) a project or an identified phase of a project only if full financing
26 reasonably can be anticipated to be available for the project in the period
27 estimated for completion.

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

33 (e) REGULATORY PROCEEDING.—Not later than June 18, 1992, the Sec-
34 retary of Transportation shall begin a regulatory proceeding to conform re-
35 view requirements for mass transportation projects under the National Envi-
36 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to comparable require-
37 ments under that Act applicable to highway projects. This section and sections
38 5303, 5305, and 5306 of this title do not affect the applicability of the Act
39 to mass transportation or highway projects. A mass transportation project
40 that has an approved draft Environmental Impact Statement is exempt from
41 complying with requirements under the Act applicable to highway projects.

1 **§5305. Transportation management areas**

2 (a) *DESIGNATION.*—The Secretary of Transportation shall designate as a
3 transportation management area—

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

5 (2) any other area, including the Lake Tahoe Basin as defined in the
6 Act of December 19, 1980 (Public Law 96–551, 94 Stat. 3233), when re-
7 quested by the chief executive officer and the metropolitan organization
8 designated for the area or the affected local officials.

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

14 (c) *CONGESTION MANAGEMENT SYSTEM.*—The transportation planning
15 process under sections 5303, 5304, and 5306 of this title in a transportation
16 management area shall include a congestion management system providing
17 for effective management, through travel demand reduction and operational
18 management strategies, of new and existing transportation facilities eligible
19 for financing under this chapter and title 23. The Secretary shall establish
20 a phase-in schedule to comply with sections 5303, 5304, and 5306.

21 (d) *PROJECT SELECTION.*—(1)(A) In consultation with the State, the met-
22 ropolitan planning organization designated for a transportation management
23 area shall select the projects to be carried out in the area with United States
24 Government participation under this chapter or title 23, except projects of the
25 National Highway System or under the Bridge and Interstate Maintenance
26 programs.

27 (B) In cooperation with the metropolitan planning organization designated
28 for a transportation management area, the State shall select the projects to
29 be carried out in the area of the National Highway System or under the
30 Bridge and Interstate Maintenance programs.

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

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

35 (e) *CERTIFICATION.*—(1) At least once every 3 years, the Secretary shall
36 ensure and certify that each metropolitan planning organization in each
37 transportation management area is carrying out its responsibilities under ap-
38 plicable laws of the United States. The Secretary may make the certification
39 only if the organization is complying with section 134 of title 23 and other
40 applicable requirements of laws of the United States and the organization and

1 chief executive officer have approved a transportation improvement program
2 for the area.

3 (2) If the Secretary does not certify before October 1, 1993, that a metro-
4 politan planning organization is carrying out its responsibilities, the Sec-
5 retary may withhold any part of the apportionment under section 104(b)(3)
6 of title 23 attributed to the relevant metropolitan area under section 133(d)(3)
7 of title 23 and capital amounts apportioned under section 5336 of this title.
8 If an organization remains uncertified for more than 2 consecutive years after
9 September 30, 1994, 20 percent of that apportionment and capital amounts
10 shall be withheld. The withheld apportionments shall be restored when the Sec-
11 retary certifies the organization.

12 (3) The Secretary may not withhold certification based on the policies and
13 criteria a metropolitan planning organization or mass transportation grant
14 recipient establishes under section 5306(a) of this title for deciding the fea-
15 sibility of private enterprise participation.

16 (f) *ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.*—
17 Government amounts may be made available for a mass transportation
18 project resulting in a significant increase in carrying capacity for single oc-
19 cupant vehicles in a transportation management area classified as a non-
20 attainment area for ozone or carbon monoxide under the Clean Air Act (42
21 U.S.C. 7401 et seq.) only if the project is part of an approved congestion
22 management system.

23 (g) *AREAS NOT DESIGNATED TRANSPORTATION MANAGEMENT AREAS.*—(1)
24 The Secretary may provide for the development of abbreviated metropolitan
25 transportation plans and programs the Secretary decides are appropriate to
26 carry out this section and sections 5303, 5304, and 5306 of this title for met-
27ropolitan areas not designated transportation management areas under this
28 section. The Secretary shall consider the complexity of transportation prob-
29 lems in those areas, including transportation-related air quality problems.

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

33 **§5306. Private enterprise participation in metropolitan**
34 **planning and transportation improvement pro-**
35 **grams and relationship to other limitations**

36 (a) *PRIVATE ENTERPRISE PARTICIPATION.*—A plan or program required
37 by section 5303, 5304, or 5305 of this title shall encourage to the maximum
38 extent feasible the participation of private enterprise. If equipment or a facil-
39 ity already being used in an urban area is to be acquired under this chapter,
40 the program shall provide that it be improved so that it will better serve the
41 transportation needs of the area.

1 (b) *RELATIONSHIP TO OTHER LIMITATIONS.*—Sections 5303–5305 of this
2 title do not authorize—

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

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

7 **§5307. Block grants**

8 (a) *DEFINITIONS.*—In this section—

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

13 (2) “designated recipient” means—

14 (A) a person designated, consistent with the planning process
15 under sections 5303–5306 of this title, by the chief executive officer
16 of a State, responsible local officials, and publicly owned operators
17 of mass transportation to receive and apportion amounts under sec-
18 tion 5336 of this title that are attributable to transportation man-
19 agement areas established under section 5305(a) of this title;

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

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

25 (b) *GENERAL AUTHORITY.*—(1) The Secretary of Transportation may make
26 grants under this section for capital projects and to finance the planning, im-
27 provement, and operating costs of equipment, facilities, and associated capital
28 maintenance items for use in mass transportation, including the renovation
29 and improvement of historic transportation facilities with related private in-
30 vestment.

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

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

38 (B) the Secretary decides the amounts are not needed for investment
39 required by the Americans with Disabilities Act of 1990 (42 U.S.C.
40 12101 et seq.).

1 (3) A grant for a capital project under this section also is available to fi-
2 nance the leasing of equipment and facilities for use in mass transportation,
3 subject to regulations the Secretary prescribes limiting the grant to leasing
4 arrangements that are more cost effective than acquisition or construction.

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

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

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

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

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

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

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 of
29 this title with transportation services assisted from other United States
30 Government sources;

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

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

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

36 (1) the recipient, within the time the Secretary prescribes, submits a
37 final program of projects prepared under subsection (c) of this section
38 and a certification for that fiscal year that the recipient (including a
39 person receiving amounts from a chief executive officer of a State under
40 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 the
12 peak hour fare;

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

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

16 (ii) will not use a procurement that uses exclusionary or dis-
17 criminatory 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 se-
29 curity 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 area
32 in or adjacent to that system, providing an emergency telephone
33 line to contact law enforcement or security personnel in an area in
34 or adjacent to that system, and any other project intended to in-
35 crease the security and safety of an existing or planned mass trans-
36 portation system, at least one percent of the amount the recipient
37 receives for each fiscal year under section 5336 of this title; or

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

40 (2) the Secretary accepts the certification.

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

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

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

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

30 (A) the recipient applies for the payment;

31 (B) the Secretary approves the payment; and

32 (C) before carrying out that part, the Secretary approves the plans
33 and specifications for the part in the same way as for other projects
34 under this section.

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

39 (A) the recipient's expected apportionment under section 5336 of this
40 title if the total amount authorized to be appropriated for the fiscal year
41 to carry out this section is appropriated; less

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

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

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

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

16 (i) *REVIEWS, AUDITS, AND EVALUATIONS.*—(1)(A) At least annually, the
17 Secretary shall carry out, or require a recipient to have carried out independ-
18 ently, reviews and audits the Secretary considers appropriate to establish
19 whether the recipient has carried out—

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

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

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

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

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

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

39 (k) *SUBMISSION OF CERTIFICATIONS.*—A certification under subsection (d)
40 of this section and any additional certification required by law to be submit-
41 ted to the Secretary may be consolidated into a single document to be submit-

1 *ted annually as part of the grant application under this section. The Sec-*
 2 *retary shall publish annually a list of all certifications required under this*
 3 *chapter with the publication required under section 5336(e)(2) of this title.*

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

11 *(m) OPERATING FERRIES OUTSIDE URBANIZED AREAS.—A vessel used in*
 12 *ferryboat operations financed under section 5336 of this title that is part of*
 13 *a State-operated ferry system may be operated occasionally outside the urban-*
 14 *ized area in which service is provided to accommodate periodic maintenance*
 15 *if existing ferry service is not reduced significantly by operating outside the*
 16 *area.*

17 *(n) RELATIONSHIP TO OTHER LAWS.—(1) Section 1001 of title 18 applies*
 18 *to a certificate or submission under this section. The Secretary may end a*
 19 *grant under this section and seek reimbursement, directly or by offsetting*
 20 *amounts available under section 5336 of this title, when a false or fraudulent*
 21 *statement or related act within the meaning of section 1001 is made in con-*
 22 *nection with a certification or submission.*

23 *(2) Sections 5302, 5318, 5323(a)(1), (d), and (f), 5332, and 5333 of this*
 24 *title apply to this section and to a grant made under this section. Except*
 25 *as provided in this section, no other provision of this chapter applies to this*
 26 *section or to a grant made under this section.*

27 **§ 5308. Mass Transit Account block grants**

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

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

34 *(2) Sections 5307(e) and 5336(d) of this title apply to grants under this*
 35 *section.*

36 **§ 5309. Discretionary grants and loans**

37 *(a) GENERAL AUTHORITY.—The Secretary of Transportation may make*
 38 *grants and loans under this section to assist State and local governmental*
 39 *authorities in financing—*

40 *(1) capital projects for new fixed guideway systems, and extensions to*
 41 *existing fixed guideway systems, including the acquisition of real prop-*

erty, the initial acquisition of rolling stock for the systems, alternatives analysis related to the development of the systems, and the acquisition of rights of way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering;

(2) capital projects, including property and improvements (except public highways other than fixed guideway facilities), needed for an efficient and coordinated mass transportation system;

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

(4) the introduction of new technology, through innovative and improved products, into mass transportation;

(5) transportation projects that enhance urban economic development or incorporate private investment, including commercial and residential development, because the projects—

(A) enhance the effectiveness of a mass transportation project and are related physically or functionally to that mass transportation project; or

(B) establish new or enhanced coordination between mass transportation and other transportation;

(6) mass transportation projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities; and

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

(b) **LOANS FOR REAL PROPERTY INTERESTS.**—(1) The Secretary of Transportation may make loans under this section to State and local governmental authorities to acquire interests in real property for use on urban mass transportation systems as rights of way, station sites, and related purposes, including reconstruction, renovation, the net cost of property management, and relocation payments made under section 5324(a) of this title.

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

(3) An applicant for a loan under this subsection shall provide a copy of the application to the planning agency for the community affected by the project at the same time the application is submitted to the Secretary of

1 *Transportation. If the planning agency submits comments to the Secretary*
 2 *not later than 30 days after the application is submitted, or, if the agency*
 3 *requests more time within those 30 days, within a period the Secretary estab-*
 4 *lishes, the Secretary shall consider those comments before taking final action*
 5 *on the application.*

6 (4) *A loan agreement under this subsection shall provide that a capital*
 7 *project on the property will be started not later than 10 years after the fiscal*
 8 *year in which the agreement is made. If an interest in property acquired*
 9 *under this subsection is not used for the purpose for which it was acquired,*
 10 *an appraisal of the current value of the property or interest shall be made*
 11 *when a decision is made about the use. The decision shall be made within*
 12 *the 10-year period. Two-thirds of the increase in value shall be paid to the*
 13 *Secretary of Transportation for deposit in the Treasury as miscellaneous re-*
 14 *ceipts.*

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

19 (c) *CONSIDERATION OF DECREASED COMMUTER RAIL TRANSPORTATION.—*
 20 *The Secretary of Transportation shall consider the adverse effect of decreased*
 21 *commuter rail transportation when deciding whether to approve a grant or*
 22 *loan under this section to acquire a rail line and all related facilities—*

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

24 *and*

25 (2) *used to provide commuter rail transportation.*

26 (d) *PROJECT AS PART OF APPROVED PROGRAM OF PROJECTS.—Except as*
 27 *provided in subsections (b)(2) and (e) of this section, the Secretary of Trans-*
 28 *portation may approve a grant or loan for a project under this section only*
 29 *after finding that the project is part of the approved program of projects re-*
 30 *quired under sections 5303–5306 of this title and that an applicant—*

31 (1) *has or will have the legal, financial, and technical capacity to*
 32 *carry out the project, satisfactory continuing control over the use of*
 33 *equipment or facilities, and the capability to maintain the equipment or*
 34 *facilities; and*

35 (2) *will maintain the equipment or facilities.*

36 (e) *CRITERIA FOR GRANTS AND LOANS FOR FIXED GUIDEWAY SYSTEMS.—*

37 (1) *This subsection applies to a project—*

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

40 (B) *not in the preliminary engineering, final design, or construction*
 41 *stage on January 1, 1987.*

1 (2) *The Secretary of Transportation may approve a grant or loan under*
2 *this section for a capital project for a new fixed guideway system or extension*
3 *of an existing fixed guideway system only if the Secretary decides that the*
4 *proposed project is—*

5 (A) *based on the results of an alternatives analysis and preliminary*
6 *engineering;*

7 (B) *justified based on a comprehensive review of its mobility improve-*
8 *ments, environmental benefits, cost effectiveness, and operating effi-*
9 *ciencies; and*

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

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

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

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

20 (C) *identify and consider mass transportation supportive existing*
21 *land use policies and future patterns;*

22 (D) *consider the degree to which the project increases the mobility of*
23 *the mass transportation dependent population or promotes economic de-*
24 *velopment; and*

25 (E) *consider other factors the Secretary considers appropriate to carry*
26 *out this chapter.*

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

30 (B) *The project justification under paragraph (1)(B) of this subsection*
31 *shall be adjusted to reflect differences in local land, construction, and operat-*
32 *ing costs.*

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

34 (i) *the proposed project plan provides for the availability of contin-*
35 *gency amounts the Secretary of Transportation determines to be reason-*
36 *able to cover unanticipated cost overruns;*

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

39 (iii) *local resources are available to operate the overall proposed mass*
40 *transportation system (including essential feeder bus and other services*
41 *necessary to achieve the projected ridership levels) without requiring a*

1 *reduction in existing mass transportation services to operate the pro-*
2 *posed project.*

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

5 *(i) existing grant commitments;*

6 *(ii) the degree to which financing sources are dedicated to the purposes*
7 *proposed; and*

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

10 *(5) A proposed project may advance from alternatives analysis to prelimi-*
11 *nary engineering only if the Secretary of Transportation finds that the*
12 *project meets the requirements of this section and there is a reasonable chance*
13 *that the project will continue to meet the requirements at the end of prelimi-*
14 *nary engineering.*

15 *(6)(A) A new fixed guideway system or extension of an existing fixed guide-*
16 *way system is not subject to the requirements of this subsection, and the si-*
17 *multaneous evaluation of similar projects in at least 2 corridors in a metro-*
18 *politan area may not be limited, if—*

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

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

26 *(B) The simultaneous evaluation of projects in at least 2 corridors in a*
27 *metropolitan area may not be limited and the Secretary of Transportation*
28 *shall make decisions under this subsection with expedited procedures that will*
29 *promote carrying out an approved State Implementation Plan in a timely*
30 *way if a project is—*

31 *(i) located in a nonattainment area that is not an extreme or severe*
32 *nonattainment area;*

33 *(ii) a transportation control measure (as defined by the Clean Air Act*
34 *(42 U.S.C. 7401 et seq.)); and*

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

36 *(C) This subsection does not apply to a part of a project (including a com-*
37 *muter rail transportation project on an existing right of way) financed com-*
38 *pletely with amounts for highways made available under part A of title I of*
39 *the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law*
40 *102-240, 105 Stat. 1915).*

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

3 (f) *REQUIRED PAYMENTS AND ELIGIBLE COSTS OF PROJECTS THAT EN-*
4 *HANCE URBAN ECONOMIC DEVELOPMENT OR INCORPORATE PRIVATE INVEST-*
5 *MENT.*—(1) Each grant or loan under subsection (a)(5) of this section shall
6 require that a person making an agreement to occupy space in a facility pay
7 a reasonable share of the costs of the facility through rental payments and
8 other means.

9 (2) Eligible costs for a project under subsection (a)(5) of this section—

10 (A) include property acquisition, demolition of existing structures, site
11 preparation, utilities, building foundations, walkways, open space, and
12 a capital project for, and improving, equipment or a facility for an
13 intermodal transfer facility or transportation mall; but

14 (B) do not include construction of a commercial revenue-producing fa-
15 cility or a part of a public facility not related to mass transportation.

16 (g) *LETTERS OF INTENT, FULL FINANCING GRANT AGREEMENTS, AND*
17 *EARLY SYSTEMS WORK AGREEMENTS.*—(1)(A) The Secretary of Transpor-
18 tation may issue a letter of intent to an applicant announcing an intention
19 to obligate, for a project under this section, an amount from future available
20 budget authority specified in law that is not more than the amount stipulated
21 as the financial participation of the Secretary in the project. The amount
22 shall be sufficient to complete at least an operable segment when a letter is
23 issued for a fixed guideway project.

24 (B) At least 30 days before issuing a letter under subparagraph (A) of this
25 paragraph, the Secretary of Transportation shall notify in writing the Com-
26 mittee on Public Works and Transportation of the House of Representatives
27 and the Committee on Banking, Housing, and Urban Affairs of the Senate
28 of the proposed issuance of the letter.

29 (C) The issuance of a letter is deemed not to be an obligation under sections
30 1108(c) and (d), 1501, and 1502(a) of title 31 or an administrative commit-
31 ment.

32 (D) An obligation or administrative commitment may be made only when
33 amounts are appropriated.

34 (2)(A) The Secretary of Transportation may make a full financing grant
35 agreement with an applicant. The agreement shall—

36 (i) establish the terms of participation by the United States Govern-
37 ment in a project under this section;

38 (ii) establish the maximum amount of Government financial assist-
39 ance for the project;

40 (iii) cover the period of time for completing the project, including a
41 period extending beyond the period of an authorization; and

1 (iv) make timely and efficient management of the project easier ac-
2 cording to the law of the United States.

3 (B) An agreement under this paragraph obligates an amount of available
4 budget authority specified in law and may include a commitment, contingent
5 on amounts to be specified in law in advance for commitments under this
6 paragraph, to obligate an additional amount from future available budget au-
7 thority specified in law. The agreement shall state that the contingent com-
8 mitment is not an obligation of the Government. Interest and other financing
9 costs of efficiently carrying out a part of the project within a reasonable time
10 are a cost of carrying out the project under a full financing grant agreement,
11 except that eligible costs may not be more than the cost of the most favorable
12 financing terms reasonably available for the project at the time of borrowing.
13 The applicant shall certify, in a way satisfactory to the Secretary of Trans-
14 portation, that the applicant has shown reasonable diligence in seeking the
15 most favorable financing terms. The amount stipulated in an agreement
16 under this paragraph for a fixed guideway project shall be sufficient to com-
17 plete at least an operable segment.

18 (3)(A) The Secretary of Transportation may make an early systems work
19 agreement with an applicant if a record of decision under the National Envi-
20 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the
21 project and the Secretary finds there is reason to believe—

22 (i) a full financing grant agreement for the project will be made; and
23 (ii) the terms of the work agreement will promote ultimate completion
24 of the project more rapidly and at less cost.

25 (B) A work agreement under this paragraph obligates an amount of avail-
26 able budget authority specified in law and shall provide for reimbursement
27 of preliminary costs of carrying out the project, including land acquisition,
28 timely procurement of system elements for which specifications are decided,
29 and other activities the Secretary of Transportation decides are appropriate
30 to make efficient, long-term project management easier. A work agreement
31 shall cover the period of time the Secretary considers appropriate. The period
32 may extend beyond the period of current authorization. Interest and other fi-
33 nancing costs of efficiently carrying out the work agreement within a reason-
34 able time are a cost of carrying out the agreement, except that eligible costs
35 may not be more than the cost of the most favorable financing terms reason-
36 ably available for the project at the time of borrowing. The applicant shall
37 certify, in a way satisfactory to the Secretary, that the applicant has shown
38 reasonable diligence in seeking the most favorable financing terms. If an ap-
39 plicant does not carry out the project for reasons within the control of the
40 applicant, the applicant shall repay all Government payments made under

1 *the work agreement plus reasonable interest and penalty charges the Secretary*
2 *establishes in the agreement.*

3 *(4) The total estimated amount of future obligations of the Government and*
4 *contingent commitments to incur obligations covered by all outstanding letters*
5 *of intent, full financing grant agreements, and early systems work agreements*
6 *may be not more than the greater of the amount authorized under section*
7 *5338(a) of this title to carry out this section or 50 percent of the uncommitted*
8 *cash balance remaining in the Mass Transit Account of the Highway Trust*
9 *Fund (including amounts received from taxes and interest earned that are*
10 *more than amounts previously obligated), less an amount the Secretary of*
11 *Transportation reasonably estimates is necessary for grants under this section*
12 *not covered by a letter. The total amount covered by new letters and contin-*
13 *gent commitments included in full financing grant agreements and early sys-*
14 *tems work agreements may be not more than a limitation specified in law.*

15 *(h) GOVERNMENT'S SHARE OF NET PROJECT COST.—Based on engineering*
16 *studies, studies of economic feasibility, and information on the expected use*
17 *of equipment or facilities, the Secretary of Transportation shall estimate the*
18 *net project cost. A grant for the project is for 80 percent of the net project*
19 *cost, unless the grant recipient requests a lower grant percentage. The remain-*
20 *der shall be provided in cash from a source other than amounts of the Govern-*
21 *ment. Transit system amounts that make up the remainder must be from an*
22 *undistributed cash surplus, a replacement or depreciation cash fund or re-*
23 *serve, or new capital. The remainder for a planned extension to a fixed guide-*
24 *way system may include the cost of rolling stock previously purchased if the*
25 *applicant satisfies the Secretary that only amounts other than amounts of the*
26 *Government were used and that the purchase was made for use on the exten-*
27 *sion. A refund or reduction of the remainder may be made only if a refund*
28 *of a proportional amount of the grant of the Government is made at the same*
29 *time.*

30 *(i) LOAN TERM REQUIREMENTS.—Except for a loan under subsection (b)*
31 *of this section, a loan, including a renewal or extension of the loan, may be*
32 *made, and a security or obligation may be bought, only if it has a maturity*
33 *date of not more than 40 years. Interest on a loan may not be less than—*

34 *(1) a rate the Secretary of the Treasury establishes, considering the*
35 *current average yield on outstanding marketable obligations of the Govern-*
36 *ment that have remaining periods of maturity comparable to the av-*
37 *erage maturity of the loan, adjusted to the nearest .125 percent; plus*

38 *(2) an allowance the Secretary of Transportation considers adequate*
39 *to cover administrative costs and probable losses.*

40 *(j) LOAN PAYMENT FORGIVENESS.—A grant agreement for a capital project*
41 *may forgive repaying the loan and interest in place of a cash grant for the*

1 amount forgiven. The amount is part of the grant and part of the contribu-
2 tion of the Government to the cost of the project.

3 (k) *LIMITATION ON MAKING LOANS AND GRANTS FOR PROJECTS.*—The Sec-
4 retary of Transportation may not make a loan under this section for a project
5 for which a grant (except a relocation payment grant) is made under this
6 section. However, the Secretary may make a project grant even though real
7 property for the project has been or will be acquired through a loan under
8 subsection (b) of this section.

9 (l) *FISCAL CAPACITY CONSIDERATIONS.*—If the Secretary of Transpor-
10 tation gives priority consideration to financing projects that include more
11 than the non-Government share required under subsection (h) of this section,
12 the Secretary shall give equal consideration to differences in the fiscal capac-
13 ity of State and local governments.

14 (m) *ALLOCATING AMOUNTS.*—(1) Of the amounts available for grants and
15 loans under this section for each of the fiscal years ending September 30,
16 1993–1997—

17 (A) 40 percent is available for fixed guideway modernization;

18 (B) 40 percent is available for capital projects for new fixed guideway
19 systems and extensions to existing fixed guideway systems; and

20 (C) 20 percent is available to replace, rehabilitate, and buy buses and
21 related equipment and to construct bus-related facilities.

22 (2) At least 5.5 percent of the amounts available in each fiscal year under
23 paragraph (1)(C) of this subsection is available for areas other than urban-
24 ized areas.

25 (3) Not later than January 20 of each year, the Secretary of Transpor-
26 tation shall submit to the Committee on Public Works and Transportation of
27 the House of Representatives and the Committee on Banking, Housing, and
28 Urban Affairs of the Senate a proposal on the allocation of amounts to be
29 made available to finance grants and loans for capital projects for new fixed
30 guideway systems and extensions to existing fixed guideway systems among
31 applicants for those amounts.

32 (4) A person applying for, or receiving, assistance for a project described
33 in clause (A), (B), or (C) of paragraph (1) of this subsection may receive as-
34 sistance for a project described in another of those clauses.

35 (n) *UNDERTAKING PROJECTS IN ADVANCE.*—(1) The Secretary of Trans-
36 portation may pay the Government's share of the net project cost to a State
37 or local governmental authority that carries out any part of a project de-
38 scribed in this section or a substitute transit project described in section
39 103(e)(4) of title 23 without the aid of amounts of the Government and ac-
40 cording to all applicable procedures and requirements if—

41 (A) the State or local governmental authority applies for the payment;

1 (B) the Secretary approves the payment; and

2 (C) before carrying out the part of the project, the Secretary approves
3 the plans and specifications for the part in the same way as other
4 projects under this section or section 103(e)(4) of title 23.

5 (2) The cost of carrying out part of a project includes the amount of inter-
6 est earned and payable on bonds issued by the State or local governmental
7 authority to the extent proceeds of the bonds are expended in carrying out
8 the part. However, the amount of interest under this paragraph may not be
9 more than the most favorable interest terms reasonably available for the
10 project at the time of borrowing. The applicant shall certify, in a way satis-
11 factory to the Secretary of Transportation, that the applicant has shown rea-
12 sonable diligence in seeking the most favorable financial terms.

13 (3) The Secretary of Transportation shall consider changes in capital
14 project cost indices when determining the estimated cost under paragraph (2)
15 of this subsection.

16 (o) *USE OF DEOBLIGATED AMOUNTS.*—An amount available under this
17 section that is deobligated may be used for any purpose under this section.

18 **§5310. Grants and loans for special needs of elderly individ-**
19 **uals and individuals with disabilities**

20 (a) *GENERAL AUTHORITY.*—The Secretary of Transportation may make
21 grants and loans to—

22 (1) State and local governmental authorities to help them provide
23 mass transportation service planned, designed, and carried out to meet
24 the special needs of elderly individuals and individuals with disabilities;
25 and

26 (2) the chief executive officer of each State for allocation to—

27 (A) private nonprofit corporations and associations to help them
28 provide that transportation service when the transportation service
29 provided under clause (1) of this subsection is unavailable, insuffi-
30 cient, or inappropriate; or

31 (B) governmental authorities—

32 (i) approved by the State to coordinate services for elderly
33 individuals and individuals with disabilities; or

34 (ii) that certify to the chief executive officer that no non-
35 profit corporation or association readily is available in an
36 area to provide service under this subsection.

37 (b) *APPORTIONING AND TRANSFERRING AMOUNTS.*—The Secretary shall
38 apportion amounts made available under section 5338(a) of this title under
39 a formula the Secretary administers that considers the number of elderly indi-
40 viduals and individuals with disabilities in each State. Any State's appor-
41 tionment remaining available for obligation at the beginning of the 90-day

1 *period before the end of the period of availability of the apportionment is*
2 *available to the chief executive officer of the State for transfer to supplement*
3 *amounts apportioned to the State under section 5311(c) or 5336(a)(1) of this*
4 *title.*

5 *(c) STATE PROGRAM OF PROJECTS.—Amounts made available for this sec-*
6 *tion may be used for transportation projects to assist in providing transpor-*
7 *tation services for elderly individuals and individuals with disabilities that*
8 *are included in a State program of projects. A program shall be submitted*
9 *annually to the Secretary for approval and shall contain an assurance that*
10 *the program provides for maximum feasible coordination of transportation*
11 *services assisted under this section with transportation services assisted by*
12 *other United States Government sources.*

13 *(d) ELIGIBLE CAPITAL EXPENSES.—A recipient of amounts under this sec-*
14 *tion may include acquiring transportation services as an eligible capital ex-*
15 *penditure.*

16 *(e) APPLICATION OF SECTION 5309.—(1) A grant or loan under subsection*
17 *(a)(1) of this section is subject to all requirements of a grant or loan under*
18 *section 5309 of this title, and is deemed to have been made under section*
19 *5309.*

20 *(2) A grant or loan under subsection (a)(2) of this section is subject to re-*
21 *quirements similar to those under paragraph (1) of this subsection to the ex-*
22 *tent the Secretary considers appropriate.*

23 *(f) MINIMUM REQUIREMENTS AND PROCEDURES FOR RECIPIENTS.—In car-*
24 *rying out section 5301(d) of this title, section 165(b) of the Federal-Aid High-*
25 *way Act of 1973 (Public Law 93–87, 87 Stat. 282), and section 504 of the*
26 *Rehabilitation Act of 1973 (29 U.S.C. 794) (consistent with Government-wide*
27 *standards to carry out section 504), the Secretary shall prescribe regulations*
28 *establishing minimum criteria a recipient of Government financial assistance*
29 *under this chapter or a law referred to in section 165(b) shall comply with*
30 *in providing mass transportation service to elderly individuals and individ-*
31 *uals with disabilities and procedures for the Secretary to monitor compliance*
32 *with the criteria. The regulations shall include provisions for ensuring that*
33 *organizations and groups representing elderly individuals and individuals*
34 *with disabilities are given adequate notice of, and an opportunity to comment*
35 *on, the proposed activity of a recipient to achieve compliance with the regula-*
36 *tions.*

37 *(g) LEASING VEHICLES.—The Secretary shall prescribe guidelines allowing*
38 *vehicles bought under this section to be leased to local governmental authori-*
39 *ties to improve transportation services designed to meet the special needs of*
40 *elderly individuals and individuals with disabilities.*

1 (h) *MEAL DELIVERY SERVICE TO HOMEBOUND INDIVIDUALS.*—Mass trans-
2 portation service providers receiving assistance under this section or section
3 5311(c) of this title may coordinate and assist in regularly providing meal
4 delivery service for homebound individuals if the delivery service does not con-
5 flict with providing mass transportation service or reduce service to mass
6 transportation passengers.

7 (i) *TRANSFER OF FACILITIES AND EQUIPMENT.*—With the consent of the
8 recipient currently having a facility or equipment acquired with assistance
9 under this section, a State may transfer the facility or equipment to any re-
10 cipient eligible to receive assistance under this chapter if the facility or equip-
11 ment will continue to be used as required under this section.

12 (j) *FARES NOT REQUIRED.*—This chapter does not require that elderly in-
13 dividuals and individuals with disabilities be charged a fare.

14 **§5311. Financial assistance for other than urbanized areas**

15 (a) *DEFINITION.*—In this section, “recipient” includes a State authority,
16 a local governmental authority, a nonprofit organization, and an operator of
17 mass transportation service.

18 (b) *GENERAL AUTHORITY.*—(1) The Secretary of Transportation may make
19 grants for transportation projects that are included in a State program of
20 mass transportation service projects (including service agreements with pri-
21 vate providers of mass transportation service) for areas other than urbanized
22 areas. The program shall be submitted annually to the Secretary. The Sec-
23 retary may approve the program only if the Secretary finds that the program
24 provides a fair distribution of amounts in the State, including Indian res-
25 ervations, and the maximum feasible coordination of mass transportation
26 service assisted under this section with transportation service assisted by other
27 United States Government sources.

28 (2) The Secretary of Transportation shall carry out a rural transportation
29 assistance program in nonurbanized areas. In carrying out this paragraph,
30 the Secretary may make grants and contracts for transportation research,
31 technical assistance, training, and related support services in nonurbanized
32 areas.

33 (c) *APPORTIONING AMOUNTS.*—The Secretary of Transportation shall ap-
34 portion amounts made available under section 5338(a) of this title so that
35 the chief executive officer of each State receives an amount equal to the total
36 amount apportioned multiplied by a ratio equal to the population of areas
37 other than urbanized areas in a State divided by the population of all areas
38 other than urbanized areas in the United States, as shown by the most recent
39 of the following: the latest Government census, the population estimate the
40 Secretary of Commerce prepares after the 4th year after the date the latest
41 census is published, or the population estimate the Secretary of Commerce

1 prepares after the 8th year after the date the latest census is published. The
2 amount may be obligated by the chief executive officer for 2 years after the
3 fiscal year in which the amount is apportioned. An amount that is not obli-
4 gated at the end of that period shall be reapportioned among the States for
5 the next fiscal year.

6 (d) *USE FOR LOCAL TRANSPORTATION SERVICE.*—A State may use an
7 amount apportioned under this section for a project included in a program
8 under subsection (b) of this section and eligible for assistance under this chap-
9 ter if the project will provide local transportation service, as defined by the
10 Secretary of Transportation, in an area other than an urbanized area.

11 (e) *USE FOR ADMINISTRATION AND TECHNICAL ASSISTANCE.*—(1) The Sec-
12 retary of Transportation may allow a State to use not more than 15 percent
13 of the amount apportioned under this section to administer this section and
14 provide technical assistance to a recipient, including project planning, pro-
15 gram and management development, coordination of mass transportation pro-
16 grams, and research the State considers appropriate to promote effective deliv-
17 ery of mass transportation to an area other than an urbanized area.

18 (2) Except as provided in this section, a State carrying out a program of
19 operating assistance under this section may not limit the level or extent of
20 use of the Government grant for the payment of operating expenses.

21 (f) *INTERCITY BUS TRANSPORTATION.*—(1) A State shall expend at least
22 10 percent of the amount made available in the fiscal year ending September
23 30, 1993, and 15 percent of the amount made available in each fiscal year
24 after September 30, 1993, to carry out a program to develop and support
25 intercity bus transportation. Eligible activities under the program include—

26 (A) planning and marketing for intercity bus transportation;

27 (B) capital grants for intercity bus shelters;

28 (C) joint-use stops and depots;

29 (D) operating grants through purchase-of-service agreements, user-side
30 subsidies, and demonstration projects; and

31 (E) coordinating rural connections between small mass transportation
32 operations and intercity bus carriers.

33 (2) A State does not have to comply with paragraph (1) of this subsection
34 in a fiscal year in which the chief executive officer of the State certifies to
35 the Secretary of Transportation that the intercity bus service needs of the
36 State are being met adequately.

37 (g) *GOVERNMENT'S SHARE OF COSTS.*—(1) In this subsection, “amounts of
38 the Government or revenues” do not include amounts received under a service
39 agreement with a State or local social service agency or a private social serv-
40 ice organization.

1 (2) A grant of the Government for a capital project under this section may
 2 not be more than 80 percent of the net cost of the project, as determined by
 3 the Secretary of Transportation. A grant to pay a subsidy for operating ex-
 4 penses may not be more than 50 percent of the net cost of the operating ex-
 5 pense project. At least 50 percent of the remainder shall be provided in cash
 6 from sources other than amounts of the Government or revenues from provid-
 7 ing mass transportation. Transit system amounts that make up the remain-
 8 der shall be from an undistributed cash surplus, a replacement or deprecia-
 9 tion cash fund or reserve, or new capital.

10 (h) AMOUNTS FOR OPERATING ASSISTANCE.—An amount made available
 11 under this section may be used for operating assistance.

12 (i) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the
 13 recipient currently having a facility or equipment acquired with assistance
 14 under this section, a State may transfer the facility or equipment to any re-
 15 cipient eligible to receive assistance under this chapter if the facility or equip-
 16 ment will continue to be used as required under this section.

17 (j) RELATIONSHIP TO OTHER LAWS.—(1) Sections 5323(a)(1)(D) and
 18 5333(b) of this title apply to this section but the Secretary of Labor may
 19 waive the application of section 5333(b).

20 (2) This subsection does not affect or discharge a responsibility of the Sec-
 21 retary of Transportation under a law of the United States.

22 **§5312. Research, development, demonstration, and training**
 23 **projects**

24 (a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—The
 25 Secretary of Transportation (or the Secretary of Housing and Urban Develop-
 26 ment when required by section 5334(i) of this title) may undertake, or make
 27 grants or contracts (including agreements with departments, agencies, and in-
 28 strumentalities of the United States Government) for, research, development,
 29 and demonstration projects related to urban mass transportation that the Sec-
 30 retary decides will help reduce urban transportation needs, improve mass
 31 transportation service, or help mass transportation service meet the total
 32 urban transportation needs at a minimum cost. The Secretary may request
 33 and receive appropriate information from any source. This subsection does
 34 not limit the authority of the Secretary under another law.

35 (b) RESEARCH, INVESTIGATIONS, AND TRAINING.—(1) The Secretary of
 36 Transportation (or the Secretary of Housing and Urban Development when
 37 required by section 5334(i) of this title) may make grants to nonprofit insti-
 38 tutions of higher learning—

39 (A) to conduct competent research and investigations into the theoreti-
 40 cal or practical problems of urban transportation; and

1 (B) to train individuals to conduct further research or obtain employ-
2 ment in an organization that plans, builds, operates, or manages an
3 urban transportation system.

4 (2) Research and investigations under this subsection include—

5 (A) the design and use of urban mass transportation systems and
6 urban roads and highways;

7 (B) the interrelationship between various modes of urban and inter-
8 urban transportation;

9 (C) the role of transportation planning in overall urban planning;

10 (D) public preferences in transportation;

11 (E) the economic allocation of transportation resources; and

12 (F) the legal, financial, engineering, and esthetic aspects of urban
13 transportation.

14 (3) When making a grant under this subsection, the appropriate Secretary
15 shall give preference to an institution that brings together knowledge and ex-
16 pertise in the various social science and technical disciplines related to urban
17 transportation problems.

18 (c) TRAINING FELLOWSHIPS AND INNOVATIVE TECHNIQUES AND METH-
19 ODS.—(1) The Secretary of Transportation may make grants to States, local
20 governmental authorities, and operators of mass transportation systems to
21 provide fellowships to train personnel employed in managerial, technical, and
22 professional positions in the mass transportation field.

23 (2) The Secretary of Transportation may make grants to State and local
24 governmental authorities for projects that will use innovative techniques and
25 methods in managing and providing mass transportation.

26 (3) A fellowship under this subsection may be for not more than one year
27 of training in an institution that offers a program applicable to the mass
28 transportation industry. The recipient of the grant shall select an individual
29 on the basis of demonstrated ability and for the contribution the individual
30 reasonably can be expected to make to an efficient mass transportation oper-
31 ation. A grant for a fellowship may not be more than the lesser of \$24,000
32 or 75 percent of—

33 (A) tuition and other charges to the fellowship recipient;

34 (B) additional costs incurred by the training institution and billed to
35 the grant recipient; and

36 (C) the regular salary of the fellowship recipient for the period of the
37 fellowship to the extent the salary is actually paid or reimbursed by the
38 grant recipient.

39 **§5313. State planning and research programs**

40 (a) COOPERATIVE RESEARCH PROGRAM.—(1) Fifty percent of the amounts
41 made available under section 5338(g)(3) of this title are available for a mass

1 transportation cooperative research program. The Secretary of Transportation
2 shall establish an independent governing board for the program. The board
3 shall recommend mass transportation research, development, and technology
4 transfer activities the Secretary considers appropriate.

5 (2) The Secretary may make grants to, and cooperative agreements with,
6 the National Academy of Sciences to carry out activities under this subsection
7 that the Secretary decides are appropriate.

8 (b) STATE PLANNING AND RESEARCH.—(1) Fifty percent of the amounts
9 made available under section 5338(g)(3) of this title shall be apportioned to
10 States for grants and contracts consistent with the purposes of sections 5303–
11 5306, 5312, 5315, 5317, and 5322 of this title. The amounts shall be apportioned
12 so that each State receives an amount equal to the population in urbanized
13 areas in the State, divided by the population in urbanized areas in
14 all States, as shown by the latest available decennial census. However, a State
15 must receive at least .5 percent of the amount apportioned under this sub-
16 section.

17 (2) A State, as the State considers appropriate, may authorize part of the
18 amount made available under this subsection to be used to supplement
19 amounts available under subsection (a) of this section.

20 (3) An amount apportioned under this subsection—

21 (A) remains available for 3 years after the fiscal year in which the
22 amount is apportioned; and

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

25 (c) GOVERNMENT'S SHARE.—When there would be a clear and direct finan-
26 cial benefit to an entity under a grant or contract financed under subsection
27 (a) of this section, the Secretary shall establish a United States Government
28 share consistent with the benefit.

29 **§ 5314. National planning and research programs**

30 (a) PROGRAM.—(1) The amounts made available under section 5338(g)(4)
31 of this title are available to the Secretary of Transportation for grants and
32 contracts for the purposes of sections 5303–5306, 5312, 5315, 5317, and 5322
33 of this title, as the Secretary considers appropriate.

34 (2) Of the amounts made available under paragraph (1) of this subsection,
35 the Secretary shall make available at least \$2,000,000 to provide mass trans-
36 portation-related technical assistance, demonstration programs, research, pub-
37 lic education, and other activities the Secretary considers appropriate to help
38 mass transportation providers comply with the Americans with Disabilities
39 Act of 1990 (42 U.S.C. 12101 et seq.). To the extent practicable, the Secretary
40 shall carry out this paragraph through a contract with a national nonprofit

1 organization serving individuals with disabilities that has a demonstrated ca-
2 pacity to carry out the activities.

3 (3) Not more than 25 percent of the amounts available under paragraph
4 (1) of this subsection is available to the Secretary for special demonstration
5 initiatives, subject to terms the Secretary considers consistent with this chap-
6 ter, except that section 5323(a)(1)(D) of this title applies to an operational
7 grant financed in carrying out section 5312(a) of this title. For a
8 nonrenewable grant of not more than \$100,000, the Secretary shall provide
9 expedited procedures on complying with the requirements of this chapter.

10 (4)(A) The Secretary may undertake a program of mass transportation
11 technology development in coordination with affected entities.

12 (B) The Secretary shall establish an Industry Technical Panel composed of
13 representatives of transportation suppliers and operators and others involved
14 in technology development. A majority of the Panel members shall represent
15 the supply industry. The Panel shall assist the Secretary in identifying prior-
16 ity technology development areas and in establishing guidelines for project de-
17 velopment, project cost sharing, and project execution.

18 (C) The Secretary shall develop guidelines for cost sharing in technology
19 development projects financed under this paragraph. The guidelines shall be
20 flexible and reflect the extent of technical risk, market risk, and anticipated
21 supplier benefits and payback periods.

22 (5) The Secretary may use amounts appropriated under this subsection to
23 supplement amounts available under section 5313(a) of this title, as the Sec-
24 retary considers appropriate.

25 (b) *GOVERNMENT'S SHARE.*—When there would be a clear and direct finan-
26 cial benefit to an entity under a grant or contract financed under subsection
27 (a) of this section, the Secretary shall establish a United States Government
28 share consistent with the benefit.

29 **§ 5315. National mass transportation institute**

30 (a) *ESTABLISHMENT AND DUTIES.*—The Secretary of Transportation shall
31 make grants to Rutgers University to establish a national mass transpor-
32 tation institute. In cooperation with the Federal Transit Administration,
33 State transportation departments, public mass transportation authorities,
34 and national and international entities, the institute shall develop and con-
35 duct training programs of instruction for United States Government, State,
36 and local transportation employees, United States citizens, and foreign na-
37 tionals engaged or to be engaged in Government-aid mass transportation
38 work. The programs may include courses in recent developments, techniques,
39 and procedures related to—

40 (1) mass transportation planning;

41 (2) management;

- 1 (3) environmental factors;
 2 (4) acquisition and joint use of rights of way;
 3 (5) engineering;
 4 (6) procurement strategies for mass transportation systems;
 5 (7) turnkey approaches to carrying out mass transportation systems;
 6 (8) new technologies;
 7 (9) emission reduction technologies;
 8 (10) ways to make mass transportation accessible to individuals with
 9 disabilities;
 10 (11) construction;
 11 (12) maintenance;
 12 (13) contract administration; and
 13 (14) inspection.

14 (b) *RELATED EDUCATIONAL AND TRAINING PROGRAMS.*—The Secretary
 15 shall delegate to the institute the authority of the Secretary to develop and
 16 conduct educational and training programs related to mass transportation.

17 (c) *PROVIDING EDUCATION AND TRAINING.*—Education and training of
 18 Government, State, and local transportation employees under this section
 19 shall be provided—

20 (1) by the Secretary at no cost to the States and local governments
 21 for subjects that are a Government program responsibility; or

22 (2) when the education and training are paid under subsection (d) of
 23 this section, by the State, with the approval of the Secretary, through
 24 grants and contracts with public and private agencies, other institutions,
 25 individuals, and the institute.

26 (d) *AVAILABILITY OF AMOUNTS.*—Not more than .5 percent of the amounts
 27 made available for a fiscal year beginning after September 30, 1991, to a
 28 State or public mass transportation authority in the State to carry out sec-
 29 tions 5304 and 5306 of this title is available for expenditure by the State and
 30 public mass transportation authorities in the State, with the approval of the
 31 Secretary, to pay not more than 80 percent of the cost of tuition and direct
 32 educational expenses related to educating and training State and local trans-
 33 portation employees under this section.

34 **§5316. University research institutes**

35 (a) *INSTITUTE FOR NATIONAL SURFACE TRANSPORTATION POLICY.*—The
 36 Secretary of Transportation shall make grants to San Jose State University
 37 to establish and operate an institute for national surface transportation pol-
 38 icy studies. The institute shall—

39 (1) include male and female students of diverse socioeconomic and eth-
 40 nic backgrounds who are seeking careers in developing and operating
 41 surface transportation programs; and

1 (2) conduct research and development activities to analyze ways of im-
2 proving aspects of developing and operating surface transportation pro-
3 grams of the United States.

4 (b) *INFRASTRUCTURE TECHNOLOGY INSTITUTE.*—The Secretary shall make
5 grants to Northwestern University to establish and operate an institute to
6 study techniques—

7 (1) to evaluate and monitor infrastructure conditions;

8 (2) to improve information systems for infrastructure construction and
9 management; and

10 (3) to study advanced materials and automated processes for con-
11 structing and rehabilitating public works facilities.

12 (c) *URBAN TRANSIT INSTITUTE.*—The Secretary shall make grants to North
13 Carolina A. and T. State University through the Institute for Transportation
14 Research and Education, the University of South Florida, and a consortium
15 of Florida A. and M., Florida State University, and Florida International
16 University to establish and operate an interdisciplinary institute to study
17 and disseminate techniques on the diverse transportation problems of urban
18 areas experiencing significant and rapid growth.

19 (d) *INSTITUTE FOR INTELLIGENT VEHICLE-HIGHWAY CONCEPTS.*—The
20 Secretary shall make grants to the University of Minnesota, Center for Trans-
21 portation Studies, to establish and operate a national institute for intelligent
22 vehicle-highway concepts. The institute shall conduct research and recommend
23 development activities that focus on methods to increase roadway capacity,
24 enhance safety, and reduce negative environmental effects of transportation
25 facilities by using intelligent vehicle-highway systems technologies.

26 (e) *INSTITUTE FOR TRANSPORTATION RESEARCH AND EDUCATION.*—The
27 Secretary shall make grants to the University of North Carolina to conduct
28 research and development and to direct technology transfer and training for
29 State and local transportation authorities to improve the overall surface
30 transportation infrastructure.

31 (f) *APPLICABILITY OF TITLE 23.*—Amounts authorized by section 5338(d)
32 of this title may be obligated in the same way as amounts are apportioned
33 under chapter 1 of title 23.

34 **§5317. Transportation centers**

35 (a) *GRANTS FOR REGIONAL TRANSPORTATION CENTERS.*—(1) The Sec-
36 retary of Transportation shall make grants to nonprofit institutions of higher
37 learning to establish and operate regional transportation centers in each of
38 the 10 United States Government regions that comprise the Standard Federal
39 Regional Boundary System.

40 (2) A nonprofit institution of higher learning interested in receiving a
41 grant under this subsection shall submit an application to the Secretary in

1 *the way and containing the information the Secretary prescribes. The Sec-*
2 *retary shall select each recipient on the basis of the following:*

3 *(A) the regional transportation center is located in a State that is rep-*
4 *resentative of the needs of the Government region for improved transpor-*
5 *tation and facilities.*

6 *(B) the demonstrated research and extension resources available to the*
7 *recipient to carry out this subsection.*

8 *(C) the capability of the recipient to provide leadership in making na-*
9 *tional and regional contributions to the solution of immediate and long-*
10 *range transportation problems.*

11 *(D) the recipient has an established transportation program encom-*
12 *passing several modes of transportation.*

13 *(E) the recipient has a demonstrated commitment of at least \$200,000*
14 *in regularly budgeted institutional amounts each year to support ongo-*
15 *ing transportation research programs.*

16 *(F) the recipient has a demonstrated ability to disseminate results of*
17 *transportation research and educational programs through a statewide or*
18 *regionwide continuing educational program.*

19 *(G) the projects the recipient proposes to carry out under the grant.*

20 *(3)(A) At each regional transportation center, the following shall be carried*
21 *out:*

22 *(i) infrastructure research on transportation.*

23 *(ii) research and training on transportation safety and the transpor-*
24 *tation of passengers and property and the interpretation, publication,*
25 *and dissemination of the results of the research.*

26 *(B) Each transportation center—*

27 *(i) should carry out research on more than one mode of transpor-*
28 *tation; and*

29 *(ii) should consider the proportion of amounts for this subsection from*
30 *amounts available to carry out urban mass transportation projects under*
31 *this chapter and from the Highway Trust Fund.*

32 *(C) At one of the transportation centers, research may be carried out on*
33 *the testing of new bus models.*

34 *(4) Before making a grant under this subsection, the Secretary may require*
35 *the recipient to make an agreement with the Secretary to ensure that the re-*
36 *recipient will maintain total expenditures from all other sources to establish*
37 *and operate a regional transportation center and related research activities*
38 *at a level at least equal to the average level of those expenditures in its 2*
39 *fiscal years prior to April 2, 1987.*

1 (5) A grant under this subsection is for 50 percent of the cost of establishing
2 and operating the regional transportation center and related research activi-
3 ties the recipient carries out.

4 (b) GRANTS FOR UNIVERSITY TRANSPORTATION CENTERS.—(1) To acceler-
5 ate the involvement and participation of minority individuals and women in
6 transportation-related professions, particularly in the science, technology, and
7 engineering disciplines, the Secretary shall make grants to Morgan State Uni-
8 versity to establish a national center for transportation management, re-
9 search, and development. The center shall give special attention to designing,
10 developing, and carrying out research, training, and technology transfer ac-
11 tivities to increase the number of highly skilled minority individuals and
12 women entering the transportation workforce.

13 (2) The Secretary shall make grants to the New Jersey Institute of Tech-
14 nology to establish and operate a center for transportation and industrial
15 productivity. The center shall conduct research and development activities
16 that focus on ways to increase surface transportation capacity, reduce conges-
17 tion, and reduce costs for transportation system users and providers through
18 the use of transportation management systems.

19 (3) The Secretary shall make a grant to Monmouth College, West Long
20 Branch, New Jersey, to modify and rebuild Building Number 500 at Mon-
21 mouth College. Before making the grant, the Secretary shall receive assurances
22 from Monmouth College that the building will be known and designated as
23 the James and Marlene Howard Transportation Information Center and that
24 transportation-related instruction and research in computer science, electronic
25 engineering, mathematics, and software engineering conducted at the building
26 will be coordinated with the Center for Transportation and Industrial Pro-
27 ductivity at the New Jersey Institute of Technology.

28 (4) The Secretary shall make grants to the University of Arkansas to estab-
29 lish a national rural transportation center. The center shall conduct research,
30 training, and technology transfer activities in the development, management,
31 and operation of intermodal transportation systems in rural areas.

32 (5)(A) The Secretary shall make grants to the University of Idaho to estab-
33 lish a National Center for Advanced Transportation Technology. The Center
34 shall be established and operated in partnership with private industry and
35 shall conduct industry-driven research and development activities that focus
36 on transportation-related manufacturing and engineering processes, materials,
37 and equipment.

38 (B) The Secretary shall make grants to the University of Idaho to plan,
39 design, and construct a building in which to conduct the research and devel-
40 opment activities of the Center.

1 (C) Amounts authorized by section 5338(e)(2) of this title may be obligated
 2 in the same way as amounts apportioned under chapter 1 of title 23 (except
 3 that the Government share of the cost of the activities conducted under this
 4 paragraph is 80 percent and the amounts remain available until expended)
 5 and are not subject to an obligational limitation.

6 (D) A grant made under this paragraph is not subject to the requirements
 7 of this section (except this paragraph).

8 (c) PROGRAM COORDINATION.—The Secretary shall provide for coordinat-
 9 ing research, education, training, and technology transfer activities that grant
 10 recipients carry out under this section, the dissemination of the results of the
 11 research, and the establishment and operation of a clearinghouse between the
 12 centers and the transportation industry. At least annually, the Secretary shall
 13 review and evaluate programs the grant recipients carry out. The Secretary
 14 may use not more than one percent of amounts made available from Govern-
 15 ment sources to carry out this section to carry out this subsection.

16 (d) OBLIGATION CEILING.—Amounts authorized to carry out this section
 17 (except subsection (b)(3)) are subject to obligational limitations established
 18 under section 1002 of the Intermodal Surface Transportation Efficiency Act
 19 of 1991 (Public Law 102–240, 105 Stat. 1916).

20 (e) AMOUNTS AVAILABLE FOR TECHNOLOGY TRANSFER ACTIVITIES.—At
 21 least 5 percent of the amounts made available to carry out this section in
 22 a fiscal year are available to carry out technology transfer activities.

23 (f) ALLOCATION AMONG GOVERNMENT REGIONS.—The Secretary shall allo-
 24 cate amounts available to carry out this section equitably among the Govern-
 25 ment regions.

26 **§ 5318. Bus testing facility**

27 (a) ESTABLISHMENT.—The Secretary of Transportation shall establish one
 28 facility for testing a new bus model for maintainability, reliability, safety,
 29 performance (including braking performance), structural integrity, fuel econ-
 30 omy, emissions, and noise. The facility shall be established by renovating a
 31 facility built with assistance of the United States Government to train rail
 32 personnel.

33 (b) OPERATION AND MAINTENANCE.—The Secretary shall make a contract
 34 with a qualified person to operate and maintain the facility. The contract
 35 may provide for the testing of rail cars and other vehicles at the facility.

36 (c) FEES.—The person operating and maintaining the facility shall estab-
 37 lish and collect fees for the testing of vehicles at the facility. The Secretary
 38 must approve the fees.

39 (d) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.—The Secretary
 40 shall make a contract with the operator of the facility under which the Sec-
 41 retary shall pay 80 percent of the cost of testing a vehicle at the facility from

1 amounts available under section 5338(j)(5) of this title. The entity having the
2 vehicle tested shall pay 20 percent of the cost.

3 (e) *REVOLVING LOAN FUND.*—The Secretary has a bus testing revolving
4 loan fund consisting of amounts authorized for the fund under section
5 317(b)(5) of the Surface Transportation and Relocation Assistance Act of
6 1987. The Secretary shall make available as repayable advances from the fund
7 to the person operating and maintaining the facility amounts to operate and
8 maintain the facility.

9 **§5319. Bicycle facilities**

10 A project to provide access for bicycles to mass transportation facilities, to
11 provide shelters and parking facilities for bicycles in or around mass trans-
12 portation facilities, or to install equipment for transporting bicycles on mass
13 transportation vehicles is a capital project eligible for assistance under sec-
14 tions 5307, 5309, and 5311 of this title. Notwithstanding sections 5307(e),
15 5309(h), and 5311(g) of this title, a grant of the United States Government
16 under this chapter for a project under this section is for 90 percent of the
17 cost of the project.

18 **§5320. Suspended light rail system technology pilot project**

19 (a) *PURPOSE.*—The purpose of this section is to provide for the construc-
20 tion by a public entity of a suspended light rail system technology pilot
21 project—

22 (1) to assess the state of new technology for a suspended light rail sys-
23 tem; and

24 (2) to establish the feasibility, costs, and benefits of using the system
25 to transport passengers.

26 (b) *GENERAL REQUIREMENTS.*—The project shall—

27 (1) use new rail technology with individual vehicles on a prefabricated
28 elevated steel guideway;

29 (2) be stability-seeking with a center of gravity for the detachable pas-
30 senger vehicles located below the point of wheel-rail contact; and

31 (3) use vehicles that are driven by overhead bogies with high efficiency,
32 low maintenance electric motors for each wheel, operating in a slightly
33 sloped plane from vertical for the wheels and the running rails, to further
34 increase stability, acceleration, and braking performance.

35 (c) *COMPETITION.*—(1) The Secretary of Transportation shall conduct a
36 national competition to select a public entity with which to make a full fi-
37 nancing grant agreement to construct the project. Not later than April 16,
38 1992, the Secretary shall select 3 public entities to be finalists in the competi-
39 tion. In conducting the competition and selecting public entities, the Sec-
40 retary shall consider—

1 (A) the public entity's demonstrated understanding and knowledge of
2 the project and its technical, managerial, and financial capacity to con-
3 struct, manage, and operate the project; and

4 (B) maximizing potential contributions to the cost of the project by
5 State, local, and private sector entities, including donation of in-kind
6 services and materials.

7 (2) The Secretary shall award a grant to each finalist to be used to partici-
8 pate in the final phase of the competition under procedures the Secretary pre-
9 scribes. A grant may not be more than 80 percent of the cost of participating.
10 A finalist may not receive more than one-third of the amount made available
11 under subsection (h)(1)(A) of this section.

12 (3) Not later than July 15, 1992, the Secretary shall select from among
13 the 3 finalists a public entity with which to make a full financing grant
14 agreement.

15 (d) ENVIRONMENTAL IMPACT.—Not later than 270 days after a public en-
16 tity is selected under subsection (c) of this section, the Secretary shall approve
17 and publish in the Federal Register a notice announcing either a finding of
18 no significant impact or a draft environmental impact statement for the
19 project. The alternatives analysis for the project shall include a decision on
20 whether to construct the project. If a draft statement is published, the Sec-
21 retary, not later than 180 days after publication, shall approve and publish
22 in the Federal Register a notice of completion of a final environmental im-
23 pact statement.

24 (e) FULL FINANCING GRANT AGREEMENT.—Not later than 60 days after
25 carrying out the requirements of subsection (d) of this section, the Secretary
26 shall make a full financing grant agreement under section 5309 of this title
27 with the public entity selected under subsection (c) of this section to construct
28 the project. The agreement shall provide that the system vendor for the project
29 shall finance—

30 (1) 100 percent of any deficit incurred in operating the project in the
31 first 2 years of revenue operations of the project; and

32 (2) 50 percent of any deficit incurred in operating the project in the
33 3d year of revenue operations of the project.

34 (f) NOTICE TO PROCEED.—Not later than 30 days after making the full
35 financing grant agreement, the Secretary shall issue a notice to proceed with
36 construction.

37 (g) OPTION NOT TO CONSTRUCT AND REAWARDING THE GRANT.—(1) Not
38 later than 30 days after completing preliminary engineering and design, the
39 selected public entity shall decide whether to proceed to constructing the
40 project. If the entity decides not to proceed—

41 (A) the Secretary shall not make the full financing grant agreement;

1 (B) remaining amounts received shall be returned to the Secretary and
2 credited to the Mass Transit Account of the Highway Trust Fund; and

3 (C) the Secretary shall use the credited amount and other amounts to
4 be provided under this section to award to another entity selected under
5 subsection (c)(1) of this section a grant under section 5309 of this title
6 to construct the project.

7 (2) Not later than 60 days after a decision is made under paragraph (1)
8 of this subsection, a grant shall be awarded under paragraph (1)(C) of this
9 section after completing a competitive process for selecting the grant recipient.

10 (h) FINANCING.—(1) The Secretary shall pay from amounts provided under
11 section 5309 of this title the following:

12 (A) at least \$1,000,000 for the fiscal year ending September 30, 1992,
13 for grants under subsection (c)(2) of this section.

14 (B) at least \$4,000,000 for the fiscal year ending September 30, 1993,
15 for the United States Government share of the costs (as determined under
16 section 5309 of this title) if the systems planning, alternatives analysis,
17 preliminary engineering, and design and environmental impact state-
18 ment are required by law for the project.

19 (C) at least \$30,000,000 for the fiscal year ending September 30, 1994,
20 as provided in the grant agreement under subsection (e) of this section,
21 for the Government share of the construction costs of the project.

22 (2) The grant agreement under subsection (e) of this section shall provide
23 that for the 3d year of revenue operations of the project, the Secretary shall
24 pay from amounts provided under this section the Government share of oper-
25 ating costs in an amount equal to the lesser of 50 percent of the deficit in-
26 curred in operating the project in that year or \$300,000.

27 (3) Amounts not expended under paragraph (1)(A) of this subsection are
28 available for the Government share of costs described in paragraph (1)(B) and
29 (C) of this subsection.

30 (4) Amounts under paragraph (1)(B) and (C) of this subsection remain
31 available until expended.

32 (i) GOVERNMENT'S SHARE OF COSTS.—The Government share of the cost
33 of constructing the project is 80 percent of the net cost of the project.

34 (j) PROJECT NOT SUBJECT TO MAJOR CAPITAL INVESTMENT POLICY.—The
35 project is not subject to the major capital investment policy of the Federal
36 Transit Administration.

37 (k) REPORT.—Not later than January 30, 1993, and each year after that
38 date, the Secretary shall submit to Congress a report on the progress and re-
39 sults of the project.

1 **§5321. Crime prevention and security**

2 *The Secretary of Transportation may make capital grants from amounts*
 3 *available under section 5338 of this title to mass transportation systems for*
 4 *crime prevention and security. This chapter does not prevent the financing*
 5 *of a project under this section when a local governmental authority other than*
 6 *the grant applicant has law enforcement responsibilities.*

7 **§5322. Human resource programs**

8 *The Secretary of Transportation may undertake, or make grants and con-*
 9 *tracts for, programs that address human resource needs as they apply to mass*
 10 *transportation activities. A program may include—*

11 *(1) an employment training program;*

12 *(2) an outreach program to increase minority and female employment*
 13 *in mass transportation activities;*

14 *(3) research on mass transportation personnel and training needs; and*

15 *(4) training and assistance for minority business opportunities.*

16 **§5323. General provisions on assistance**

17 *(a) INTERESTS IN PROPERTY.—(1) Financial assistance provided under*
 18 *this chapter to a State or a local governmental authority may be used to ac-*
 19 *quire an interest in, or buy property of, a private mass transportation com-*
 20 *pany, for a capital project for property acquired from a private mass trans-*
 21 *portation company after July 9, 1964, or to operate mass transportation*
 22 *equipment or a mass transportation facility in competition with, or in addi-*
 23 *tion to, transportation service provided by an existing mass transportation*
 24 *company, only if—*

25 *(A) the Secretary of Transportation finds the assistance is essential to*
 26 *a program of projects required under sections 5303–5306 of this title;*

27 *(B) the Secretary of Transportation finds that the program, to the*
 28 *maximum extent feasible, provides for the participation of private mass*
 29 *transportation companies;*

30 *(C) just compensation under State or local law will be paid to the*
 31 *company for its franchise or property; and*

32 *(D) the Secretary of Labor certifies that the assistance complies with*
 33 *section 5333(b) of this title.*

34 *(2) A governmental authority may not use financial assistance of the*
 35 *United States Government to acquire land, equipment, or a facility used in*
 36 *mass transportation from another governmental authority in the same geo-*
 37 *graphic area.*

38 *(b) NOTICE AND PUBLIC HEARING.—(1) An application for a grant or loan*
 39 *under this chapter (except section 5307) for a capital project that will affect*
 40 *substantially a community, or the mass transportation service of a commu-*
 41 *nity, must include a certificate of the applicant that the applicant has—*

1 (A) provided an adequate opportunity for a public hearing with ade-
2 quate prior notice;

3 (B) held that hearing unless no one with a significant economic, so-
4 cial, or environmental interest requested one;

5 (C) considered the economic, social, and environmental effects of the
6 project; and

7 (D) found that the project is consistent with official plans for develop-
8 ing the urban area.

9 (2) Notice of a hearing under this subsection shall include a concise de-
10 scription of the proposed project and shall be published in a newspaper of
11 general circulation in the geographic area the project will serve. If a hearing
12 is held, a copy of the transcript of the hearing shall be submitted with the
13 application.

14 (c) *ACQUIRING NEW BUS MODELS.*—Amounts appropriated or made avail-
15 able under this chapter (except section 5307) after September 30, 1989, may
16 be obligated or expended to acquire a new bus model only if a bus of the
17 model has been tested at the facility established under section 5318 of this
18 title.

19 (d) *BUYING AND OPERATING BUSES.*—(1) Financial assistance under this
20 chapter may be used to buy or operate a bus only if the applicant, govern-
21 mental authority, or publicly owned operator that receives the assistance
22 agrees that, except as provided in the agreement, the governmental authority
23 or an operator of mass transportation for the governmental authority will not
24 provide charter bus transportation service outside the urban area in which
25 it provides regularly scheduled mass transportation service. An agreement
26 shall provide for a fair arrangement the Secretary of Transportation consid-
27 ers appropriate to ensure that the assistance will not enable a governmental
28 authority or an operator for a governmental authority to foreclose a private
29 operator from providing intercity charter bus service if the private operator
30 can provide the service.

31 (2) On receiving a complaint about a violation of an agreement, the Sec-
32 retary of Transportation shall investigate and decide whether a violation has
33 occurred. If the Secretary decides that a violation has occurred, the Secretary
34 shall correct the violation under terms of the agreement. In addition to a rem-
35 edy specified in the agreement, the Secretary may bar a recipient under this
36 subsection or an operator from receiving further assistance when the Secretary
37 finds a continuing pattern of violations of the agreement.

38 (e) *BUS PASSENGER SEAT FUNCTIONAL SPECIFICATIONS.*—The initial ad-
39 vertising by a State or local governmental authority for bids to acquire buses
40 using financial assistance under this chapter (except section 5307) may in-
41 clude passenger seat functional specifications that are at least equal to per-

1 *formance specifications the Secretary of Transportation prescribes. The speci-*
2 *fications shall be based on a finding by the State or local governmental au-*
3 *thority of local requirements for safety, comfort, maintenance, and life cycle*
4 *costs.*

5 *(f) SCHOOLBUS TRANSPORTATION.—(1) Financial assistance under this*
6 *chapter may be used for a capital project, or to operate mass transportation*
7 *equipment or a mass transportation facility, only if the applicant agrees not*
8 *to provide schoolbus transportation that exclusively transports students and*
9 *school personnel in competition with a private schoolbus operator. This sub-*
10 *section does not apply—*

11 *(A) to an applicant that operates a school system in the area to be*
12 *served and a separate and exclusive schoolbus program for the school sys-*
13 *tem;*

14 *(B) unless a private schoolbus operator can provide adequate transpor-*
15 *tation that complies with applicable safety standards at reasonable rates;*
16 *and*

17 *(C) to a State or local governmental authority if it or a direct prede-*
18 *cessor in interest from which it acquired the duty of transporting school*
19 *children and personnel, and facilities to transport them, provided school-*
20 *bus transportation at any time after November 25, 1973, but before No-*
21 *vember 26, 1974.*

22 *(2) An applicant violating an agreement under this subsection may not re-*
23 *ceive other financial assistance under this chapter.*

24 *(g) BUYING BUSES UNDER OTHER LAWS.—Subsections (d) and (f) of this*
25 *section apply to financial assistance to buy a bus under sections 103(e)(4)*
26 *and 142(a) or (c) of title 23. However, subsection (f)(1)(C) of this section ap-*
27 *plies to sections 103(e)(4) and 142(a) or (c) only if schoolbus transportation*
28 *was provided at any time after August 12, 1972, but before August 13, 1973.*

29 *(h) GRANT AND LOAN PROHIBITIONS.—A grant or loan may not be used*
30 *to—*

31 *(1) pay ordinary governmental or nonproject operating expenses; or*

32 *(2) support a procurement that uses an exclusionary or discrimina-*
33 *tory specification.*

34 *(i) GOVERNMENT'S SHARE OF COSTS FOR CERTAIN PROJECTS.—A Govern-*
35 *ment grant for a project to be assisted under this chapter that involves acquir-*
36 *ing vehicle-related equipment required by the Clean Air Act (42 U.S.C. 7401*
37 *et seq.) or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et*
38 *seq.) is for 90 percent of the net project cost of the equipment that is attrib-*
39 *utable to complying with those Acts. The Secretary of Transportation, through*
40 *practicable administrative procedures, may determine the costs attributable to*
41 *that equipment.*

1 (j) *BUY AMERICAN.*—(1) *The Secretary of Transportation may obligate an*
2 *amount that may be appropriated to carry out this chapter for a project only*
3 *if the steel, iron, and manufactured goods used in the project are produced*
4 *in the United States.*

5 (2) *The Secretary of Transportation may waive paragraph (1) of this sub-*
6 *section if the Secretary finds that—*

7 (A) *applying paragraph (1) would be inconsistent with the public in-*
8 *terest;*

9 (B) *the steel, iron, and goods produced in the United States are not*
10 *produced in a sufficient and reasonably available amount or are not of*
11 *a satisfactory quality;*

12 (C) *when procuring rolling stock (including train control, communica-*
13 *tion, and traction power equipment) under this chapter—*

14 (i) *the cost of components and subcomponents produced in the*
15 *United States is more than 60 percent of the cost of all components*
16 *of the rolling stock; and*

17 (ii) *final assembly of the rolling stock has occurred in the United*
18 *States; or*

19 (D) *including domestic material will increase the cost of the overall*
20 *project by more than 25 percent.*

21 (3) *In this subsection, labor costs involved in final assembly are not in-*
22 *cluded in calculating the cost of components.*

23 (4) *The Secretary of Transportation may not make a waiver under para-*
24 *graph (2) of this subsection for goods produced in a foreign country if the*
25 *Secretary, in consultation with the United States Trade Representative, de-*
26 *cides that the government of that foreign country—*

27 (A) *has an agreement with the United States Government under which*
28 *the Secretary has waived the requirement of this subsection; and*

29 (B) *has violated the agreement by discriminating against goods to*
30 *which this subsection applies that are produced in the United States and*
31 *to which the agreement applies.*

32 (5) *A person is ineligible under subpart 9.4 of chapter 1 of title 48, Code*
33 *of Federal Regulations, to receive a contract or subcontract made with*
34 *amounts authorized under the Intermodal Surface Transportation Efficiency*
35 *Act of 1991 (Public Law 102–240, 105 Stat. 1914) if a court or department,*
36 *agency, or instrumentality of the Government decides the person inten-*
37 *tionally—*

38 (A) *affixed a “Made in America” label, or a label with an inscription*
39 *having the same meaning, to goods sold in or shipped to the United*
40 *States that are used in a project to which this subsection applies but not*
41 *produced in the United States; or*

1 (B) represented that goods described in clause (A) of this paragraph
 2 were produced in the United States.

3 (6) The Secretary of Transportation may not impose any limitation on as-
 4 sistance provided under this chapter that restricts a State from imposing
 5 more stringent requirements than this subsection on the use of articles, mate-
 6 rials, and supplies mined, produced, or manufactured in foreign countries in
 7 projects carried out with that assistance or restricts a recipient of that assist-
 8 ance from complying with those State-imposed requirements.

9 (7) Not later than January 1, 1995, the Secretary of Transportation shall
 10 submit to Congress a report on purchases from foreign entities waived under
 11 paragraph (2) of this subsection in the fiscal years ending September 30,
 12 1992, and September 30, 1993. The report shall indicate the dollar value of
 13 items for which waivers were granted.

14 (k) APPLICATION OF SECTION 135 OF TITLE 23.—The planning and pro-
 15 gramming requirements of section 135 of title 23 apply to a grant made
 16 under sections 5307–5311 of this title.

17 **§5324. Limitations on discretionary and special needs**
 18 **grants and loans**

19 (a) RELOCATION PROGRAM REQUIREMENTS.—Financial assistance may be
 20 provided under section 5309 of this title only if the Secretary of Transpor-
 21 tation decides that—

22 (1) an adequate relocation program is being carried out for families
 23 displaced by a project; and

24 (2) an equal number of decent, safe, and sanitary dwellings are being,
 25 or will be, provided to those families in the same area or in another area
 26 generally not less desirable for public utilities and public and commer-
 27 cial facilities, at rents or prices within the financial means of those fam-
 28 ilies, and with reasonable access to their places of employment.

29 (b) ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—(1) In carrying
 30 out section 5301(e) of this title, the Secretary of Transportation shall cooper-
 31 ate and consult with the Secretaries of Agriculture, Health and Human Serv-
 32 ices, Housing and Urban Development, and the Interior and the Council on
 33 Environmental Quality on each project that may have a substantial impact
 34 on the environment.

35 (2) In carrying out section 5309 of this title, the Secretary of Transpor-
 36 tation shall review each transcript of a hearing submitted under section
 37 5323(b) of this title to establish that an adequate opportunity to present views
 38 was given to all parties with a significant economic, social, or environmental
 39 interest and that the project application includes a statement on—

40 (A) the environmental impact of the proposal;

41 (B) adverse environmental effects that cannot be avoided;

1 (C) alternatives to the proposal; and

2 (D) irreversible and irretrievable impacts on the environment.

3 (3)(A) The Secretary of Transportation may approve an application for fi-
4 nancial assistance under section 5309 of this title only if the Secretary makes
5 written findings, after reviewing the application and any hearings held before
6 a State or local governmental authority under section 5323(b) of this title,
7 that—

8 (i) an adequate opportunity to present views was given to all parties
9 with a significant economic, social, or environmental interest;

10 (ii) the preservation and enhancement of the environment, and the in-
11 terest of the community in which a project is located, were considered;
12 and

13 (iii) no adverse environmental effect is likely to result from the project,
14 or no feasible and prudent alternative to the effect exists and all reason-
15 able steps have been taken to minimize the effect.

16 (B) If a hearing has not been conducted or the Secretary of Transportation
17 decides that the record of the hearing is inadequate for making the findings
18 required by this subsection, the Secretary shall conduct a hearing on an envi-
19 ronmental issue raised by the application after giving adequate notice to in-
20 terested persons.

21 (C) A finding of the Secretary of Transportation under subparagraph (A)
22 of this paragraph shall be made a matter of public record.

23 (c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—
24 The Secretary of Transportation may not regulate the operation of a mass
25 transportation system for which a grant is made under section 5309 of this
26 title and, after a grant is made, may not regulate any charge for the system.
27 However, the Secretary may require the local governmental authority, cor-
28 poration, or association to comply with any undertaking provided by it relat-
29 ed to its grant application.

30 **§ 5325. Contract requirements**

31 (a) NONCOMPETITIVE BIDDING.—A capital project or improvement contract
32 for which a grant or loan is made under this chapter, if the contract is not
33 made through competitive bidding, shall provide that records related to the
34 contract shall be made available to the Secretary of Transportation and the
35 Comptroller General, or an officer or employee of the Secretary or Comptroller
36 General, when conducting an audit and inspection.

37 (b) ACQUIRING ROLLING STOCK.—A recipient of financial assistance of the
38 United States Government under this chapter may make a contract to expend
39 that assistance to acquire rolling stock—

40 (1) based on—

41 (A) initial capital costs; or

1 (B) performance, standardization, life cycle costs, and other fac-
2 tors; or

3 (2) with a party selected through a competitive procurement process.

4 (c) *PROCURING ASSOCIATED CAPITAL MAINTENANCE ITEMS.*—A recipient
5 of a grant under section 5307 of this title procuring an associated capital
6 maintenance item under section 5307(b) may make a contract directly with
7 the original manufacturer or supplier of the item to be replaced, without re-
8 ceiving prior approval of the Secretary, if the recipient first certifies in writ-
9 ing to the Secretary that—

10 (1) the manufacturer or supplier is the only source for the item; and

11 (2) the price of the item is no more than the price similar customers
12 pay for the item.

13 (d) *MANAGEMENT, ARCHITECTURAL, AND ENGINEERING CONTRACTS.*—A
14 contract for program management, construction management, a feasibility
15 study, and preliminary engineering, design, architectural, engineering, sur-
16 veying, mapping, or related services for a project for which a grant or loan
17 is made under this chapter shall be awarded in the same way as a contract
18 for architectural and engineering services is negotiated under title IX of the
19 Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et
20 seq.) or an equivalent qualifications-based requirement of a State. This sub-
21 section does not apply to the extent a State has adopted or adopts by law
22 a formal procedure for procuring those services.

23 **§ 5326. Special procurements**

24 (a) *TURNKEY SYSTEM PROJECTS.*—(1) In this subsection, “turnkey system
25 project” means a project under which a recipient makes a contract with a
26 seller, firm, or consortium of firms to construct a mass transportation system
27 that meets specific performance criteria and that the seller operates for a pe-
28 riod of time.

29 (2) To advance new technologies and lower the cost of a capital project for
30 a new mass transportation system, the Secretary of Transportation shall
31 allow solicitation for a turnkey system project to be financed under this chap-
32 ter to be awarded conditionally before United States Government requirements
33 have been met on the project if the award is made without prejudice to carry-
34 ing out those requirements. Government financial assistance under this chap-
35 ter may be made available for the project after the recipient complies with
36 Government requirements.

37 (3) To develop regulations applying generally to turnkey system projects,
38 the Secretary may approve at least 2 projects for an initial demonstration
39 phase. The results of the demonstration projects (and other projects using this
40 procurement method on December 18, 1991) shall be considered in developing
41 guidelines to carry out this subsection.

1 (b) *MULTIYEAR ROLLING STOCK.*—(1) A recipient procuring rolling stock
2 with Government financial assistance under this chapter may make a
3 multiyear contract to buy the rolling stock and replacement parts under
4 which the recipient has an option to buy additional rolling stock or replace-
5 ment parts for not more than 5 years after the date of the original contract.

6 (2) The Secretary shall allow at least 2 recipients to act on a cooperative
7 basis to procure rolling stock in compliance with this subsection and other
8 Government procurement requirements.

9 (c) *EFFICIENT PROCUREMENT.*—A recipient may award a procurement
10 contract under this chapter to other than the lowest bidder when the award
11 furthers an objective consistent with the purposes of this chapter, including
12 improved long-term operating efficiency and lower long-term costs. Not later
13 than March 17, 1992, the Secretary shall—

14 (1) make appropriate changes in existing procedures to make the pol-
15 icy stated in this subsection readily practicable for all mass transpor-
16 tation authorities; and

17 (2) prescribe guidance that clarifies and carries out the policy.

18 **§5327. Project management oversight**

19 (a) *PROJECT MANAGEMENT PLAN REQUIREMENTS.*—To receive United
20 States Government financial assistance for a major capital project under this
21 chapter or the National Capital Transportation Act of 1969 (Public Law 91–
22 143, 83 Stat. 320), a recipient must prepare and carry out a project manage-
23 ment plan approved by the Secretary of Transportation. The plan shall pro-
24 vide for—

25 (1) adequate recipient staff organization with well-defined reporting
26 relationships, statements of functional responsibilities, job descriptions,
27 and job qualifications;

28 (2) a budget covering the project management organization, appro-
29 priate consultants, property acquisition, utility relocation, systems dem-
30 onstration staff, audits, and miscellaneous payments the recipient may
31 be prepared to justify;

32 (3) a construction schedule for the project;

33 (4) a document control procedure and recordkeeping system;

34 (5) a change order procedure that includes a documented, systematic
35 approach to the handling of construction change orders;

36 (6) organizational structures, management skills, and staffing levels
37 required throughout the construction phase;

38 (7) quality control and quality assurance functions, procedures, and
39 responsibilities for construction, system installation, and integration of
40 system components;

41 (8) material testing policies and procedures;

1 (9) *internal plan implementation and reporting requirements;*

2 (10) *criteria and procedures to be used for testing the operational sys-*
3 *tem or its major components;*

4 (11) *periodic updates of the plan, especially related to project budget*
5 *and project schedule, financing, ridership estimates, and the status of*
6 *local efforts to enhance ridership where ridership estimates partly depend*
7 *on the success of those efforts; and*

8 (12) *the recipient's commitment to submit a project budget and project*
9 *schedule to the Secretary each month.*

10 (b) *PLAN APPROVAL.—(1) The Secretary shall approve a plan not later*
11 *than 60 days after it is submitted. If the approval cannot be completed within*
12 *60 days, the Secretary shall notify the recipient, explain the reasons for the*
13 *delay, and estimate the additional time that will be required.*

14 (2) *The Secretary shall inform the recipient of the reasons when a plan*
15 *is disapproved.*

16 (c) *LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—(1) The Secretary*
17 *may use not more than .5 percent of amounts made available for a fiscal year*
18 *to carry out section 5307, 5309, or 5311 of this title, an interstate transfer*
19 *mass transportation project under section 103(e)(4) of title 23 as in effect on*
20 *September 30, 1991, or a project under the National Capital Transportation*
21 *Act of 1969 (Public Law 91-143, 83 Stat. 320) to make a contract to oversee*
22 *the construction of a major project under section 5307, 5309, 5311, or*
23 *103(e)(4) of that Act. The Secretary may use when necessary not more than*
24 *an additional .25 percent of amounts made available in a fiscal year to carry*
25 *out a major project under section 5307 to make a contract to oversee the con-*
26 *struction of the project.*

27 (2) *The Secretary may use amounts available under paragraph (1) of this*
28 *subsection to make contracts for safety, procurement, management, and finan-*
29 *cial compliance reviews and audits of a recipient of amounts under para-*
30 *graph (1). Subsections (a), (b), and (e) of this section do not apply to con-*
31 *tracts under this paragraph.*

32 (3) *The Government shall pay the entire cost of carrying out a contract*
33 *under this subsection.*

34 (d) *ACCESS TO SITES AND RECORDS.—Each recipient of assistance under*
35 *this chapter or section 14(b) of the National Capital Transportation Act of*
36 *1969 (Public Law 91-143, 83 Stat. 320), as added by section 2 of the Na-*
37 *tional Capital Transportation Amendments of 1979 (Public Law 96-184, 93*
38 *Stat. 1320), shall provide the Secretary and a contractor the Secretary chooses*
39 *under subsection (c) of this section with access to the construction sites and*
40 *records of the recipient when reasonably necessary.*

1 (e) *REGULATIONS.*—*The Secretary shall prescribe regulations necessary to*
 2 *carry out this section. The regulations shall include—*

3 (1) *a definition of “major capital project” for subsection (c) of this*
 4 *section that excludes a project to acquire rolling stock or to maintain or*
 5 *rehabilitate a vehicle; and*

6 (2) *a requirement that oversight begin during the preliminary engi-*
 7 *neering stage of a project, unless the Secretary finds it more appropriate*
 8 *to begin the oversight during another stage of the project, to maximize*
 9 *the transportation benefits and cost savings associated with project man-*
 10 *agement oversight.*

11 **§ 5328. Project review**

12 (a) *SCHEDULE.*—(1) *When the Secretary of Transportation allows a new*
 13 *fixed guideway project to advance into the alternatives analysis stage of*
 14 *project review, the Secretary shall cooperate with the applicant in alternatives*
 15 *analysis and in preparing a draft environmental impact statement and shall*
 16 *approve the draft for circulation not later than 45 days after the applicant*
 17 *submits the draft to the Secretary.*

18 (2) *After the draft is circulated and not later than 30 days after the appli-*
 19 *cant selects a locally preferred alternative, the Secretary shall allow the*
 20 *project to advance to the preliminary engineering stage if the Secretary finds*
 21 *the project is consistent with section 5309(e)(1)–(6) of this title.*

22 (3) *The Secretary shall issue a record of decision and allow a project to*
 23 *advance to the final design stage of construction not later than 120 days after*
 24 *the final environmental impact statement for the project is completed.*

25 (4) *The Secretary shall make a full financing grant agreement under sec-*
 26 *tion 5309 of this title for a project not later than 120 days after the project*
 27 *enters the final design stage of construction. The agreement shall provide for*
 28 *a United States Government share of the construction cost at least equal to*
 29 *the Government share estimated in the Secretary’s most recent report required*
 30 *under section 5309(m)(2) of this title or an update of the report unless the*
 31 *applicant requests otherwise.*

32 (b) *ALLOWED DELAYS.*—(1) *Advancement of a project under the time re-*
 33 *quirements of subsection (a) of this section may be delayed only—*

34 (A) *for the time the applicant may request; or*

35 (B) *during the time the Secretary finds, after reasonable notice and*
 36 *an opportunity for comment, that the applicant, for reasons attributable*
 37 *only to the applicant, has not complied substantially with the provisions*
 38 *of this chapter applicable to the project.*

39 (2) *Not more than 10 days after imposing a delay under paragraph (1)(B)*
 40 *of this subsection, the Secretary shall give the applicant a written statement*

1 explaining the reasons for the delay and describing actions the applicant must
2 take to end the delay.

3 (3) At least once every 6 months, the Secretary shall report to the Commit-
4 tee on Public Works and Transportation of the House of Representatives and
5 the Committee on Banking, Housing, and Urban Affairs of the Senate on each
6 situation in which the Secretary has not met a time requirement of subsection
7 (a) of this section or delayed a time requirement under paragraph (1)(B) of
8 this subsection. The report shall explain the reasons for the delay and include
9 a plan for achieving timely completion of the Secretary's review.

10 (c) PROGRAM OF INTERRELATED PROJECTS.—(1) In this subsection, a pro-
11 gram of interrelated projects includes the following:

12 (A) the New Jersey Urban Core Project (as defined in title III of the
13 Intermodal Surface Transportation Efficiency Act of 1991 (Public Law
14 102-240, 105 Stat. 2087)).

15 (B) the San Francisco Bay Area Rail Extension Program, consisting
16 of at least an extension of the San Francisco Bay Area Rapid Transit
17 District to the San Francisco International Airport (Phase 1a to Colma
18 and Phase 1b to San Francisco Airport), the Santa Clara County Tran-
19 sit District Tasman Corridor Project, a program element designated by
20 a change to the Metropolitan Transportation Commission Resolution No.
21 1876, and a program element financed completely with non-Government
22 amounts, including the BART Warm Springs Extension, Dublin Exten-
23 sion, and West Pittsburg Extension.

24 (C) the Los Angeles Metro Rail Minimum Operable Segment-3 Pro-
25 gram, consisting of 7 stations and approximately 11.6 miles of heavy
26 rail subway on the following lines:

27 (i) one line running west and northwest from the Hollywood/Vine
28 station to the North Hollywood station, with 2 intermediate sta-
29 tions.

30 (ii) one line running west from the Wilshire/Western station to
31 the Pico/San Vicente station, with one intermediate station.

32 (iii) the East Side Extension, consisting of an initial line of ap-
33 proximately 3 miles, with at least 2 stations, beginning at Union
34 Station and running generally east.

35 (D) the Baltimore-Washington Transportation Improvement Program,
36 consisting of 3 extensions of the Baltimore Light Rail to Hunt Valley,
37 Penn Station, and Baltimore-Washington Airport, MARC extensions to
38 Frederick and Waldorf, Maryland, and an extension of the Washington
39 Subway system to Largo, Maryland.

40 (E) the Tri-County Metropolitan Transportation District of Oregon
41 Westside Light Rail Program, consisting of the locally preferred alter-

1 *native for the Westside Light Rail Project, including system related costs,*
2 *contained in the Department of Transportation and Related Agencies*
3 *Appropriations Act, 1991 (Public Law 101-516, 104 Stat. 2155), and*
4 *defined in House Report 101-584, and the Hillsboro extension to the*
5 *Westside Light Rail Project contained in that Act.*

6 *(F) the Queens Local/Express Connector Program, consisting of the lo-*
7 *cally preferred alternative for the connection of the 63d Street tunnel ex-*
8 *tension to the Queens Boulevard lines, the bell-mouth part of the connec-*
9 *tor that will allow for future access by commuter rail trains and other*
10 *subway lines to the 63d Street tunnel extension, planning elements for*
11 *connecting the upper and lower levels to commuter and subway lines in*
12 *Long Island City, and planning elements for providing a connector for*
13 *commuter rail transportation to the East side of Manhattan and subway*
14 *lines to the proposed Second Avenue subway.*

15 *(G) the Dallas Area Rapid Transit Authority light rail elements of*
16 *the New System Plan, consisting of the locally preferred alternative for*
17 *the South Oak Cliff corridor, the South Oak Cliff corridor extension-*
18 *Camp Wisdom, the West Oak Cliff corridor-Westmoreland, the North*
19 *Central corridor-Park Lane, the North Central corridor-Richardson,*
20 *Plano, and Garland extensions, the Pleasant Grove corridor-Buckner,*
21 *and the Carrollton corridors-Farmers Branch and Las Colinas terminal.*

22 *(H) other programs designated by law or the Secretary.*

23 *(2) Consistent with the time requirements of subsection (a) of this section*
24 *or as otherwise provided by law, the Secretary shall make at least one full*
25 *financing grant agreement for each program described in paragraph (1) of*
26 *this subsection. The agreement shall include commitments to advance each of*
27 *the applicant's program elements (in the program of interrelated projects)*
28 *through the appropriate program review stages as provided in subsection (a)*
29 *or as otherwise provided by law and to provide Government financing for*
30 *each element. The agreement may be changed to include design and construc-*
31 *tion of a particular element.*

32 *(3) When reviewing a project in a program of interrelated projects, the Sec-*
33 *retary shall consider the local financial commitment, transportation effective-*
34 *ness, and other assessment factors of all program elements to the extent con-*
35 *sideration expedites carrying out the project.*

36 *(4) Including a program element not financed by the Government in a pro-*
37 *gram of interrelated projects does not impose Government requirements that*
38 *otherwise would not apply to the element.*

39 **§ 5329. Investigation of safety hazards**

40 *(a) GENERAL.—The Secretary of Transportation may investigate a condi-*
41 *tion in equipment, a facility, or an operation financed under this chapter*

1 *that the Secretary believes causes a serious hazard of death or injury to estab-*
2 *lish the nature and extent of the condition and how to eliminate or correct*
3 *it. If the Secretary establishes that a condition causes a hazard, the Secretary*
4 *shall require the local governmental authority receiving amounts under this*
5 *chapter to submit a plan for correcting it. The Secretary may withhold fur-*
6 *ther financial assistance under this chapter until a plan is approved and car-*
7 *ried out.*

8 (b) *REPORT.—Not later than June 15, 1992, the Secretary shall submit to*
9 *Congress a report containing—*

10 (1) *a description of actions taken to identify and investigate condi-*
11 *tions in a facility, equipment, or way of operating as part of the find-*
12 *ings and decisions required of the Secretary in providing a grant or loan*
13 *under this chapter;*

14 (2) *a description of actions of the Secretary to correct or eliminate,*
15 *as a requirement for making an amount available through a grant or*
16 *loan under this chapter, a condition found to create a serious hazard of*
17 *death or injury;*

18 (3) *a summary of all passenger-related deaths and injuries resulting*
19 *from an unsafe condition in a facility, equipment, or way of operating*
20 *a facility or equipment at least partly financed under this chapter;*

21 (4) *a summary of all employee-related deaths and injuries resulting*
22 *from an unsafe condition in a facility, equipment, or way of operating*
23 *a facility or equipment at least partly financed under this chapter;*

24 (5) *a summary of action of the Secretary to correct or eliminate the*
25 *unsafe condition to which the deaths and injuries referred to in clauses*
26 *(3) and (4) of this subsection were attributed;*

27 (6) *a summary of actions of the Secretary to alert mass transportation*
28 *operators of the nature of the unsafe condition found to create a serious*
29 *hazard of death or injury; and*

30 (7) *recommendations of the Secretary to Congress of any legislative or*
31 *administrative actions necessary to ensure that all recipients of amounts*
32 *under this chapter will undertake the best way available to correct or*
33 *eliminate hazards of death or injury, including—*

34 (A) *a timetable for undertaking actions;*

35 (B) *an estimate of the capital and operating cost to take the ac-*
36 *tions; and*

37 (C) *minimum standards for establishing and carrying out safety*
38 *plans by recipients of amounts under this chapter.*

1 **§5330. Withholding amounts for noncompliance with safety**
 2 **requirements**

3 (a) *APPLICATION.*—This section applies only to States that have rail fixed
 4 guideway mass transportation systems not subject to regulation by the Fed-
 5 eral Railroad Administration.

6 (b) *GENERAL AUTHORITY.*—The Secretary of Transportation may withhold
 7 not more than 5 percent of the amount required to be appropriated for use
 8 in a State or urbanized area in the State under section 5307 of this title for
 9 a fiscal year beginning after September 30, 1994, if the State in the prior
 10 fiscal year has not met the requirements of subsection (c) of this section and
 11 the Secretary decides the State is not making an adequate effort to comply
 12 with subsection (c).

13 (c) *STATE REQUIREMENTS.*—A State meets the requirements of this section
 14 if the State—

15 (1) establishes and is carrying out a safety program plan for each
 16 fixed guideway mass transportation system in the State that establishes
 17 at least safety requirements, lines of authority, levels of responsibility
 18 and accountability, and methods of documentation for the system; and

19 (2) designates a State authority as having responsibility—

20 (A) to require, review, approve, and monitor the carrying out of
 21 each plan;

22 (B) to investigate hazardous conditions and accidents on the sys-
 23 tems; and

24 (C) to require corrective action to correct or eliminate those con-
 25 ditions.

26 (d) *MULTISTATE INVOLVEMENT.*—When more than one State is subject to
 27 this section in connection with a single mass transportation authority, the
 28 affected States may designate an entity (except the mass transportation au-
 29 thority) to ensure uniform safety standards and enforcement and to meet the
 30 requirements of subsection (c) of this section.

31 (e) *AVAILABILITY OF WITHHELD AMOUNTS.*—(1) An amount withheld
 32 under subsection (b) of this section remains available for apportionment for
 33 use in the State until the end of the 2d fiscal year after the fiscal year for
 34 which the amount may be appropriated.

35 (2) If a State meets the requirements of subsection (c) of this section before
 36 the last day of the period for which an amount withheld under subsection (b)
 37 of this section remains available under paragraph (1) of this subsection, the
 38 Secretary, on the first day on which the State meets the requirements, shall
 39 apportion to the State the amount withheld that remains available for appor-
 40 tionment for use in the State. An amount apportioned under this paragraph
 41 remains available until the end of the 3d fiscal year after the fiscal year in

1 which the amount is apportioned. An amount not obligated at the end of the
2 3-year period shall be apportioned for use in other States under section 5336
3 of this title.

4 (3) If a State does not meet the requirements of subsection (c) of this section
5 at the end of the period for which an amount withheld under subsection (b)
6 of this section remains available under paragraph (1) of this subsection, the
7 amount shall be apportioned for use in other States under section 5336 of this
8 title.

9 (f) REGULATIONS.—Not later than December 18, 1992, the Secretary shall
10 prescribe regulations stating the requirements for complying with subsection
11 (c) of this section.

12 **§5331. Alcohol and controlled substances testing**

13 (a) DEFINITIONS.—In this section—

14 (1) “controlled substance” means any substance under section 102 of
15 the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
16 U.S.C. 802) whose use the Secretary of Transportation decides has a risk
17 to transportation safety.

18 (2) “person” includes any entity organized or existing under the laws
19 of the United States, a State, territory, or possession of the United
20 States, or a foreign country.

21 (3) “mass transportation” means any form of mass transportation, ex-
22 cept a form the Secretary decides is covered adequately, for employee al-
23cohol and controlled substances testing purposes, under subchapter III of
24 chapter 201 or section 31306 of this title.

25 (b) TESTING PROGRAM FOR MASS TRANSPORTATION EMPLOYEES.—(1)(A)
26 In the interest of mass transportation safety, the Secretary of Transportation
27 shall prescribe regulations not later than October 28, 1992, that establish a
28 program requiring mass transportation operations that receive financial as-
29sistance under section 5307, 5309, or 5311 of this title or section 103(e)(4)
30 of title 23 to conduct preemployment, reasonable suspicion, random, and post-
31 accident testing of mass transportation employees responsible for safety-sen-
32sitive functions (as decided by the Secretary) for the use of alcohol or a con-
33trolled substance in violation of law or a United States Government regula-
34tion.

35 (B) When the Secretary of Transportation considers it appropriate in the
36 interest of safety, the Secretary may prescribe regulations for conducting peri-
37 odic recurring testing of mass transportation employees responsible for safety-
38 sensitive functions (as decided by the Secretary) for the use of alcohol or a
39 controlled substance in violation of law or a Government regulation.

40 (2) In prescribing regulations under this subsection, the Secretary of Trans-
41 portation—

1 (A) shall require that post-accident testing of such a mass transpor-
2 tation employee be conducted when loss of human life occurs in an acci-
3 dent involving mass transportation; and

4 (B) may require that post-accident testing of such a mass transpor-
5 tation employee be conducted when bodily injury or significant property
6 damage occurs in any other serious accident involving mass transpor-
7 tation.

8 (c) *DISQUALIFICATIONS FOR USE.*—(1) When the Secretary of Transpor-
9 tation considers it appropriate, the Secretary shall require disqualification for
10 an established period of time or dismissal of any employee referred to in sub-
11 section (b)(1) of this section who is found—

12 (A) to have used or been impaired by alcohol when on duty; or

13 (B) to have used a controlled substance, whether or not on duty, except
14 as allowed for medical purposes by law or regulation.

15 (2) This section does not supersede any penalty applicable to a mass trans-
16 portation employee under another law.

17 (d) *TESTING AND LABORATORY REQUIREMENTS.*—In carrying out sub-
18 section (b) of this section, the Secretary of Transportation shall develop re-
19 quirements that shall—

20 (1) promote, to the maximum extent practicable, individual privacy
21 in the collection of specimens;

22 (2) for laboratories and testing procedures for controlled substances,
23 incorporate the Department of Health and Human Services scientific
24 and technical guidelines dated April 11, 1988, and any amendments to
25 those guidelines, including mandatory guidelines establishing—

26 (A) comprehensive standards for every aspect of laboratory con-
27 trolled substances testing and laboratory procedures to be applied in
28 carrying out this section, including standards requiring the use of
29 the best available technology to ensure the complete reliability and
30 accuracy of controlled substances tests and strict procedures govern-
31 ing the chain of custody of specimens collected for controlled sub-
32 stances testing;

33 (B) the minimum list of controlled substances for which individ-
34 uals may be tested; and

35 (C) appropriate standards and procedures for periodic review of
36 laboratories and criteria for certification and revocation of certifi-
37 cation of laboratories to perform controlled substances testing in
38 carrying out this section;

39 (3) require that a laboratory involved in controlled substances testing
40 under this section have the capability and facility, at the laboratory, of
41 performing screening and confirmation tests;

1 (4) provide that all tests indicating the use of alcohol or a controlled
2 substance in violation of law or a Government regulation be confirmed
3 by a scientifically recognized method of testing capable of providing
4 quantitative information about alcohol or a controlled substance;

5 (5) provide that each specimen be subdivided, secured, and labeled in
6 the presence of the tested individual and that a part of the specimen be
7 retained in a secure manner to prevent the possibility of tampering, so
8 that if the individual's confirmation test results are positive the individ-
9 ual has an opportunity to have the retained part tested by a 2d con-
10 firmation test done independently at another certified laboratory if the
11 individual requests the 2d confirmation test not later than 3 days after
12 being advised of the results of the first confirmation test;

13 (6) ensure appropriate safeguards for testing to detect and quantify
14 alcohol in breath and body fluid samples, including urine and blood,
15 through the development of regulations that may be necessary and in
16 consultation with the Secretary of Health and Human Services;

17 (7) provide for the confidentiality of test results and medical informa-
18 tion (except information about alcohol or a controlled substance) of em-
19 ployees, except that this clause does not prevent the use of test results for
20 the orderly imposition of appropriate sanctions under this section; and

21 (8) ensure that employees are selected for tests by nondiscriminatory
22 and impartial methods, so that no employee is harassed by being treated
23 differently from other employees in similar circumstances.

24 (e) *REHABILITATION.*—The Secretary of Transportation shall prescribe reg-
25 ulations establishing requirements for rehabilitation programs that provide
26 for the identification and opportunity for treatment of any mass transpor-
27 tation employee referred to in subsection (b)(1) of this section who is found
28 to have used alcohol or a controlled substance in violation of law or a Govern-
29 ment regulation. The Secretary shall decide on the circumstances under which
30 employees shall be required to participate in a program. This subsection does
31 not prevent a mass transportation operation from establishing a program
32 under this section in cooperation with another mass transportation operation.

33 (f) *RELATIONSHIP TO OTHER LAWS, REGULATIONS, STANDARDS, AND OR-*
34 *DERS.*—(1) A State or local government may not prescribe, issue, or continue
35 in effect a law, regulation, standard, or order that is inconsistent with regula-
36 tions prescribed under this section. However, a regulation prescribed under
37 this section does not preempt a State criminal law that imposes sanctions for
38 reckless conduct leading to loss of life, injury, or damage to property.

39 (2) In prescribing regulations under this section, the Secretary of Trans-
40 portation—

1 (A) shall establish only requirements that are consistent with inter-
2 national obligations of the United States; and

3 (B) shall consider applicable laws and regulations of foreign countries.

4 (3) This section does not prevent the Secretary of Transportation from con-
5 tinuing in effect, amending, or further supplementing a regulation prescribed
6 before October 28, 1991, governing the use of alcohol or a controlled substance
7 by mass transportation employees.

8 (g) *INELIGIBILITY FOR ASSISTANCE*.—A person is not eligible for financial
9 assistance under section 5307, 5309, or 5311 of this title or section 103(e)(4)
10 of title 23 if the person is required, under regulations the Secretary of Trans-
11 portation prescribes under this section, to establish a program of alcohol and
12 controlled substances testing and does not establish the program.

13 **§5332. Nondiscrimination**

14 (a) *DEFINITION*.—In this section, “person” includes a governmental au-
15 thority, political subdivision, authority, legal representative, trust, unincor-
16 porated organization, trustee, trustee in bankruptcy, and receiver.

17 (b) *PROHIBITIONS*.—A person may not be excluded from participating in,
18 denied a benefit of, or discriminated against under, a project, program, or
19 activity receiving financial assistance under this chapter because of race,
20 color, creed, national origin, sex, or age.

21 (c) *COMPLIANCE*.—(1) The Secretary of Transportation shall take affirma-
22 tive action to ensure compliance with subsection (b) of this section.

23 (2) When the Secretary decides that a person receiving financial assistance
24 under this chapter is not complying with subsection (b) of this section, a civil
25 rights law of the United States, or a regulation or order under that law, the
26 Secretary shall notify the person of the decision and require action be taken
27 to ensure compliance with subsection (b).

28 (d) *AUTHORITY OF SECRETARY FOR NONCOMPLIANCE*.—If a person does
29 not comply with subsection (b) of this section within a reasonable time after
30 receiving notice, the Secretary shall—

31 (1) direct that no further financial assistance of the United States
32 Government under this chapter be provided to the person;

33 (2) refer the matter to the Attorney General with a recommendation
34 that a civil action be brought;

35 (3) proceed under title VI of the Civil Rights Act of 1964 (42 U.S.C.
36 2000d et seq.); and

37 (4) take any other action provided by law.

38 (e) *CIVIL ACTIONS BY ATTORNEY GENERAL*.—The Attorney General may
39 bring a civil action for appropriate relief when—

40 (1) a matter is referred to the Attorney General under subsection
41 (d)(2) of this section; or

1 (2) the Attorney General believes a person is engaged in a pattern or
2 practice in violation of this section.

3 (f) *APPLICATION AND RELATIONSHIP TO OTHER LAWS.*—This section ap-
4 plies to an employment or business opportunity and is in addition to title
5 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

6 **§5333. Labor standards**

7 (a) *PREVAILING WAGES REQUIREMENT.*—The Secretary of Transportation
8 shall ensure that laborers and mechanics employed by contractors and sub-
9 contractors in construction work financed with a grant or loan under this
10 chapter be paid wages not less than those prevailing on similar construction
11 in the locality, as determined by the Secretary of Labor under the Act of
12 March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5).
13 The Secretary of Transportation may approve a grant or loan only after
14 being assured that required labor standards will be maintained on the con-
15 struction work. For a labor standard under this subsection, the Secretary of
16 Labor has the same duties and powers stated in Reorganization Plan No. 14
17 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and section 2 of the Act of June
18 13, 1934 (40 U.S.C. 276c).

19 (b) *EMPLOYEE PROTECTIVE ARRANGEMENTS.*—(1) As a condition of finan-
20 cial assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and
21 (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees affected
22 by the assistance shall be protected under arrangements the Secretary of
23 Labor concludes are fair and equitable. The agreement granting the assistance
24 under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337,
25 and 5338(j)(5) shall specify the arrangements.

26 (2) Arrangements under this subsection shall include—

27 (A) the preservation of rights, privileges, and benefits (including con-
28 tinuation of pension rights and benefits) under existing collective bar-
29 gaining agreements or otherwise;

30 (B) the continuation of collective bargaining rights;

31 (C) the protection of employees against a worsening of their positions
32 related to employment;

33 (D) assurances of employment to employees of acquired mass transpor-
34 tation systems;

35 (E) assurances of priority of reemployment of employees whose em-
36 ployment is ended or who are laid off; and

37 (F) paid training or retraining programs.

38 (3) Arrangements under this subsection shall provide benefits at least equal
39 to benefits established under section 11347 of this title.

1 **§5334. Administrative**

2 (a) *GENERAL AUTHORITY.*—*In carrying out this chapter, the Secretary of*
3 *Transportation may—*

4 (1) *prescribe terms for a project under sections 5307 and 5309–5311*
5 *of this title (except terms the Secretary of Labor prescribes under section*
6 *5333(b) of this title);*

7 (2) *sue and be sued;*

8 (3) *foreclose on property or bring a civil action to protect or enforce*
9 *a right conferred on the Secretary of Transportation by law or agree-*
10 *ment;*

11 (4) *buy property related to a loan under this chapter;*

12 (5) *agree to pay an annual amount in place of a State or local tax*
13 *on real property acquired or owned under this chapter;*

14 (6) *sell, exchange, or lease property, a security, or an obligation;*

15 (7) *obtain loss insurance for property and assets the Secretary of*
16 *Transportation holds;*

17 (8) *consent to a modification in an agreement under this chapter; and*

18 (9) *include in an agreement or instrument under this chapter a cov-*
19 *enant or term the Secretary of Transportation considers necessary to*
20 *carry out this chapter.*

21 (b) *PROCEDURES FOR PRESCRIBING REGULATIONS.*—(1) *The Secretary of*
22 *Transportation shall prepare an agenda listing all areas in which the Sec-*
23 *retary intends to propose regulations governing activities under this chapter*
24 *within the following 12 months. The Secretary shall publish the proposed*
25 *agenda in the Federal Register as part of the Secretary's semiannual regu-*
26 *latory agenda that lists regulatory activities of the Federal Transit Adminis-*
27 *tration. The Secretary shall submit the agenda to the Committees on Public*
28 *Works and Transportation and Appropriations of the House of Representa-*
29 *tives and the Committees on Banking, Housing, and Urban Affairs and Ap-*
30 *propriations of the Senate on the day the agenda is published.*

31 (2) *Except for emergency regulations, the Secretary of Transportation shall*
32 *give interested parties at least 60 days to participate in a regulatory proceed-*
33 *ing under this chapter by submitting written information, views, or argu-*
34 *ments, with or without an oral presentation, except when the Secretary for*
35 *good cause finds that public notice and comment are unnecessary because of*
36 *the routine nature or insignificant impact of the regulation or that an emer-*
37 *gency regulation should be issued. The Secretary may extend the 60-day pe-*
38 *riod if the Secretary decides the period is insufficient to allow diligent indi-*
39 *viduals to prepare comments or that other circumstances justify an extension.*

40 (3) *An emergency regulation ends 120 days after it is issued.*

1 (4) *The Secretary of Transportation shall comply with this section (except*
2 *subsections (h) and (i)) and sections 5323(a)(2), (c) and (e), 5324(c), and*
3 *5325 of this title when proposing or carrying out a regulation governing an*
4 *activity under this chapter, except for a routine matter or a matter with no*
5 *significant impact.*

6 (c) *BUDGET PROGRAM AND SET OF ACCOUNTS.—The Secretary of Trans-*
7 *portation shall—*

8 (1) *submit each year a budget program as provided in section 9103*
9 *of title 31; and*

10 (2) *maintain a set of accounts the Comptroller General shall audit*
11 *under chapter 35 of title 31.*

12 (d) *DEPOSITORY AND AVAILABILITY OF AMOUNTS.—The Secretary of*
13 *Transportation shall deposit amounts made available to the Secretary under*
14 *this chapter in a checking account in the Treasury. Receipts, assets, and*
15 *amounts obtained or held by the Secretary to carry out this chapter are avail-*
16 *able for administrative expenses to carry out this chapter.*

17 (e) *BINDING EFFECT OF FINANCIAL TRANSACTION.—A financial trans-*
18 *action of the Secretary of Transportation under this chapter and a related*
19 *voucher are binding on all officers and employees of the United States Gov-*
20 *ernment.*

21 (f) *DEALING WITH ACQUIRED PROPERTY.—Notwithstanding another law*
22 *related to the Government acquiring, using, or disposing of real property, the*
23 *Secretary of Transportation may deal with property acquired under sub-*
24 *section (a)(3) or (4) of this section in any way. However, this subsection does*
25 *not—*

26 (1) *deprive a State or political subdivision of a State of jurisdiction*
27 *of the property; or*

28 (2) *impair the civil rights, under the laws of a State or political sub-*
29 *division of a State, of an inhabitant of the property.*

30 (g) *TRANSFER OF ASSETS NO LONGER NEEDED.—(1) If a recipient of as-*
31 *sistance under this chapter decides an asset acquired under this chapter at*
32 *least in part with that assistance is no longer needed for the purpose for*
33 *which it was acquired, the Secretary of Transportation may authorize the re-*
34 *recipient to transfer the asset to a local governmental authority to be used for*
35 *a public purpose with no further obligation to the Government. The Secretary*
36 *may authorize a transfer for a public purpose other than mass transportation*
37 *only if the Secretary decides—*

38 (A) *the asset will remain in public use for at least 5 years after the*
39 *date the asset is transferred;*

40 (B) *there is no purpose eligible for assistance under this chapter for*
41 *which the asset should be used;*

1 (C) the overall benefit of allowing the transfer is greater than the in-
2 terest of the Government in liquidation and return of the financial inter-
3 est of the Government in the asset, after considering fair market value
4 and other factors; and

5 (D) through an appropriate screening or survey process, that there is
6 no interest in acquiring the asset for Government use if the asset is a
7 facility or land.

8 (2) A decision under paragraph (1) of this section must be in writing and
9 include the reason for the decision.

10 (3) This subsection is in addition to another law related to using and dis-
11 posing of a facility or equipment under an assistance agreement.

12 (h) *TRANSFER OF AMOUNTS AND NON-GOVERNMENT SHARE.*—(1) Amounts
13 made available for a mass transportation project under title 23 shall be trans-
14 ferred to and administered by the Secretary of Transportation under this
15 chapter. Amounts made available for a highway project under this chapter
16 shall be transferred to and administered by the Secretary under title 23.

17 (2) The provisions of title 23 related to the non-Government share apply
18 to amounts under title 23 used for mass transportation projects. The provi-
19 sions of this chapter related to the non-Government share apply to amounts
20 under this chapter used for highway projects.

21 (i) *AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT.*—
22 The Secretary of Housing and Urban Development shall—

23 (1) carry out section 5312(a) and (b)(1) of this title related to—

24 (A) urban transportation systems and planned development of
25 urban areas; and

26 (B) the role of transportation planning in overall urban plan-
27 ning; and

28 (2) advise and assist the Secretary of Transportation in making find-
29 ings under section 5323(a)(1)(A) of this title.

30 (j) *RELATIONSHIP TO OTHER LAWS.*—(1) Section 9107(a) of title 31 ap-
31 plies to the Secretary of Transportation under this chapter.

32 (2) Section 3709 of the Revised Statutes (41 U.S.C. 5) applies to a contract
33 for more than \$1,000 for services or supplies related to property acquired
34 under this chapter.

35 **§ 5335. Reports and audits**

36 (a) *REPORTING SYSTEM AND UNIFORM SYSTEM OF ACCOUNTS AND*
37 *RECORDS.*—(1) To help meet the needs of individual mass transportation sys-
38 tems, the United States Government, State and local governments, and the
39 public for information on which to base mass transportation service planning,
40 the Secretary of Transportation shall maintain a reporting system, by uni-
41 form categories, to accumulate mass transportation financial and operating

1 information and a uniform system of accounts and records. The reporting and
2 uniform systems shall contain appropriate information to help any level of
3 government make a public sector investment decision. The Secretary may re-
4 quest and receive appropriate information from any source.

5 (2) The Secretary may make a grant under section 5307 of this title only
6 if the applicant, and any person that will receive benefits directly from the
7 grant, are subject to the reporting and uniform systems.

8 (b) *QUARTERLY REPORTS.*—Not later than 30 days after the last day of
9 each calendar quarter, the Secretary shall submit to the Committees on Public
10 Works and Transportation and Appropriations of the House of Representa-
11 tives and the Committees on Banking, Housing, and Urban Affairs and Ap-
12 propriations of the Senate a report on—

13 (1) obligations by State, designated recipient, and applicant made
14 under this chapter during the quarter;

15 (2) the balance of unobligated apportionments under this chapter on
16 the last day of the quarter;

17 (3) the balance of unobligated amounts under this chapter on the last
18 day of the quarter that the Secretary may expend;

19 (4) letters of intent issued during the quarter;

20 (5) letters of intent outstanding on the last day of the quarter; and

21 (6) grant contracts executed and reimbursement authority established
22 for amounts obligated for each State, designated recipient, and appli-
23 cant.

24 (c) *BIENNIAL NEEDS REPORT.*—In January 1993 and in January of every
25 2d year after 1993, the Comptroller General shall submit to the Committee
26 on Public Works and Transportation of the House of Representatives and the
27 Committee on Banking, Housing, and Urban Affairs of the Senate a report
28 containing an evaluation of the extent to which current mass transportation
29 needs are addressed adequately and an estimate of the future mass transpor-
30 tation needs of the United States, including mass transportation needs in
31 rural areas (particularly access to health care facilities). The report shall in-
32 clude—

33 (1) an assessment of needs related to rail modernization, guideway
34 modernization, replacing, rehabilitating, and buying buses and related
35 equipment, constructing bus related facilities, and constructing new fixed
36 guideway systems and extensions to existing fixed guideway systems;

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 on
40 fixed guideway systems;

1 (3) a 5-year projection of the need to invest in the expansion of exist-
2 ing mass transportation systems to meet changing economic, commuter,
3 and residential patterns;

4 (4) an estimate of the level of expenditure needed to satisfy the needs
5 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 to
8 support public mass transportation; and

9 (6) the gap between the level of expenditure estimated under clause (4)
10 of this paragraph and the level of resources identified under clause (5)
11 of this paragraph that are available to meet the needs.

12 (d) *BIENNIAL TRANSFERABILITY REPORT.*—In January 1993 and in Janu-
13 ary of every 2d year after 1993, the Comptroller General shall submit to the
14 Committee on Public Works and Transportation of the House of Representa-
15 tives and the Committee on Banking, Housing, and Urban Affairs of the Sen-
16 ate a report on carrying out section 5307(b)(5) of this title. The report
17 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 U.S.C.
27 7401 et seq.) and the Americans With Disabilities Act of 1990 (42
28 U.S.C. 12101 et seq.); and

29 (C) the State's efforts to extend public mass transportation serv-
30 ices to unserved rural areas; and

31 (3) examine the relative levels of Government mass transportation as-
32 sistance 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 Surface
36 Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat.
37 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 a
5 ratio equal to the population of the area divided by the total popu-
6 lation of all urbanized areas with populations of less than 200,000
7 as shown in the latest United States Government census; and

8 (B) 50 percent of the total amount apportioned multiplied by a
9 ratio for the area based on population weighted by a factor, estab-
10 lished by the Secretary of Transportation, of the number of inhab-
11 itants in each square mile; and

12 (2) 90.68 percent shall be apportioned each fiscal year only in urban-
13 ized areas with populations of at least 200,000 as provided in subsections
14 (b) and (c) of this section.

15 (b) *BASED ON FIXED GUIDEWAY REVENUE VEHICLE-MILES, ROUTE-*
16 *MILES, AND PASSENGER-MILES.*—(1) In this subsection, “fixed guideway rev-
17 enue vehicle-miles” and “fixed guideway route-miles” include ferry boat oper-
18 ations directly or under contract by the designated recipient.

19 (2) Of the amount apportioned under subsection (a)(2) of this section,
20 33.29 percent shall be apportioned as follows:

21 (A) 95.61 percent of the total amount apportioned under this sub-
22 section shall be apportioned so that each urbanized area with a popu-
23 lation of at least 200,000 is entitled to receive an amount equal to—

24 (i) 60 percent of the 95.61 percent apportioned under this sub-
25 paragraph multiplied by a ratio equal to the number of fixed guide-
26 way revenue vehicle-miles attributable to the area, as established by
27 the Secretary of Transportation, divided by the total number of all
28 fixed guideway revenue vehicle-miles attributable to all areas; and

29 (ii) 40 percent of the 95.61 percent apportioned under this sub-
30 paragraph multiplied by a ratio equal to the number of fixed guide-
31 way route-miles attributable to the area, established by the Sec-
32 retary, divided by the total number of all fixed guideway route-
33 miles attributable to all areas.

34 (B) 4.39 percent of the total amount apportioned under this subsection
35 shall be apportioned so that each urbanized area with a population of
36 at least 200,000 is entitled to receive an amount equal to—

37 (i) the number of fixed guideway vehicle passenger-miles traveled
38 multiplied by the number of fixed guideway vehicle passenger-miles
39 traveled for each dollar of operating cost in an area; divided by

40 (ii) the total number of fixed guideway vehicle passenger-miles
41 traveled multiplied by the total number of fixed guideway vehicle

1 *passenger-miles traveled for each dollar of operating cost in all*
2 *areas.*

3 *(C) An urbanized area with a population of at least 750,000 in which*
4 *commuter rail transportation is provided shall receive at least .75 per-*
5 *cent of the total amount apportioned under this subsection.*

6 *(D) Under subparagraph (A) of this paragraph, fixed guideway reve-*
7 *nuce vehicle- or route-miles, and passengers served on those miles, in an*
8 *urbanized area with a population of less than 200,000, where the miles*
9 *and passengers served otherwise would be attributable to an urbanized*
10 *area with a population of at least 1,000,000 in an adjacent State, are*
11 *attributable to the governmental authority in the State in which the ur-*
12 *banized area with a population of less than 200,000 is located. The au-*
13 *thority is deemed an urbanized area with a population of at least*
14 *200,000 if the authority makes a contract for the service.*

15 *(E) A recipient's apportionment under subparagraph (A)(i) of this*
16 *paragraph may not be reduced if the recipient, after satisfying the Sec-*
17 *retary of Transportation that energy or operating efficiencies would be*
18 *achieved, reduces revenue vehicle-miles but provides the same frequency*
19 *of revenue service to the same number of riders.*

20 *(c) BASED ON BUS REVENUE VEHICLE-MILES AND PASSENGER-MILES.—*
21 *Of the amount apportioned under subsection (a)(2) of this section, 66.71 per-*
22 *cent shall be apportioned as follows:*

23 *(1) 90.8 percent of the total amount apportioned under this subsection*
24 *shall be apportioned as follows:*

25 *(A) 73.39 percent of the 90.8 percent apportioned under this*
26 *paragraph shall be apportioned so that each urbanized area with*
27 *a population of at least 1,000,000 is entitled to receive an amount*
28 *equal to—*

29 *(i) 50 percent of the 73.39 percent apportioned under this*
30 *subparagraph multiplied by a ratio equal to the total bus reve-*
31 *nuce vehicle-miles operated in or directly serving the urbanized*
32 *area divided by the total bus revenue vehicle-miles attributable*
33 *to all areas;*

34 *(ii) 25 percent of the 73.39 percent apportioned under this*
35 *subparagraph multiplied by a ratio equal to the population of*
36 *the area divided by the total population of all areas, as shown*
37 *by the latest Government census; and*

38 *(iii) 25 percent of the 73.39 percent apportioned under this*
39 *subparagraph multiplied by a ratio for the area based on pop-*
40 *ulation weighted by a factor, established by the Secretary of*

1 *Transportation, of the number of inhabitants in each square*
2 *mile.*

3 *(B) 26.61 percent of the 90.8 percent apportioned under this*
4 *paragraph shall be apportioned so that each urbanized area with*
5 *a population of at least 200,000 but not more than 999,999 is enti-*
6 *tled to receive an amount equal to—*

7 *(i) 50 percent of the 26.61 percent apportioned under this*
8 *subparagraph multiplied by a ratio equal to the total bus reve-*
9 *nue vehicle-miles operated in or directly serving the urbanized*
10 *area divided by the total bus revenue vehicle-miles attributable*
11 *to all areas;*

12 *(ii) 25 percent of the 26.61 percent apportioned under this*
13 *subparagraph multiplied by a ratio equal to the population of*
14 *the area divided by the total population of all areas, as shown*
15 *by the latest Government census; and*

16 *(iii) 25 percent of the 26.61 percent apportioned under this*
17 *subparagraph multiplied by a ratio for the area based on pop-*
18 *ulation weighted by a factor, established by the Secretary of*
19 *Transportation, of the number of inhabitants in each square*
20 *mile.*

21 *(2) 9.2 percent of the total amount apportioned under this subsection*
22 *shall be apportioned so that each urbanized area with a population of*
23 *at least 200,000 is entitled to receive an amount equal to—*

24 *(A) the number of bus passenger-miles traveled multiplied by the*
25 *number of bus passenger-miles traveled for each dollar of operating*
26 *cost in an area; divided by*

27 *(B) the total number of bus passenger-miles traveled multiplied*
28 *by the total number of bus passenger-miles traveled for each dollar*
29 *of operating cost in all areas.*

30 *(d) OPERATING ASSISTANCE.—(1) The total amount apportioned under this*
31 *section that may be used for operating assistance may not be more than—*

32 *(A) 80 percent of the total amount apportioned in the fiscal year end-*
33 *ing September 30, 1982, under section 5(a)(1)(A), (2)(A), and (3)(A) of*
34 *the Urban Mass Transportation Act of 1964 to urbanized areas with*
35 *populations of at least 1,000,000;*

36 *(B) 90 percent of the total amount apportioned in that year under*
37 *section 5(a)(1)(A), (2)(A), and (3)(A) to urbanized areas with popu-*
38 *lations of at least 200,000 but not more than 999,999;*

39 *(C) 95 percent of the total amount apportioned in that year under sec-*
40 *tion 5(a)(1)(A), (2)(A), and (3)(A) to urbanized areas with populations*
41 *of less than 200,000; or*

1 (D) two-thirds of the total amount apportioned under this section dur-
2 ing the first complete year an urbanized area received amounts under
3 this section if the area first became an urbanized area under the 1980
4 Government census or later.

5 (2) Amounts apportioned under paragraph (1) of this subsection shall be
6 increased on October 1 of each year by an amount equal to the amount appli-
7 cable to each urbanized area under paragraph (1) (except increases under this
8 paragraph), multiplied by the percentage increase in the Consumer Price
9 Index for all-urban consumers published by the Secretary of Labor during the
10 most recent calendar year. However, the increase may not be more than the
11 percentage increase of amounts made available under section 5338(f) of this
12 title in the current fiscal year and amounts made available under section
13 5338(f) in the prior fiscal year.

14 (e) DATE OF APPORTIONMENT.—The Secretary of Transportation shall—

15 (1) apportion amounts appropriated under section 5338(f) of this title
16 to carry out section 5307 of this title not later than the 10th day after
17 the date the amounts are appropriated or October 1 of the fiscal year
18 for which the amounts are appropriated, whichever is later; and

19 (2) publish apportionments of the amounts, including amounts attrib-
20 utable to each urbanized area with a population of more than 50,000
21 and amounts attributable to each State of a multistate urbanized area,
22 on the apportionment date.

23 (f) AMOUNTS NOT APPORTIONED TO DESIGNATED RECIPIENTS.—The chief
24 executive officer of a State may expend in an urbanized area with a popu-
25 lation of less than 200,000 an amount apportioned under this section that
26 is not apportioned to a designated recipient as defined in section 5307(a) of
27 this title.

28 (g) TRANSFERS OF APPORTIONMENTS.—(1) The chief executive officer of a
29 State may transfer any part of the State's apportionment under subsection
30 (a)(1) of this section to supplement amounts apportioned to the State under
31 section 5311(c) of this title or amounts apportioned to urbanized areas under
32 this subsection. The chief executive officer may make a transfer only after con-
33 sulting with responsible local officials and publicly owned operators of mass
34 transportation in each area for which the amount originally was apportioned
35 under this section.

36 (2) The chief executive officer of a State may transfer any part of the
37 State's apportionment under section 5311(c) of this title to supplement
38 amounts apportioned to the State under subsection (a)(1) of this section.

39 (3) The chief executive officer of a State may use throughout the State
40 amounts of a State's apportionment remaining available for obligation at the

1 *beginning of the 90-day period before the period of the availability of the*
 2 *amounts expires.*

3 (4) *A designated recipient for an urbanized area with a population of at*
 4 *least 200,000 may transfer a part of its apportionment under this section to*
 5 *the chief executive officer of a State. The chief executive officer shall distribute*
 6 *the transferred amounts to urbanized areas under this section.*

7 (5) *Capital and operating assistance limitations applicable to the original*
 8 *apportionment apply to amounts transferred under this subsection.*

9 (h) *CHANGES OF APPORTIONMENTS.—If sufficient amounts are available,*
 10 *the Secretary of Transportation shall change apportionments under this sec-*
 11 *tion between the Mass Transit Account of the Highway Trust Fund and the*
 12 *general fund to ensure that each recipient receives from the general fund at*
 13 *least as much operating assistance made available each fiscal year under this*
 14 *section as the recipient is eligible to receive.*

15 (i) *PERIOD OF AVAILABILITY TO RECIPIENTS.—An amount apportioned*
 16 *under this section may be obligated by the recipient for 3 years after the fiscal*
 17 *year in which the amount is apportioned. Not later than 30 days after the*
 18 *end of the 3-year period, an amount that is not obligated at the end of that*
 19 *period shall be added to the amount that may be apportioned under this sec-*
 20 *tion in the next fiscal year.*

21 (j) *APPLICATION OF OTHER SECTIONS.—Sections 5302, 5318, 5323(a)(1),*
 22 *(d), and (f), 5332, and 5333 of this title apply to this section and to a grant*
 23 *made under this section. Except as provided in this section, no other provi-*
 24 *sion of this chapter applies to this section or to a grant made under this sec-*
 25 *tion.*

26 (k) *CERTAIN URBANIZED AREAS GRANDFATHERED.—An area designated*
 27 *an urbanized area under the 1980 census and not designated an urbanized*
 28 *area under the 1990 census for the fiscal year ending September 30, 1993,*
 29 *is eligible to receive—*

30 (1) *50 percent of the amount the area would have received if the area*
 31 *had been an urbanized area as defined by section 5302(a)(13) of this*
 32 *title; and*

33 (2) *an amount equal to 50 percent of the amount that the State in*
 34 *which the area is located would have received if the area had been an*
 35 *area other than an urbanized area.*

36 **§5337. Apportionment of appropriations for fixed guideway**
 37 **modernization**

38 (a) *PERCENTAGE DISTRIBUTION.—The Secretary of Transportation shall*
 39 *apportion amounts made available for fixed guideway modernization under*
 40 *section 5309 of this title for each of the fiscal years ending September 30,*
 41 *1993–1997, as follows:*

1 (1) *The first \$455,000,000 shall be apportioned in the following urban-*
2 *ized areas as follows:*

3 (A) *Baltimore, 1.84 percent.*

4 (B) *Boston, 8.56 percent.*

5 (C) *Chicago/Northwestern Indiana, 17.18 percent.*

6 (D) *Cleveland, 2.09 percent.*

7 (E) *New York, 35.57 percent.*

8 (F) *Northeastern New Jersey, 9.04 percent.*

9 (G) *Philadelphia/Southern New Jersey, 12.41 percent.*

10 (H) *San Francisco, 7.21 percent.*

11 (I) *Southwestern Connecticut, 6.10 percent.*

12 (2) *The next \$42,700,000 shall be apportioned in the following urban-*
13 *ized areas as follows:*

14 (A) *New York, 33.2341 percent.*

15 (B) *Northeastern New Jersey, 22.1842 percent.*

16 (C) *Philadelphia/Southern New Jersey, 5.7594 percent.*

17 (D) *San Francisco, 2.7730 percent.*

18 (E) *Pittsburgh, 31.9964 percent.*

19 (F) *New Orleans, 4.0529 percent.*

20 (3) *The next \$70,000,000 shall be apportioned as follows:*

21 (A) *50 percent in the urbanized areas listed in paragraphs (1)*
22 *and (2) as provided in section 5336(b)(2)(A) of this title.*

23 (B) *50 percent in other urbanized areas eligible for assistance*
24 *under section 5336(b)(2)(A) of this title if the areas contain fixed*
25 *guideway systems placed in revenue service at least 7 years before*
26 *the fiscal year in which amounts are made available and in any*
27 *other urbanized area if, before the first day of the fiscal year, the*
28 *area satisfies the Secretary that the area has modernization needs*
29 *that cannot be met adequately with amounts received as provided*
30 *in section 5336(b)(2)(A).*

31 (4) *Remaining amounts shall be apportioned in each urbanized area*
32 *eligible for assistance under paragraphs (1)–(3) of this subsection as pro-*
33 *vided in section 5336(B)(2)(A).*

34 (b) *TOTAL AMOUNTS NOT AVAILABLE.*—*In a fiscal year in which the total*
35 *amounts authorized under subsection (a)(1) and (2) of this section are not*
36 *available, the Secretary shall reduce on a proportionate basis the apportion-*
37 *ments of all urbanized areas eligible under subsection (a)(1) or (2) to adjust*
38 *for the amount not available.*

39 (c) *NEW JERSEY TRANSIT CORPORATION.*—*Rail modernization amounts*
40 *allocated to the New Jersey Transit Corporation under this section may be*
41 *spent in any urbanized area in which the New Jersey Transit Corporation*

1 operates rail transportation, regardless of which urbanized area generates the
2 financing.

3 (d) AVAILABILITY OF AMOUNTS.—An amount apportioned under this sec-
4 tion—

5 (1) remains available for 3 years after the fiscal year in which the
6 amount is apportioned; and

7 (2) that is unobligated at the end of the 3-year period shall be
8 reapportioned for the next fiscal year among urbanized areas eligible
9 under subsection (a)(1)–(3) of this section using the apportionment for-
10 mula of this section.

11 **§ 5338. Authorizations**

12 (a) FOR SECTIONS 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317, 5320,
13 5327, AND 5334(a) AND (c) AND SECTION 103(e)(4) OF TITLE 23.—(1) Not
14 more than the following amounts are available from the Mass Transit Account
15 of the Highway Trust Fund for the Secretary of Transportation to carry out
16 sections 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, and
17 5334(a) and (c) of this title:

18 (A) \$1,150,000,000 for the fiscal year ending September 30, 1993.

19 (B) \$1,190,000,000 for the fiscal year ending September 30, 1994.

20 (C) \$1,150,000,000 for the fiscal year ending September 30, 1995.

21 (D) \$1,110,000,000 for the fiscal year ending September 30, 1996.

22 (E) \$1,920,000,000 for the fiscal year ending September 30, 1997.

23 (2) In addition to amounts made available under paragraph (1) of this
24 subsection, not more than the following amounts may be appropriated to the
25 Secretary to carry out sections 5303–5306, 5308, 5310, 5311, 5313, 5314,
26 5317, 5320, 5327, and 5334(a) and (c) of this title and substitute transit
27 projects under section 103(e)(4) of title 23:

28 (A) \$2,055,000,000 for the fiscal year ending September 30, 1993.

29 (B) \$1,885,000,000 for the fiscal year ending September 30, 1994.

30 (C) \$1,925,000,000 for the fiscal year ending September 30, 1995.

31 (D) \$1,965,000,000 for the fiscal year ending September 30, 1996.

32 (E) \$2,430,000,000 for the fiscal year ending September 30, 1997.

33 (b) SECTION 5309.—(1) Not more than the following amounts are available
34 from the Account for the Secretary to carry out section 5309 of this title:

35 (A) \$1,725,000,000 for the fiscal year ending September 30, 1993.

36 (B) \$1,785,000,000 for the fiscal year ending September 30, 1994.

37 (C) \$1,725,000,000 for the fiscal year ending September 30, 1995.

38 (D) \$1,665,000,000 for the fiscal year ending September 30, 1996.

39 (E) \$2,880,000,000 for the fiscal year ending September 30, 1997.

1 (2) *In addition to amounts made available under paragraph (1) of this*
 2 *subsection, not more than the following amounts may be appropriated to the*
 3 *Secretary to carry out section 5309 of this title:*

4 (A) *\$305,000,000 for the fiscal year ending September 30, 1993.*

5 (B) *\$265,000,000 for the fiscal year ending September 30, 1994.*

6 (C) *\$325,000,000 for the fiscal year ending September 30, 1995.*

7 (D) *\$385,000,000 for the fiscal year ending September 30, 1996.*

8 (E) *\$20,000,000 for the fiscal year ending September 30, 1997.*

9 (c) *SECTION 5315.—The Secretary shall make available in equal amounts*
 10 *from amounts provided under subsections (f) and (g) of this section not more*
 11 *than \$3,000,000 for each of the fiscal years ending September 30, 1993–1997,*
 12 *to carry out section 5315 of this title.*

13 (d) *SECTION 5316.—Not more than the following amounts may be appro-*
 14 *priated to the Secretary from the Fund (except the Account) for each of the*
 15 *fiscal years ending September 30, 1993–1997:*

16 (1) *\$250,000 to carry out section 5316(a) of this title.*

17 (2) *\$3,000,000 to carry out section 5316(b) of this title.*

18 (3) *\$1,000,000 to carry out section 5316(c) of this title.*

19 (4) *\$1,000,000 to carry out section 5316(d) of this title.*

20 (5) *\$1,000,000 to carry out section 5316(e) of this title.*

21 (e) *SECTION 5317.—(1) Not more than \$6,000,000 is available from the*
 22 *Fund (except the Account) for the Secretary for each of the fiscal years ending*
 23 *September 30, 1993–1997, to carry out section 5317 of this title.*

24 (2) *Not more than the following amounts may be appropriated to the Sec-*
 25 *retary from the Fund (except the Account) for making grants under section*
 26 *5317(b)(5)(B) of this title:*

27 (A) *\$3,000,000 for the fiscal year ending September 30, 1993.*

28 (B) *\$2,500,000 for the fiscal year ending September 30, 1994.*

29 (f) *SECTION 5307.—Amounts remaining available each fiscal year under*
 30 *subsection (a)(1) of this section, after allocation under subsections (g)–(i) and*
 31 *(j)(4) of this section, are available under section 5307 of this title.*

32 (g) *PLANNING, PROGRAMMING, AND RESEARCH.—Before apportioning in*
 33 *each fiscal year amounts made available or appropriated under subsection (a)*
 34 *of this section, an amount equal to 3 percent of amounts made available or*
 35 *appropriated under subsections (a) and (b) of this section is available as fol-*
 36 *lows:*

37 (1) *45 percent for metropolitan planning activities under section*
 38 *5303(g) of this title.*

39 (2) *5 percent to carry out section 5308(b)(2) of this title.*

40 (3) *20 percent to carry out State programs under section 5313 of this*
 41 *title.*

1 (4) 30 percent to carry out the national program under section 5314
2 of this title.

3 (h) *OTHER SET-ASIDES.*—Before apportioning in each fiscal year amounts
4 made available or appropriated under subsection (a) of this section, of
5 amounts made available or appropriated under subsections (a) and (b) of this
6 section—

7 (1) not more than .96 percent is available for administrative expenses
8 to carry out section 5334(a) and (c)–(f) of this title;

9 (2) not more than 1.34 percent is available for transportation services
10 to elderly individuals and individuals with disabilities under the for-
11 mula under section 5310(a) of this title; and

12 (3) \$7,000,000 is available for section 5317 for each of the fiscal years
13 ending September 30, 1993–1997.

14 (i) *COMPLETING INTERSTATE TRANSFER TRANSIT PROJECTS.*—Of the
15 amounts remaining available each year under subsections (a) and (b) of this
16 section, after allocation under subsections (g) and (h) of this section, not more
17 than \$164,843,000 for the fiscal year ending September 30, 1993, is available
18 for substitute transit projects under section 103(e)(4) of title 23.

19 (j) *LIMITATIONS.*—Of the amounts available—

20 (1) under subsection (a)(2) of this section, 3.5 percent is available to
21 finance programs and activities, including administrative costs, under
22 section 5310 of this title;

23 (2) 1.5 percent of the amounts available to finance research, develop-
24 ment, and demonstration projects under section 5312(a) of this title is
25 available to increase the information and technology available to provide
26 improved mass transportation service and facilities planned and de-
27 signed to meet the special needs of elderly individuals and individuals
28 with disabilities;

29 (3) not more than 12.5 percent is available for grants to any one State
30 under section 5312(c)(2) of this title;

31 (4) 5.5 percent of the amount remaining available each year under
32 subsection (a)(1) of this section, after allocation under subsections (g)–
33 (i) of this section, is available under the formula under section 5311 of
34 this title; and

35 (5) under section 5309(m)(1)(C) of this title—

36 (A) \$2,000,000 is available for the fiscal year ending September
37 30, 1993;

38 (B) the lesser of \$2,000,000 or an amount the Secretary deter-
39 mines is necessary for each fiscal year is available for each of the
40 fiscal years ending September 30, 1994–1996; and

1 (C) the lesser of \$3,000,000 or an amount the Secretary deter-
2 mines is necessary is available for the fiscal year ending September
3 30, 1997.

4 (k) *GRANTS AS CONTRACTUAL OBLIGATIONS.*—(1) A grant or contract ap-
5 proved by the Secretary, that is financed with amounts made available under
6 subsection (a)(1), (b)(1), (c), or (e) of this section, is a contractual obligation
7 of the United States Government to pay the Government's share of the cost
8 of the project.

9 (2) A grant or contract, approved by the Secretary, that is financed with
10 amounts made available under subsection (a)(2) or (b)(2) of this section, is
11 a contractual obligation of the Government to pay the Government's share of
12 the cost of the project only to the extent amounts are provided in advance
13 in an appropriations law.

14 (l) *EARLY APPROPRIATIONS AND AVAILABILITY OF AMOUNTS.*—(1)
15 Amounts appropriated under subsection (a)(2) of this section to carry out sec-
16 tion 5311 of this title may be appropriated in the fiscal year before the fiscal
17 year in which the appropriation is available for obligation.

18 (2) Amounts made available or appropriated under subsections (a), (b), (g),
19 (h)(1) and (2), and (j)(4) of this section remain available until expended.

20 (3) An amount apportioned under section 5308 of this title—

21 (A) remains available for 3 years after the fiscal year in which the
22 amount is apportioned; and

23 (B) that is unobligated at the end of the 3-year period shall be added
24 to the amount available for apportionment for the next fiscal year not
25 later than 30 days after the end of the 3-year period.

26 **CHAPTER 55—INTERMODAL TRANSPORTATION**

SUBCHAPTER I—GENERAL

Sec.

5501. National Intermodal Transportation System policy.

5502. Intermodal Transportation Advisory Board.

5503. Office of Intermodalism.

5504. Model intermodal transportation plans.

SUBCHAPTER II—TERMINALS

5561. Definition.

5562. Assistance projects.

5563. Conversion of certain rail passenger terminals.

5564. Interim preservation of certain rail passenger terminals.

5565. Encouraging the development of plans for converting certain rail passenger terminals.

5566. Records and audits.

5567. Preference for preserving buildings of historic or architectural significance.

5568. Authorization of appropriations.

27 SUBCHAPTER I—GENERAL

28 **§ 5501. National Intermodal Transportation System policy**

29 (a) *GENERAL.*—It is the policy of the United States Government to develop
30 a National Intermodal Transportation System that is economically efficient

1 and environmentally sound, provides the foundation for the United States to
2 compete in the global economy, and will move individuals and property in
3 an energy efficient way.

4 (b) *SYSTEM CHARACTERISTICS.*—(1) *The National Intermodal Transportation System shall consist of all forms of transportation in a unified, inter-*
5 *connected manner, including the transportation systems of the future, to re-*
6 *duce energy consumption and air pollution while promoting economic devel-*
7 *opment and supporting the United States' preeminent position in inter-*
8 *national commerce.*

9
10 (2) *The National Intermodal Transportation System shall include a Na-*
11 *tional Highway System consisting of the Dwight D. Eisenhower System of*
12 *Interstate and Defense Highways and those principal arterial roads that are*
13 *essential for interstate and regional commerce and travel, national defense,*
14 *intermodal transfer facilities, and international commerce and border cross-*
15 *ings.*

16 (3) *The National Intermodal Transportation System shall include signifi-*
17 *cant improvements in public transportation necessary to achieve national*
18 *goals for improved air quality, energy conservation, international competi-*
19 *tiveness, and mobility for elderly individuals, individuals with disabilities,*
20 *and economically disadvantaged individuals in urban and rural areas of the*
21 *United States.*

22 (4) *The National Intermodal Transportation System shall provide im-*
23 *proved access to ports and airports, the Nation's link to commerce.*

24 (5) *The National Intermodal Transportation System shall give special em-*
25 *phasis to the contributions of the transportation sectors to increased produc-*
26 *tivity growth. Social benefits must be considered with particular attention to*
27 *the external benefits of reduced air pollution, reduced traffic congestion, and*
28 *other aspects of the quality of life in the United States.*

29 (6) *The National Intermodal Transportation System must be operated and*
30 *maintained with insistent attention to the concepts of innovation, competi-*
31 *tion, energy efficiency, productivity, growth, and accountability. Practices*
32 *that resulted in the lengthy and overly costly construction of the Dwight D.*
33 *Eisenhower System of Interstate and Defense Highways must be confronted*
34 *and stopped.*

35 (7) *The National Intermodal Transportation System shall be adapted to*
36 *"intelligent vehicles", "magnetic levitation systems", and other new tech-*
37 *nologies, wherever feasible and economical, with benefit cost estimates given*
38 *special emphasis on safety considerations and techniques for cost allocation.*

39 (8) *When appropriate, the National Intermodal Transportation System*
40 *will be financed, as regards Government apportionments and reimbursements,*
41 *by the Highway Trust Fund. Financial assistance will be provided to State*

1 and local governments and their instrumentalities to help carry out national
 2 goals related to mobility for elderly individuals, individuals with disabilities,
 3 and economically disadvantaged individuals.

4 (9) *The National Intermodal Transportation System must be the center-*
 5 *piece of a national investment commitment to create the new wealth of the*
 6 *United States for the 21st century.*

7 (c) *DISTRIBUTION AND POSTING.*—*The Secretary of Transportation shall*
 8 *distribute copies of the policy in subsections (a) and (b) of this section to each*
 9 *employee of the Department of Transportation and ensure that the policy is*
 10 *posted in all offices of the Department.*

11 **§ 5502. Intermodal Transportation Advisory Board**

12 (a) *ORGANIZATION.*—*The Intermodal Transportation Advisory Board is a*
 13 *board in the Office of the Secretary of Transportation.*

14 (b) *MEMBERSHIP.*—*The Board consists of the Secretary, who serves as*
 15 *chairman, and the Administrator, or the Administrator's designee, of—*

16 (1) *the Federal Highway Administration;*

17 (2) *the Federal Aviation Administration;*

18 (3) *the Maritime Administration;*

19 (4) *the Federal Railroad Administration; and*

20 (5) *the Federal Transit Administration.*

21 (c) *DUTIES AND POWERS.*—*The Board shall provide recommendations for*
 22 *carrying out the duties of the Secretary described in section 301(3) of this*
 23 *title.*

24 **§ 5503. Office of Intermodalism**

25 (a) *ESTABLISHMENT.*—*The Secretary of Transportation shall establish in*
 26 *the Office of the Secretary an Office of Intermodalism.*

27 (b) *DIRECTOR.*—*The head of the Office is a Director who shall be appointed*
 28 *by the Secretary.*

29 (c) *DUTIES AND POWERS.*—*The Director shall carry out the duties of the*
 30 *Secretary described in section 301(3) of this title.*

31 (d) *INTERMODAL TRANSPORTATION DATA BASE.*—(1) *The Director shall*
 32 *develop, maintain, and disseminate intermodal transportation data through*
 33 *the Bureau of Transportation Statistics. The Director shall coordinate the col-*
 34 *lection of data for the data base with the States and metropolitan planning*
 35 *organizations. The data base shall include information on—*

36 (A) *the volume of property and number of individuals carried in*
 37 *intermodal transportation by relevant classification;*

38 (B) *patterns of movement of property and individuals in intermodal*
 39 *transportation by relevant classification by origin and destination; and*

40 (C) *public and private investment in intermodal transportation facili-*
 41 *ties and services.*

1 (2) *The Director shall make information from the data base available to*
2 *the public.*

3 (e) *RESEARCH.—The Director shall—*

4 (1) *coordinate United States Government research on intermodal*
5 *transportation as provided in the plan developed under section 6009(b)*
6 *of the Intermodal Surface Transportation Efficiency Act of 1991 (Public*
7 *Law 102–240, 105 Stat. 2177); and*

8 (2) *carry out additional research needs identified by the Director.*

9 (f) *TECHNICAL ASSISTANCE.—The Director shall provide technical assist-*
10 *ance to States and to metropolitan planning organizations for urban areas*
11 *having a population of at least 1,000,000 in collecting data related to inter-*
12 *modal transportation to facilitate the collection of the data by States and met-*
13 *ropolitan planning organizations.*

14 (g) *ADMINISTRATIVE AND CLERICAL SUPPORT.—The Director shall provide*
15 *administrative and clerical support to the Intermodal Transportation Advi-*
16 *sory Board.*

17 **§ 5504. Model intermodal transportation plans**

18 (a) *GRANTS.—The Secretary of Transportation shall make grants to States*
19 *to develop model State intermodal transportation plans that are consistent*
20 *with the policy set forth in section 302(e) of this title. The model plans shall*
21 *include systems for collecting data related to intermodal transportation.*

22 (b) *DISTRIBUTION.—The Secretary shall award grants to States under this*
23 *section that represent a variety of geographic regions and transportation*
24 *needs, patterns, and modes.*

25 (c) *PLAN SUBMISSION.—As a condition to a State receiving a grant under*
26 *this section, the Secretary shall require that the State provide assurances that*
27 *the State will submit to the Secretary a State intermodal transportation plan*
28 *not later than 18 months after the date of receipt of the grant.*

29 (d) *GRANT AMOUNTS.—The Secretary shall reserve, from amounts deducted*
30 *under section 104(a) of title 23, \$3,000,000 to make grants under this section.*
31 *The total amount that a State may receive in grants under this section may*
32 *not be more than \$500,000.*

33 *SUBCHAPTER II—TERMINALS*

34 **§ 5561. Definition**

35 *In this chapter, “civic and cultural activities” includes libraries, musical*
36 *and dramatic presentations, art exhibits, adult education programs, public*
37 *meeting places, and other facilities for carrying on an activity any part of*
38 *which is supported under a law of the United States.*

1 **§ 5562. Assistance projects**

2 (a) *REQUIREMENTS TO PROVIDE ASSISTANCE.*—The Secretary of Trans-
3 portation shall provide financial, technical, and advisory assistance under
4 this chapter to—

5 (1) *promote, on a feasibility demonstration basis, the conversion of at*
6 *least 3 rail passenger terminals into intermodal transportation termi-*
7 *nals;*

8 (2) *preserve rail passenger terminals that reasonably are likely to be*
9 *converted or maintained pending preparation of plans for their reuse;*

10 (3) *acquire and use space in suitable buildings of historic or architec-*
11 *tural significance but only if use of the space is feasible and prudent*
12 *when compared to available alternatives; and*

13 (4) *encourage State and local governments, local and regional trans-*
14 *portation authorities, common carriers, philanthropic organizations, and*
15 *other responsible persons to develop plans to convert rail passenger ter-*
16 *minals into intermodal transportation terminals and civic and cultural*
17 *activity centers.*

18 (b) *EFFECT ON ELIGIBILITY.*—This chapter does not affect the eligibility
19 of any rail passenger terminal for preservation or reuse assistance under an-
20 other program or law.

21 (c) *ACQUIRING SPACE.*—The Secretary may acquire space under subsection
22 (a)(3) of this section only after consulting with the Advisory Council on His-
23 toric Preservation and the Chairman of the National Endowment for the Arts.

24 **§ 5563. Conversion of certain rail passenger terminals**

25 (a) *AUTHORITY TO PROVIDE ASSISTANCE.*—The Secretary of Transpor-
26 tation may provide financial assistance to convert a rail passenger terminal
27 to an intermodal transportation terminal under section 5562(a)(1) of this
28 title only if—

29 (1) *the terminal can be converted to accommodate other modes of*
30 *transportation the Secretary of Transportation decides are appropriate,*
31 *including—*

32 (A) *motorbus transportation;*

33 (B) *mass transit (rail or rubber tire); and*

34 (C) *airline ticket offices and passenger terminals providing direct*
35 *transportation to area airports;*

36 (2) *the terminal is listed on the National Register of Historic Places*
37 *maintained by the Secretary of the Interior;*

38 (3) *the architectural integrity of the terminal will be preserved;*

39 (4) *to the extent practicable, the use of the terminal facilities for trans-*
40 *portation may be combined with use of those facilities for other civic and*
41 *cultural activities, especially when another activity is recommended by—*

- 1 (A) the Advisory Council on Historic Preservation;
 2 (B) the Chairman of the National Endowment for the Arts; or
 3 (C) consultants retained under subsection (b) of this section; and
 4 (5) the terminal and the conversion project meet other criteria pre-
 5 scribed by the Secretary of Transportation after consultation with the
 6 Council and Chairman.

7 (b) *ARCHITECTURAL INTEGRITY.*—The Secretary of Transportation must
 8 employ consultants on whether the architectural integrity of the rail passenger
 9 terminal will be preserved under subsection (a)(3) of this section. The Sec-
 10 retary may decide that the architectural integrity will be preserved only if
 11 the consultants concur. The Council and Chairman shall recommend consult-
 12 ants to be employed by the Secretary. The consultants also may make rec-
 13 ommendations referred to in subsection (a)(4) of this section.

14 (c) *GOVERNMENT'S SHARE OF COSTS.*—The Secretary of Transportation
 15 may not make a grant under this section for more than 80 percent of the
 16 total cost of converting a rail passenger terminal into an intermodal trans-
 17 portation terminal.

18 **§ 5564. Interim preservation of certain rail passenger termi-**
 19 **nals**

20 (a) *GENERAL GRANT AUTHORITY.*—Subject to subsection (b) of this section,
 21 the Secretary of Transportation may make a grant of financial assistance to
 22 a responsible person (including a governmental authority) to preserve a rail
 23 passenger terminal under section 5562(a)(2) of this title. To receive assistance
 24 under this section, the person must be qualified, prepared, committed, and au-
 25 thorized by law to maintain (and prevent the demolition, dismantling, or fur-
 26 ther deterioration of) the terminal until plans for its reuse are prepared.

27 (b) *GRANT REQUIREMENTS.*—The Secretary of Transportation may make
 28 a grant of financial assistance under this section only if—

29 (1) the Secretary decides the rail passenger terminal has a reasonable
 30 likelihood of being converted to, or conditioned for reuse as, an inter-
 31 modal transportation terminal, a civic or cultural activities center, or
 32 both; and

33 (2) planning activity directed toward conversion or reuse has begun
 34 and is proceeding in a competent way.

35 (c) *MAXIMIZING PRESERVATION OF TERMINALS.*—(1) Amounts appro-
 36 priated to carry out this section and section 5562(a)(2) of this title shall be
 37 expended in the way most likely to maximize the preservation of rail pas-
 38 senger terminals that are—

39 (A) reasonably capable of conversion to intermodal transportation ter-
 40 minals;

1 (B) listed in the National Register of Historic Places maintained by
2 the Secretary of the Interior; or

3 (C) recommended (on the basis of architectural integrity and quality)
4 by the Advisory Council on Historic Preservation or the Chairman of
5 the National Endowment for the Arts.

6 (2) The Secretary of Transportation may not make a grant under this sec-
7 tion for more than 80 percent of the total cost of maintaining the terminal
8 for an interim period of not more than 5 years.

9 **§5565. Encouraging the development of plans for converting**
10 **rail passenger terminals**

11 (a) GENERAL GRANT AUTHORITY.—The Secretary of Transportation may
12 make a grant of financial assistance to a qualified person (including a gov-
13 ernmental authority) to encourage the development of plans for converting a
14 rail passenger terminal under section 5562(a)(4) of this title. To receive as-
15 sistance under this section, the person must—

16 (1) be prepared to develop practicable plans that meet zoning, land
17 use, and other requirements of the applicable State and local jurisdic-
18 tions in which the terminal is located;

19 (2) incorporate into the designs and plans proposed for converting the
20 terminal, features that reasonably appear likely to attract private inves-
21 tors willing to carry out the planned conversion and its subsequent
22 maintenance and operation; and

23 (3) complete the designs and plans for the conversion within the period
24 of time prescribed by the Secretary.

25 (b) PREFERENCE.—In making a grant under this section, the Secretary of
26 Transportation shall give preferential consideration to an applicant whose
27 completed designs and plans will be carried out within 3 years after their
28 completion.

29 (c) MAXIMIZING CONVERSION AND CONTINUED PUBLIC USE.—(1) Amounts
30 appropriated to carry out this section and section 5562(a)(4) of this title shall
31 be expended in the way most likely to maximize the conversion and continued
32 public use of rail passenger terminals that are—

33 (A) listed in the National Register of Historic Places maintained by
34 the Secretary of the Interior; or

35 (B) recommended (on the basis of architectural integrity and quality)
36 by the Advisory Council on Historic Preservation or the Chairman of
37 the National Endowment for the Arts.

38 (2) The Secretary of Transportation may not make a grant under this sec-
39 tion for more than 80 percent of the total cost of the project for which the
40 financial assistance is provided.

1 **§5566. Records and audits**

2 (a) *RECORD REQUIREMENTS.*—Each recipient of financial assistance under
3 this chapter shall keep records required by the Secretary of Transportation.

4 The records shall disclose—

5 (1) the amount, and disposition by the recipient, of the proceeds of the
6 assistance;

7 (2) the total cost of the project for which the assistance was given or
8 used;

9 (3) the amount of that part of the cost of the project supplied by other
10 sources; and

11 (4) any other records that will make an effective audit easier.

12 (b) *AUDITS AND INSPECTIONS.*—For 3 years after a project is completed,
13 the Secretary and the Comptroller General may audit and inspect records of
14 a recipient that the Secretary or Comptroller General decides may be related
15 or pertinent to the financial assistance.

16 **§5567. Preference for preserving buildings of historic or ar-**
17 **chitectural significance**

18 Amtrak shall give preference to the use of rail passenger terminal facilities
19 that will preserve buildings of historic or architectural significance.

20 **§5568. Authorization of appropriations**

21 (a) *GENERAL.*—The following amounts may be appropriated to the Sec-
22 retary of Transportation:

23 (1) not more than \$15,000,000 to carry out section 5562(a)(1) and (3)
24 of this title.

25 (2) not more than \$2,500,000 to carry out section 5562(a)(2) of this
26 title.

27 (3) not more than \$2,500,000 to carry out section 5562(a)(4) of this
28 title.

29 (b) *AVAILABILITY OF AMOUNTS.*—Amounts appropriated to carry out this
30 chapter remain available until expended.

31 **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.

§5701. Findings

Congress finds that—

(1) the United States public is entitled to receive food and other consumer products that are not made unsafe because of certain transportation practices;

(2) the United States public is threatened by the transportation of products potentially harmful to consumers in motor vehicles and rail vehicles that are used to transport food and other consumer products; and

(3) the risks to consumers by those transportation practices are unnecessary and those practices must be ended.

§5702. Definitions

In this chapter—

(1) “cosmetic”, “device”, “drug”, “food”, and “food additive” have the same meanings given those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(2) “nonfood product” means (individually or by class) a material, substance, or product that is not a cosmetic, device, drug, food, or food additive, or is deemed a nonfood product under section 5703(a)(2) of this title, including refuse and solid waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

(3) “refuse” means discarded material that is, or is required by law, to be transported to or disposed of in a landfill or incinerator.

(4) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States.

(5) “transports” and “transportation” mean any movement of property in commerce (including intrastate commerce) by motor vehicle or rail vehicle.

(6) “United States” means all of the States.

§5703. General regulation

(a) GENERAL REQUIREMENTS.—(1) Not later than July 31, 1991, the Secretary of Transportation, after consultation required by section 5709 of this title, shall prescribe regulations on the transportation of cosmetics, devices, drugs, food, and food additives in motor vehicles and rail vehicles that are used to transport nonfood products that would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

(2) The Secretary shall deem a cosmetic, device, or drug to be a nonfood product if—

(A) the cosmetic, device, or drug is transported in a motor vehicle or rail vehicle before, or at the same time as, a food or food additive; and

1 (B) transportation of the cosmetic, device, or drug would make the
2 food or food additive unsafe to humans or animals.

3 (b) *SPECIAL REQUIREMENTS.*—In prescribing regulations under subsection
4 (a)(1) of this section, the Secretary, after consultation required by section
5 5709 of this title, shall establish requirements for appropriate—

6 (1) recordkeeping, identification, marking, certification, or other
7 means of verification to comply with sections 5704–5706 of this title;

8 (2) decontamination, removal, disposal, and isolation to comply with
9 regulations carrying out sections 5704 and 5705 of this title; and

10 (3) material for the construction of tank trucks, rail tank cars, cargo
11 tanks, and accessory equipment to comply with regulations carrying out
12 section 5704 of this title.

13 (c) *CONSIDERATIONS AND ADDITIONAL REQUIREMENTS.*—In prescribing
14 regulations under subsection (a)(1) of this section, the Secretary, after con-
15 sultation required by section 5709 of this title, shall consider, and may estab-
16 lish requirements related to, each of the following:

17 (1) the extent to which packaging or similar means of protecting and
18 isolating commodities are adequate to eliminate or ameliorate the poten-
19 tial risks of transporting cosmetics, devices, drugs, food, or food additives
20 in motor vehicles or rail vehicles used to transport nonfood products.

21 (2) appropriate compliance and enforcement measures to carry out
22 this chapter.

23 (3) appropriate minimum insurance or other liability requirements
24 for a person to whom this chapter applies.

25 (d) *PACKAGES MEETING PACKAGING STANDARDS.*—If the Secretary finds
26 packaging standards to be adequate, regulations under subsection (a)(1) of
27 this section may not apply to cosmetics, devices, drugs, food, food additives,
28 or nonfood products packaged in packages that meet the standards.

29 **§ 5704. Tank trucks, rail tank cars, and cargo tanks**

30 (a) *PROHIBITIONS.*—The regulations prescribed under section 5703(a)(1) of
31 this title shall include provisions prohibiting a person from—

32 (1) using, offering for use, or arranging for the use of a tank truck,
33 rail tank car, or cargo tank used in motor vehicle or rail transportation
34 of cosmetics, devices, drugs, food, or food additives if the tank truck, rail
35 tank car, or cargo tank is used to transport a nonfood product, except
36 a nonfood product included in a list published under subsection (b) of
37 this section;

38 (2) using, offering for use, or arranging for the use of a tank truck
39 or cargo tank to provide motor vehicle transportation of cosmetics, de-
40 vices, drugs, food, food additives, or nonfood products included in the list
41 published under subsection (b) of this section unless the tank truck or

1 cargo tank is identified, by a permanent marking on the tank truck or
2 cargo tank, as transporting only cosmetics, devices, drugs, food, food ad-
3 ditives, or nonfood products included in the list;

4 (3) using, offering for use, or arranging for the use of a tank truck
5 or cargo tank to provide motor vehicle transportation of a nonfood prod-
6 uct that is not included in the list published under subsection (b) of this
7 section if the tank truck or cargo tank is identified, as provided in clause
8 (2) of this subsection, as a tank truck or cargo tank transporting only
9 cosmetics, devices, drugs, food, food additives, or nonfood products in-
10 cluded in the list; or

11 (4) receiving, except for lawful disposal purposes, any cosmetic, device,
12 drug, food, food additive, or nonfood product that has been transported
13 in a tank truck or cargo tank in violation of clause (2) or (3) of this
14 subsection.

15 (b) *LIST OF NONFOOD PRODUCTS NOT UNSAFE.*—After consultation re-
16 quired by section 5709 of this title, the Secretary of Transportation shall pub-
17 lish in the Federal Register a list of nonfood products the Secretary decides
18 do not make cosmetics, devices, drugs, food, or food additives unsafe to hu-
19 mans or animals because of transportation of the nonfood products in a tank
20 truck, rail tank car, or cargo tank used to transport cosmetics, devices, drugs,
21 food, or food additives. The Secretary may amend the list periodically by pub-
22 lication in the Federal Register.

23 (c) *DISCLOSURE.*—A person that arranges for the use of a tank truck or
24 cargo tank used in motor vehicle transportation for the transportation of a
25 cosmetic, device, drug, food, food additive, or nonfood product shall disclose
26 to the motor carrier or other appropriate person if the cosmetic, device, drug,
27 food, food additive, or nonfood product being transported is to be used—

28 (1) as, or in the preparation of, a food or food additive; or

29 (2) as a nonfood product included in the list published under sub-
30 section (b) of this section.

31 **§ 5705. Motor and rail transportation of nonfood products**

32 (a) *PROHIBITIONS.*—The regulations prescribed under section 5703(a)(1) of
33 this title shall include provisions prohibiting a person from using, offering
34 for use, or arranging for the use of a motor vehicle or rail vehicle (except a
35 tank truck, rail tank car, or cargo tank described in section 5704 of this title)
36 to transport cosmetics, devices, drugs, food, or food additives if the vehicle is
37 used to transport nonfood products included in a list published under sub-
38 section (b) of this section.

39 (b) *LIST OF UNSAFE NONFOOD PRODUCTS.*—(1) After consultation required
40 by section 5709 of this title, the Secretary of Transportation shall publish in
41 the Federal Register a list of nonfood products the Secretary decides would

1 *make cosmetics, devices, drugs, food, or food additives unsafe to humans or*
 2 *animals because of transportation of the nonfood products in a motor vehicle*
 3 *or rail vehicle used to transport cosmetics, devices, drugs, food, or food addi-*
 4 *tives. The Secretary may amend the list periodically by publication in the*
 5 *Federal Register.*

6 *(2) The list published under paragraph (1) of this subsection may not in-*
 7 *clude cardboard, pallets, beverage containers, and other food packaging except*
 8 *to the extent the Secretary decides that the transportation of cardboard, pal-*
 9 *lets, beverage containers, or other food packaging in a motor vehicle or rail*
 10 *vehicle used to transport cosmetics, devices, drugs, food, or food additives*
 11 *would make the cosmetics, devices, drugs, food, or food additives unsafe to hu-*
 12 *mans or animals.*

13 **§5706. Dedicated vehicles**

14 *(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of*
 15 *this title shall include provisions prohibiting a person from using, offering*
 16 *for use, or arranging for the use of a motor vehicle or rail vehicle to transport*
 17 *asbestos, in forms or quantities the Secretary of Transportation decides are*
 18 *necessary, or products that present an extreme danger to humans or animals,*
 19 *despite any decontamination, removal, disposal, packaging, or other isolation*
 20 *procedures, unless the motor vehicle or rail vehicle is used only to transport*
 21 *one or more of the following: asbestos, those extremely dangerous products, or*
 22 *refuse.*

23 *(b) LIST OF APPLICABLE PRODUCTS.—After consultation required by sec-*
 24 *tion 5709 of this title, the Secretary shall publish in the Federal Register a*
 25 *list of the products to which this section applies. The Secretary may amend*
 26 *the list periodically by publication in the Federal Register.*

27 **§5707. Waiver authority**

28 *(a) GENERAL AUTHORITY.—After consultation required by section 5709 of*
 29 *this title, the Secretary of Transportation may waive any part of this chapter*
 30 *or regulations prescribed under this chapter for a class of persons, motor vehi-*
 31 *cles, rail vehicles, cosmetics, devices, drugs, food, food additives, or nonfood*
 32 *products, if the Secretary decides that the waiver—*

33 *(1) would not result in the transportation of cosmetics, devices, drugs,*

34 *food, or food additives that would be unsafe to humans or animals; and*

35 *(2) would not be contrary to the public interest and this chapter.*

36 *(b) PUBLICATION OF WAIVERS.—The Secretary shall publish in the Federal*
 37 *Register any waiver and the reasons for the waiver.*

38 **§5708. Food transportation inspections**

39 *(a) GENERAL AUTHORITY.—For commercial motor vehicles, the Secretary*
 40 *of Transportation may carry out this chapter and assist in carrying out com-*
 41 *patible State laws and regulations through means that include inspections*

1 conducted by State employees that are paid for with money authorized under
2 section 31104 of this title, if the recipient State agrees to assist in the enforce-
3 ment of this chapter or is enforcing compatible State laws and regulations.

4 (b) *PROVIDING ASSISTANCE.*—On the request of the Secretary of Transpor-
5 tation, the Secretaries of Agriculture and Health and Human Services, the
6 Administrator of the Environmental Protection Agency, and the heads of
7 other appropriate departments, agencies, and instrumentalities of the United
8 States Government shall provide assistance, to the extent available, to the Sec-
9 retary of Transportation to carry out this chapter, including assistance in
10 the training of personnel under a program established under subsection (c)
11 of this section.

12 (c) *TRAINING PROGRAM.*—After consultation required by section 5709 of
13 this title and consultation with the heads of appropriate State transportation
14 and food safety authorities, the Secretary of Transportation shall develop and
15 carry out a training program for inspectors to conduct vigorous enforcement
16 of this chapter and regulations prescribed under this chapter or compatible
17 State laws and regulations. As part of the training program, the inspectors,
18 including State inspectors or personnel paid with money authorized under
19 section 31104 of this title, shall be trained in the recognition of adulteration
20 problems associated with the transportation of cosmetics, devices, drugs, food,
21 and food additives and in the procedures for obtaining assistance of the ap-
22 propriate departments, agencies, and instrumentalities of the Government and
23 State authorities to support the enforcement.

24 **§5709. Consultation**

25 As provided by sections 5703–5708 of this title, the Secretary of Transpor-
26 tation shall consult with the Secretaries of Agriculture and Health and
27 Human Services and the Administrator of the Environmental Protection
28 Agency.

29 **§5710. Administrative**

30 The Secretary of Transportation has the same duties and powers in regu-
31 lating transportation under this chapter as the Secretary has under section
32 5121(a)–(c) (except subsection (c)(1)(A)) of this title in regulating transpor-
33 tation under chapter 51 of this title.

34 **§5711. Enforcement and penalties**

35 (a) *ACTIONS.*—The Secretary of Transportation shall request that a civil
36 action be brought and take action to eliminate or ameliorate an imminent
37 hazard related to a violation of a regulation prescribed or order issued under
38 this chapter in the same way and to the same extent as authorized by section
39 5122 of this title.

1 (b) *APPLICABLE PENALTIES AND PROCEDURES.*—The penalties and proce-
 2 dures in sections 5123 and 5124 of this title apply to a violation of a regula-
 3 tion prescribed or order issued under this chapter.

4 **§5712. Relationship to other laws**

5 Section 5125 of this title applies to the relationship between this chapter
 6 and a requirement of a State, a political subdivision of a State, or an Indian
 7 tribe.

8 **§5713. Application of sections 5711 and 5712**

9 Sections 5711 and 5712 of this title apply only to transportation occurring
 10 on or after the date that regulations prescribed under section 5703(a)(1) of
 11 this title are effective.

12 **§5714. Coordination procedures**

13 Not later than November 3, 1991, the Secretary of Transportation, after
 14 consultation with appropriate State officials, shall establish procedures to
 15 promote more effective coordination between the departments, agencies, and
 16 instrumentalities of the United States Government and State authorities with
 17 regulatory authority over motor carrier safety and railroad safety in carrying
 18 out and enforcing this chapter.

19 **CHAPTER 59—INTERMODAL SAFE CONTAINER**
 20 **TRANSPORTATION**

Sec.

5901. Definitions.

5902. Notifications and certifications.

5903. Prohibitions.

5904. State enforcement.

5905. Liens.

5906. Perishable agricultural commodities.

5907. Regulations and effective date.

21 **§5901. Definitions**

22 In this chapter—

23 (1) the definitions in section 10102 of this title apply.

24 (2) “beneficial owner” means a person not having title to property but
 25 having ownership rights in the property, including a trustee of property
 26 in transit from an overseas place of origin that is domiciled or doing
 27 business in the United States, except that a carrier, agent of a carrier,
 28 broker, customs broker, freight forwarder, warehouser, or terminal opera-
 29 tor is not a beneficial owner only because of providing or arranging for
 30 any part of the intermodal transportation of property.

31 (3) “carrier” means—

32 (A) a motor carrier, water carrier, and rail carrier providing
 33 transportation of property in commerce; and

1 (B) an ocean common carrier (as defined in section 3 of the
2 Shipping Act of 1984 (46 App. U.S.C. 1702)) providing transpor-
3 tation of property in commerce.

4 (4) “container” has the meaning given the term “freight container”
5 by the International Standards Organization in Series 1, Freight Con-
6 tainers, 3d Edition (reference number ISO668–1979(E)), including suc-
7 cessive revisions, and similar containers that are used in providing
8 transportation in interstate commerce.

9 (5) “first carrier” means the first carrier transporting a loaded con-
10 tainer or trailer in intermodal transportation.

11 (6) “intermodal transportation” means the successive transportation of
12 a loaded container or trailer from its place of origin to its place of des-
13 tination by more than one mode of transportation in interstate or for-
14 eign commerce, whether under a single bill of lading or under separate
15 bills of lading.

16 (7) “trailer” means a nonpower, property-carrying, trailing unit that
17 is designed for use in combination with a truck tractor.

18 **§ 5902. Notifications and certifications**

19 (a) *PRIOR NOTIFICATION.*—Before a person tenders to a first carrier for
20 intermodal transportation a loaded container or trailer having a projected
21 gross cargo weight of more than 10,000 pounds (including packing material
22 and pallets), the person shall give the carrier a written notification of the
23 gross cargo weight and a reasonable description of the contents of the con-
24 tainer or trailer. The notification may be transmitted electronically.

25 (b) *CERTIFICATION.*—Not later than when a person tenders to a first car-
26 rier for intermodal transportation a container or trailer to which subsection
27 (a) of this section applies or a loaded container or trailer having an actual
28 gross cargo weight of more than 10,000 pounds (including packing material
29 and pallets), the person shall certify to the carrier in writing the actual gross
30 cargo weight and a reasonable description of the contents of the container or
31 trailer.

32 (c) *FORWARDING CERTIFICATIONS TO SUBSEQUENT CARRIERS.*—A carrier,
33 agent of a carrier, broker, customs broker, freight forwarder, warehouse, or
34 terminal operator shall forward the certification provided under subsection (b)
35 of this section to a subsequent carrier transporting the container or trailer
36 in intermodal transportation. The act of forwarding the certification may not
37 be construed as a verification or affirmation of the accuracy or completeness
38 of the information in the certification.

39 (d) *NONAPPLICATION.*—(1) Subsections (a) and (b) of this section and sec-
40 tion 5903(c) of this title do not apply to a carrier when the carrier is trans-
41 ferring a loaded container or trailer to another carrier during intermodal

1 *transportation, unless the carrier is also the person tendering the loaded con-*
2 *tainer or trailer to the first carrier.*

3 (2) *A carrier, agent of a carrier, broker, customs broker, freight forwarder,*
4 *warehouse, or terminal operator is deemed not to be a person tendering a*
5 *loaded container or trailer to a first carrier under this section, unless the car-*
6 *rier, agent, broker, customs broker, freight forwarder, warehouse, or terminal*
7 *operator assumes legal responsibility for loading property into the container*
8 *or trailer.*

9 **§ 5903. Prohibitions**

10 (a) *PROVIDING ERRONEOUS INFORMATION.*—*A person tendering a loaded*
11 *container or trailer may not provide erroneous information in a certification*
12 *required by section 5902(b) of this title.*

13 (b) *TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.*—*A motor car-*
14 *rier may not transport a loaded container or trailer to which section 5902(b)*
15 *of this title applies before receiving the certification required by section*
16 *5902(b).*

17 (c) *UNLAWFUL COERCION.*—(1) *A person may not coerce or attempt to co-*
18 *erce a person participating in intermodal transportation to transport a load-*
19 *ed container or trailer having an actual gross cargo weight of more than*
20 *10,000 pounds (including packing materials and pallets) before the certifi-*
21 *cation required by section 5902(b) of this title is provided.*

22 (2) *A person, knowing that the weight of a loaded container or trailer or*
23 *the weight of a tractor-trailer combination carrying the container or trailer*
24 *is more than the weight allowed by applicable State law, may not coerce or*
25 *attempt to coerce a carrier to transport the container or trailer or to operate*
26 *the tractor-trailer combination in violation of that State law.*

27 **§ 5904. State enforcement**

28 (a) *GENERAL.*—*A State may enact a law to permit the State or a political*
29 *subdivision of the State—*

30 (1) *to impose a fine or penalty, for a violation of a State highway*
31 *weight law or regulation by a tractor-trailer combination carrying a*
32 *loaded container or trailer for which a certification is required by section*
33 *5902(b) of this title, against the person tendering the loaded container*
34 *or trailer to the first carrier if the violation results from the person's*
35 *having provided erroneous information in the certification in violation*
36 *of section 5903(a) of this title; and*

37 (2) *to impound the container or trailer until the fine or penalty has*
38 *been paid by the owner or beneficial owner of the contents of the con-*
39 *tainer or trailer or the person tendering the loaded container or trailer*
40 *to the first carrier.*

1 (b) *LIMITATION.*—This chapter does not require a person tendering a load-
 2 ed container or trailer to a first carrier to ensure that the first carrier or
 3 any other carrier involved in the intermodal transportation will comply with
 4 any State highway weight law or regulation, other than as required by this
 5 chapter.

6 **§ 5905. Liens**

7 (a) *GENERAL.*—If a person involved in the intermodal transportation of a
 8 loaded container or trailer for which a certification is required by section
 9 5902(b) of this title is required under State law to post a bond or pay any
 10 fine, penalty, cost, or interest resulting from providing erroneous information
 11 in the certification to the first carrier in violation of section 5903(a) of this
 12 title, the person has a lien against the contents equal to the amount of the
 13 bond, fine, penalty, cost, or interest incurred, until the person receives a pay-
 14 ment of that amount from the owner or beneficial owner of the contents or
 15 from the person responsible for making the certification.

16 (b) *LIMITATIONS.*—(1) A lien under this section does not authorize a person
 17 to dispose of the contents of a loaded container or trailer until the person who
 18 tendered the container or trailer to the first carrier is given a reasonable op-
 19 portunity to establish responsibility for the bond, fine, penalty, cost, or
 20 interest.

21 (2) In this section, an owner or beneficial owner of the contents of a con-
 22 tainer or trailer or a person tendering a container or trailer to the first car-
 23 rier is deemed not to be a person involved in the intermodal transportation
 24 of the container or trailer.

25 **§ 5906. Perishable agricultural commodities**

26 Sections 5904(a)(2) and 5905 of this title do not apply to a container or
 27 trailer the contents of which are perishable agricultural commodities (as de-
 28 fined in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a
 29 et seq.)).

30 **§ 5907. Regulations and effective date**

31 (a) *REGULATIONS.*—Not later than July 25, 1993, the Secretary of Trans-
 32 portation shall prescribe final regulations to enforce this chapter. The Sec-
 33 retary may establish by regulation exemptions to the regulations that are in
 34 the public interest and consistent with the purposes of this chapter.

35 (b) *EFFECTIVE DATE.*—This chapter is effective on the date final regula-
 36 tions to enforce this chapter are prescribed.

37 (c) Title 49, United States Code, is amended by adding the following imme-
 38 diately after subtitle IV:

1

SUBTITLE V—RAIL PROGRAMS

PART A—SAFETY

<i>CHAPTER</i>	<i>Sec.</i>
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203. SAFETY APPLIANCES	20301
205. SIGNAL SYSTEMS	20501
207. LOCOMOTIVES	20701
209. ACCIDENTS AND INCIDENTS	20901
211. HOURS OF SERVICE	21101
213. PENALTIES	21301

PART B—ASSISTANCE

221. LOCAL RAIL FREIGHT ASSISTANCE	22101
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PART C—PASSENGER TRANSPORTATION

241. GENERAL	24101
243. AMTRAK	24301
245. AMTRAK COMMUTER	24501
247. AMTRAK ROUTE SYSTEM	24701
249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM	24901

PART D—MISCELLANEOUS

261. LAW ENFORCEMENT	26101
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2

PART A—SAFETY

3

CHAPTER 201—GENERAL

SUBCHAPTER I—GENERAL

<i>Sec.</i>
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20102. Definitions.
20103. General authority.
20104. Emergency authority.
20105. State participation.
20106. National uniformity of regulation.
20107. Inspection and investigation.
20108. Research, development, testing, and training.
20109. Employee protections.
20110. Effect on employee qualifications and collective bargaining.
20111. Enforcement by the Secretary of Transportation.
20112. Enforcement by the Attorney General.
20113. Enforcement by the States.
20114. Judicial procedures.
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SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

20131. Restricted access to rolling equipment.
20132. Visible markers for rear cars.
20133. Passenger equipment.
20134. Grade crossings and railroad rights of way.
20135. Licensing or certification of locomotive operators.
20136. Automatic train control and related systems.
20137. Event recorders.
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20140. Alcohol and controlled substances testing.
20141. Power brake safety.
20142. Track safety.
20143. Locomotive visibility.
20144. Blue signal protection for on-track vehicles.

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.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under

1 this chapter, including a regulation or order establishing, amending, or
2 waiving compliance with a railroad safety regulation prescribed or order is-
3 sued under this chapter. An opportunity for an oral presentation shall be pro-
4 vided.

5 **§20104. Emergency authority**

6 (a) *ORDERING RESTRICTIONS AND PROHIBITIONS.*—(1) If, through testing,
7 inspection, investigation, or research carried out under this chapter, the Sec-
8 retary of Transportation decides that an unsafe condition or practice, or a
9 combination of unsafe conditions and practices, causes an emergency situa-
10 tion involving a hazard of death or personal injury, the Secretary imme-
11 diately may order restrictions and prohibitions, without regard to section
12 20103(e) of this title, that may be necessary to abate the situation.

13 (2) The order shall describe the condition or practice, or a combination of
14 conditions and practices, that causes the emergency situation and prescribe
15 standards and procedures for obtaining relief from the order. This paragraph
16 does not affect the Secretary's discretion under this section to maintain the
17 order in effect for as long as the emergency situation exists.

18 (b) *REVIEW OF ORDERS.*—After issuing an order under this section, the
19 Secretary shall provide an opportunity for review of the order under section
20 554 of title 5. If a petition for review is filed and the review is not completed
21 by the end of the 30-day period beginning on the date the order was issued,
22 the order stops being effective at the end of that period unless the Secretary
23 decides in writing that the emergency situation still exists.

24 (c) *CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.*—An employee of a
25 railroad carrier engaged in interstate or foreign commerce who may be ex-
26 posed to imminent physical injury during that employment because of the
27 Secretary's failure, without any reasonable basis, to issue an order under sub-
28 section (a) of this section, or the employee's authorized representative, may
29 bring a civil action against the Secretary in a district court of the United
30 States to compel the Secretary to issue an order. The action must be brought
31 in the judicial district in which the emergency situation is alleged to exist,
32 in which that employing carrier has its principal executive office, or for the
33 District of Columbia. The Secretary's failure to issue an order under sub-
34 section (a) of this section may be reviewed only under section 706 of title 5.

35 **§20105. State participation**

36 (a) *INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.*—The Secretary of
37 Transportation may prescribe investigative and surveillance activities nec-
38 essary to enforce the safety regulations prescribed and orders issued by the
39 Secretary that apply to railroad equipment, facilities, rolling stock, and oper-
40 ations in a State. The State may participate in those activities when the safe-
41 ty practices for railroad equipment, facilities, rolling stock, and operations

1 *in the State are regulated by a State authority and the authority submits*
2 *to the Secretary an annual certification as provided in subsection (b) of this*
3 *section.*

4 (b) ANNUAL CERTIFICATION.—(1) A State authority's annual certification
5 must include—

6 (A) a certification that the authority—

7 (i) has regulatory jurisdiction over the safety practices for rail-
8 road equipment, facilities, rolling stock, and operations in the State;

9 (ii) was given a copy of each safety regulation prescribed and
10 order issued by the Secretary, that applies to the equipment, facili-
11 ties, rolling stock, or operations, as of the date of certification; and

12 (iii) is conducting the investigative and surveillance activities
13 prescribed by the Secretary under subsection (a) of this section; and

14 (B) a report, in the form the Secretary prescribes by regulation, that
15 includes—

16 (i) the name and address of each railroad carrier subject to the
17 safety jurisdiction of the authority;

18 (ii) each accident or incident reported during the prior 12
19 months by a railroad carrier involving a fatality, personal injury
20 requiring hospitalization, or property damage of more than \$750
21 (or a higher amount prescribed by the Secretary), and a summary
22 of the authority's investigation of the cause and circumstances sur-
23 rounding the accident or incident;

24 (iii) the record maintenance, reporting, and inspection practices
25 conducted by the authority to aid the Secretary in enforcing rail-
26 road safety regulations prescribed and orders issued by the Sec-
27 retary, including the number of inspections made of railroad equip-
28 ment, facilities, rolling stock, and operations by the authority dur-
29 ing the prior 12 months; and

30 (iv) other information the Secretary requires.

31 (2) An annual certification applies to a safety regulation prescribed or
32 order issued after the date of the certification only if the State authority sub-
33 mits an appropriate certification to provide the necessary investigative and
34 surveillance activities.

35 (3) If, after receipt of an annual certification, the Secretary decides the
36 State authority is not complying satisfactorily with the investigative and sur-
37 veillance activities prescribed under subsection (a) of this section, the Sec-
38 retary may reject any part of the certification or take other appropriate ac-
39 tion to achieve adequate enforcement. The Secretary must give the authority
40 notice and an opportunity for a hearing before taking action under this para-
41 graph. When the Secretary gives notice, the burden of proof is on the author-

1 *ity to show that it is complying satisfactorily with the investigative and sur-*
 2 *veillance activities prescribed by the Secretary.*

3 *(c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the Sec-*
 4 *retary does not receive an annual certification under subsection (a) of this*
 5 *section related to any railroad equipment, facility, rolling stock, or operation,*
 6 *the Secretary may make an agreement with a State authority for the author-*
 7 *ity to provide any part of the investigative and surveillance activities pre-*
 8 *scribed by the Secretary as necessary to enforce the safety regulations and or-*
 9 *ders applicable to the equipment, facility, rolling stock, or operation.*

10 *(2) The Secretary may terminate any part of an agreement made under*
 11 *this subsection on finding that the authority has not provided every part of*
 12 *the investigative and surveillance activities to which the agreement relates.*
 13 *The Secretary must give the authority notice and an opportunity for a hear-*
 14 *ing before making such a finding. The finding and termination shall be pub-*
 15 *lished in the Federal Register and may not become effective for at least 15*
 16 *days after the date of publication.*

17 *(d) AGREEMENT FOR INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—In*
 18 *addition to providing for State participation under this section, the Secretary*
 19 *may make an agreement with a State to provide investigative and surveil-*
 20 *lance activities related to the Secretary's duties under chapters 203–213 of*
 21 *this title.*

22 *(e) PAYMENT.—On application by a State authority that has submitted a*
 23 *certification under subsections (a) and (b) of this section or made an agree-*
 24 *ment under subsection (c) or (d) of this section, the Secretary shall pay not*
 25 *more than 50 percent of the cost of the personnel, equipment, and activities*
 26 *of the authority needed, during the next fiscal year, to carry out a safety pro-*
 27 *gram under the certification or agreement. However, the Secretary may pay*
 28 *an authority only when the authority assures the Secretary that it will pro-*
 29 *vide the remaining cost of the safety program and that the total State money*
 30 *expended for the safety program, excluding grants of the United States Gov-*
 31 *ernment, will be at least as much as the average amount expended for the*
 32 *fiscal years that ended June 30, 1969, and June 30, 1970.*

33 *(f) MONITORING.—The Secretary may monitor State investigative and sur-*
 34 *veillance practices and carry out other inspections and investigations nec-*
 35 *essary to help enforce this chapter.*

36 **§20106. National uniformity of regulation**

37 *Laws, regulations, and orders related to railroad safety shall be nationally*
 38 *uniform to the extent practicable. A State may adopt or continue in force a*
 39 *law, regulation, or order related to railroad safety until the Secretary of*
 40 *Transportation prescribes a regulation or issues an order covering the subject*
 41 *matter of the State requirement. A State may adopt or continue in force an*

1 additional or more stringent law, regulation, or order related to railroad safe-
2 ty when the law, regulation, or order—

3 (1) is necessary to eliminate or reduce an essentially local safety haz-
4 ard;

5 (2) is not incompatible with a law, regulation, or order of the United
6 States Government; and

7 (3) does not unreasonably burden interstate commerce.

8 **§ 20107. Inspection and investigation**

9 (a) *GENERAL.*—To carry out this part, the Secretary of Transportation
10 may take actions the Secretary considers necessary, including—

11 (1) conduct investigations, make reports, issue subpoenas, require the
12 production of documents, take depositions, and prescribe recordkeeping
13 and reporting requirements; and

14 (2) delegate to a public entity or qualified person the inspection, ex-
15 amination, and testing of railroad equipment, facilities, rolling stock, op-
16 erations, and persons.

17 (b) *ENTRY AND INSPECTION.*—In carrying out this part, an officer, em-
18 ployee, or agent of the Secretary, at reasonable times and in a reasonable
19 way, may enter and inspect railroad equipment, facilities, rolling stock, oper-
20 ations, and relevant records. When requested, the officer, employee, or agent
21 shall display proper credentials. During an inspection, the officer, employee,
22 or agent is an employee of the United States Government under chapter 171
23 of title 28.

24 **§ 20108. Research, development, testing, and training**

25 (a) *GENERAL.*—The Secretary of Transportation shall carry out, as nec-
26 cessary, research, development, testing, evaluation, and training for every area
27 of railroad safety.

28 (b) *CONTRACTS.*—To carry out this part, the Secretary may make contracts
29 for, and carry out, research, development, testing, evaluation, and training
30 (particularly for those areas of railroad safety found to need prompt atten-
31 tion).

32 (c) *AMOUNTS FROM NON-GOVERNMENT SOURCES FOR TRAINING SAFETY*
33 *EMPLOYEES.*—The Secretary may request, receive, and expend amounts re-
34 ceived from non-United States Government sources for expenses incurred in
35 training safety employees of private industry, State and local authorities, or
36 other public authorities, except State rail safety inspectors participating in
37 training under section 20105 of this title.

38 **§ 20109. Employee protections**

39 (a) *FILING COMPLAINTS AND TESTIFYING.*—A railroad carrier engaged in
40 interstate or foreign commerce may not discharge or in any way discriminate

1 against an employee because the employee, whether acting for the employee
2 or as a representative, has—

3 (1) filed a complaint or brought or caused to be brought a proceeding
4 related to the enforcement of this part or, as applicable to railroad safe-
5 ty, chapter 51 or 57 of this title; or

6 (2) testified or will testify in that proceeding.

7 (b) REFUSING TO WORK BECAUSE OF HAZARDOUS CONDITIONS.—(1) A
8 railroad carrier engaged in interstate or foreign commerce may not discharge
9 or in any way discriminate against an employee for refusing to work when
10 confronted by a hazardous condition related to the performance of the employ-
11 ee's duties, if—

12 (A) the refusal is made in good faith and no reasonable alternative
13 to the refusal is available to the employee;

14 (B) a reasonable individual in the circumstances then confronting the
15 employee would conclude that—

16 (i) the hazardous condition presents an imminent danger of death
17 or serious injury; and

18 (ii) the urgency of the situation does not allow sufficient time to
19 eliminate the danger through regular statutory means; and

20 (C) the employee, where possible, has notified the carrier of the hazard-
21 ous condition and the intention not to perform further work unless the
22 condition is corrected immediately.

23 (2) This subsection does not apply to security personnel employed by a car-
24 rier to protect individuals and property transported by railroad.

25 (c) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under
26 this section is subject to resolution under section 3 of the Railway Labor Act
27 (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment
28 Board, a division or delegate of the Board, or another board of adjustment
29 established under section 3 to resolve the dispute, grievance, or claim, the pro-
30 ceeding shall be expedited and the dispute, grievance, or claim shall be re-
31 solved not later than 180 days after it is filed. If the violation is a form of
32 discrimination that does not involve discharge, suspension, or another action
33 affecting pay, and no other remedy is available under this subsection, the
34 Board, division, delegate, or other board of adjustment may award the em-
35 ployee reasonable damages, including punitive damages, of not more than
36 \$20,000.

37 (d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not
38 seek protection under both this section and another provision of law for the
39 same allegedly unlawful act of the carrier.

40 (e) DISCLOSURE OF IDENTITY.—(1) Except as provided in paragraph (2)
41 of this subsection, or with the written consent of the employee, the Secretary

1 of Transportation may not disclose the name of an employee of a railroad
 2 carrier who has provided information about an alleged violation of this part
 3 or, as applicable to railroad safety, chapter 51 or 57 of this title or a regula-
 4 tion prescribed or order issued under any of those provisions.

5 (2) The Secretary shall disclose to the Attorney General the name of an em-
 6 ployee described in paragraph (1) of this subsection if the matter is referred
 7 to the Attorney General for enforcement.

8 **§20110. Effect on employee qualifications and collective bar-**
 9 **gaining**

10 This chapter does not—

11 (1) authorize the Secretary of Transportation to prescribe regulations
 12 and issue orders related to qualifications of employees, except qualifica-
 13 tions specifically related to safety; or

14 (2) prohibit the bargaining representatives of railroad carriers and
 15 their employees from making collective bargaining agreements under the
 16 Railway Labor Act (45 U.S.C. 151 et seq.), including agreements related
 17 to qualifications of employees, that are not inconsistent with regulations
 18 prescribed and orders issued under this chapter.

19 **§20111. Enforcement by the Secretary of Transportation**

20 (a) *EXCLUSIVE AUTHORITY.*—The Secretary of Transportation has exclu-
 21 sive authority—

22 (1) to impose and compromise a civil penalty for a violation of a rail-
 23 road safety regulation prescribed or order issued by the Secretary;

24 (2) except as provided in section 20113 of this title, to request an in-
 25 junction for a violation of a railroad safety regulation prescribed or
 26 order issued by the Secretary; and

27 (3) to recommend appropriate action be taken under section 20112(a)
 28 of this title.

29 (b) *COMPLIANCE ORDERS.*—The Secretary may issue an order directing
 30 compliance with this part or with a railroad safety regulation prescribed or
 31 order issued under this part.

32 (c) *ORDERS PROHIBITING INDIVIDUALS FROM PERFORMING SAFETY-SEN-*
 33 *SITIVE FUNCTIONS.*—If an individual's violation of a regulation prescribed or
 34 order issued by the Secretary under this chapter is shown to make that indi-
 35 vidual unfit for the performance of safety-sensitive functions, the Secretary,
 36 after notice and opportunity for a hearing, may issue an order prohibiting
 37 the individual from performing safety-sensitive functions in the railroad in-
 38 dustry for a specified period of time or until specified conditions are met.
 39 This subsection does not affect the Secretary's authority under section 20104
 40 of this title to act on an emergency basis.

1 (d) REGULATIONS REQUIRING REPORTING OF REMEDIAL ACTIONS.—(1)
 2 The Secretary shall prescribe regulations to require that a railroad carrier
 3 notified by the Secretary that imposition of a civil penalty will be rec-
 4 ommended for a failure to comply with this part, chapter 51 or 57 of this
 5 title, or a regulation prescribed or order issued under any of those provisions,
 6 shall report to the Secretary, not later than the 30th day after the end of the
 7 month in which the notification is received—

8 (A) actions taken to remedy the failure; or

9 (B) if appropriate remedial actions cannot be taken by that 30th day,
 10 an explanation of the reasons for the delay.

11 (2) The Secretary—

12 (A) not later than June 3, 1993, shall issue a notice of a regulatory
 13 proceeding for proposed regulations to carry out this subsection; and

14 (B) not later than September 3, 1994, shall prescribe final regulations
 15 to carry out this subsection.

16 **§20112. Enforcement by the Attorney General**

17 (a) CIVIL ACTIONS.—At the request of the Secretary of Transportation, the
 18 Attorney General may bring a civil action in a district court of the United
 19 States—

20 (1) to enjoin a violation of, or to enforce, a railroad safety regulation
 21 prescribed or order issued by the Secretary;

22 (2) to collect a civil penalty imposed or an amount agreed on in com-
 23 promise under section 21301 of this title; or

24 (3) to enforce a subpoena issued by the Secretary under this chapter.

25 (b) VENUE.—(1) Except as provided in paragraph (2) of this subsection,
 26 a civil action under this section may be brought in the judicial district in
 27 which the violation occurred or the defendant has its principal executive of-
 28 fice. If an action to collect a penalty is against an individual, the action also
 29 may be brought in the judicial district in which the individual resides.

30 (2) A civil action to enforce a subpoena issued by the Secretary or a compli-
 31 ance order issued under section 20111(b) of this title may be brought in the
 32 judicial district in which the defendant resides, does business, or is found.

33 **§20113. Enforcement by the States**

34 (a) INJUNCTIVE RELIEF.—If the Secretary of Transportation does not begin
 35 a civil action under section 20112 of this title to enjoin the violation of a
 36 railroad safety regulation prescribed or order issued by the Secretary not later
 37 than 15 days after the date the Secretary receives notice of the violation and
 38 a request from a State authority participating in investigative and surveil-
 39 lance activities under section 20105 of this title that the action be brought,
 40 the authority may bring a civil action in a district court of the United States
 41 to enjoin the violation. This subsection does not apply if the Secretary makes

1 an affirmative written finding that the violation did not occur or that the
2 action is not necessary because of other enforcement action taken by the Sec-
3 retary related to the violation.

4 (b) *IMPOSITION AND COLLECTION OF CIVIL PENALTIES.*—If the Secretary
5 does not impose the applicable civil penalty for a violation of a railroad safe-
6 ty regulation prescribed or order issued by the Secretary not later than 60
7 days after the date of receiving notice from a State authority participating
8 in investigative and surveillance activities under section 20105 of this title,
9 the authority may bring a civil action in a district court of the United States
10 to impose and collect the penalty. This paragraph does not apply if the Sec-
11 retary makes an affirmative written finding that the violation did not occur.

12 (c) *VENUE.*—A civil action under this section may be brought in the judi-
13 cial district in which the violation occurred or the defendant has its principal
14 executive office. However, a State authority may not bring an action under
15 this section outside the State.

16 **§20114. Judicial procedures**

17 (a) *CRIMINAL CONTEMPT.*—In a trial for criminal contempt for violating
18 an injunction or restraining order issued under this chapter, the violation of
19 which is also a violation of this chapter, the defendant may demand a jury
20 trial. The defendant shall be tried as provided in rule 42(b) of the Federal
21 Rules of Criminal Procedure (18 App. U.S.C.).

22 (b) *SUBPENAS FOR WITNESSES.*—A subpoena for a witness required to at-
23 tend a district court of the United States in an action brought under this
24 chapter may be served in any judicial district.

25 (c) *REVIEW OF AGENCY ACTION.*—Except as provided in section 20104(c)
26 of this title, a proceeding to review a final action of the Secretary of Trans-
27 portation under this part or, as applicable to railroad safety, chapter 51 or
28 57 of this title shall be brought in the appropriate court of appeals as pro-
29 vided in chapter 158 of title 28.

30 **§20115. User fees**

31 (a) *SCHEDULE OF FEES.*—The Secretary of Transportation shall prescribe
32 by regulation a schedule of fees for railroad carriers subject to this chapter.
33 The fees—

34 (1) shall cover the costs of carrying out this chapter (except section
35 20108(a));

36 (2) shall be imposed fairly on the railroad carriers, in reasonable rela-
37 tionship to an appropriate combination of criteria such as revenue ton-
38 miles, track miles, passenger miles, or other relevant factors; and

39 (3) may not be based on that part of industry revenues attributable
40 to a railroad carrier or class of railroad carriers.

1 (b) *COLLECTION PROCEDURES.*—The Secretary shall prescribe procedures
2 to collect the fees. The Secretary may use the services of a department, agency,
3 or instrumentality of the United States Government or of a State or local au-
4 thority to collect the fees, and may reimburse the department, agency, or in-
5 strumentality a reasonable amount for its services.

6 (c) *COLLECTION, DEPOSIT, AND USE.*—(1) The Secretary shall impose and
7 collect fees under this section for each fiscal year before the end of the fiscal
8 year.

9 (2) Fees collected under this section shall be deposited in the general fund
10 of the Treasury as offsetting receipts. The fees may be used, to the extent pro-
11 vided in advance in an appropriation law, only to carry out this chapter.

12 (3) Fees prescribed under this section shall be imposed in an amount suffi-
13 cient to pay for the costs of activities under this chapter. However, the total
14 fees received for a fiscal year may not be more than 105 percent of the total
15 amount of the appropriations for the fiscal year for activities to be financed
16 by the fees.

17 (d) *ANNUAL REPORT.*—(1) Not later than 90 days after the end of each
18 fiscal year in which fees are collected under this section, the Secretary shall
19 report to Congress on—

20 (A) the amount of fees collected during that fiscal year;

21 (B) the impact of the fees on the financial health of the railroad indus-
22 try and its competitive position relative to each competing mode of
23 transportation; and

24 (C) the total cost of Government safety activities for each other com-
25 peting mode of transportation, including any part of that total cost de-
26 frayed by Government user fees.

27 (2) Not later than 90 days after submitting a report for a fiscal year, the
28 Secretary shall submit to Congress recommendations for corrective legislation
29 if the report includes a finding that—

30 (A) there has been an impact from the fees on the financial health of
31 the railroad industry or its competitive position relative to each compet-
32 ing mode of transportation; or

33 (B) there is a significant difference in the burden of Government user
34 fees on the railroad industry and other competing modes of transpor-
35 tation.

36 (e) *EXPIRATION.*—This section expires on September 30, 1995.

37 **§20116. Annual report**

38 The Secretary of Transportation shall submit to the President for submis-
39 sion to Congress not later than July 1 of each year a report on carrying out
40 this chapter for the prior calendar year. The report shall include the following
41 information about the prior year:

1 (1) a thorough statistical compilation of railroad accidents, incidents,
2 and casualties by cause.

3 (2) a list of railroad safety regulations and orders prescribed, issued,
4 or in effect under this chapter.

5 (3) a summary of the reasons for each waiver granted under section
6 20103(d) of this title.

7 (4) an evaluation of the degree of compliance with railroad safety reg-
8 ulations prescribed and orders issued under this chapter.

9 (5) a summary of outstanding problems in carrying out railroad safe-
10 ty regulations prescribed and orders issued under this chapter, in order
11 of priority.

12 (6) an analysis and evaluation of research and related activities com-
13 pleted, including their policy implications, and technological progress
14 achieved.

15 (7) a list, with a brief statement of the issues, of completed or pending
16 civil actions to enforce railroad safety regulations prescribed and orders
17 issued under this chapter.

18 (8) the extent to which technical information was distributed to the
19 scientific community and consumer-oriented information was made
20 available to the public.

21 (9) a compilation of certifications filed under section 20105(a) of this
22 title that were—

23 (A) in effect; or

24 (B) rejected in any part by the Secretary, and a summary of the
25 reasons for each rejection.

26 (10) a compilation of agreements made under section 20105(c) of this
27 title that were—

28 (A) in effect; or

29 (B) terminated in any part by the Secretary, and a summary
30 of the reasons for each termination.

31 (11) recommendations for legislation the Secretary considers necessary
32 to strengthen the national railroad safety program.

33 **§20117. Authorization of appropriations**

34 (a) GENERAL.—(1) Not more than the following amounts may be appro-
35 priated to the Secretary of Transportation to carry out this chapter:

36 (A) \$68,283,000 for the fiscal year ending September 30, 1993.

37 (B) \$71,690,000 for the fiscal year ending September 30, 1994.

38 (2) Not more than \$5,000,000 may be appropriated to the Secretary for
39 the fiscal year ending September 30, 1993, to carry out section 20105 of this
40 title.

1 (b) *GRADE CROSSING SAFETY*.—Not more than \$1,000,000 may be appro-
 2 priated to the Secretary for improvements in grade crossing safety, except
 3 demonstration projects under section 20134(c) of this title. Amounts appro-
 4 priated under this subsection remain available until expended.

5 (c) *RESEARCH AND DEVELOPMENT, AUTOMATED TRACK INSPECTION, AND*
 6 *STATE PARTICIPATION GRANTS*.—Amounts appropriated under this section
 7 for research and development, automated track inspection, and grants under
 8 section 20105(e) of this title remain available until expended.

9 (d) *MINIMUM AVAILABLE FOR CERTAIN PURPOSES*.—At least 50 percent of
 10 the amounts appropriated to the Secretary for a fiscal year to carry out rail-
 11 road research and development programs under this chapter or another law
 12 shall be available for safety research, improved track inspection and informa-
 13 tion acquisition technology, improved railroad freight transportation, and im-
 14 proved railroad passenger systems.

15 *SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY*

16 **§20131. Restricted access to rolling equipment**

17 The Secretary of Transportation shall prescribe regulations and issue or-
 18 ders that may be necessary to require that when railroad carrier employees
 19 (except train or yard crews) assigned to inspect, test, repair, or service rolling
 20 equipment have to work on, under, or between that equipment, every manu-
 21 ally operated switch, including each crossover switch, providing access to the
 22 track on which the equipment is located is lined against movement to that
 23 track and secured by an effective locking device that can be removed only by
 24 the class or craft of employees performing the inspection, testing, repair, or
 25 service.

26 **§20132. Visible markers for rear cars**

27 (a) *GENERAL*.—The Secretary of Transportation shall prescribe regulations
 28 and issue orders that may be necessary to require that—

29 (1) the rear car of each passenger and commuter train has at least
 30 one highly visible marker that is lighted during darkness and when
 31 weather conditions restrict clear visibility; and

32 (2) the rear car of each freight train has highly visible markers during
 33 darkness and when weather conditions restrict clear visibility.

34 (b) *PREEMPTION*.—Notwithstanding section 20106 of this title, subsection
 35 (a) of this section does not prohibit a State from continuing in force a law,
 36 regulation, or order in effect on July 8, 1976, related to lighted markers on
 37 the rear car of a freight train except to the extent it would cause the car to
 38 be in violation of this section.

39 **§20133. Passenger equipment**

40 (a) *GENERAL*.—The Secretary of Transportation shall prescribe regulations
 41 and issue orders that may be necessary to ensure that the construction, main-

1 *tenance, and operation of railroad equipment used to transport railroad pas-*
 2 *sengers, whether in commuter or intercity service, maximize the safety of those*
 3 *passengers. The Secretary periodically shall review the regulations and orders*
 4 *and make amendments that may be necessary.*

5 *(b) CONSIDERATIONS AND AREAS OF CONCENTRATION.—In prescribing reg-*
 6 *ulations, issuing orders, and making amendments under this section, the Sec-*
 7 *retary shall—*

8 *(1) consider comparable regulations and procedures of the United*
 9 *States Government that apply to other modes of transportation, espe-*
 10 *cially those regulations and procedures carried out by the Administrator*
 11 *of the Federal Aviation Administration;*

12 *(2) consider relevant differences between commuter and intercity pas-*
 13 *senger service;*

14 *(3) concentrate on those areas that the Secretary believes present the*
 15 *greatest opportunity for enhancing the safety of the equipment; and*

16 *(4) give significant weight to the expenditures that would be necessary*
 17 *to retrofit existing equipment and to change specifications for equipment*
 18 *on order.*

19 *(c) CONSULTATION.—In prescribing regulations, issuing orders, and mak-*
 20 *ing amendments under this section, the Secretary may consult with Amtrak,*
 21 *public authorities operating railroad passenger service, other railroad carriers*
 22 *transporting passengers, organizations of passengers, and organizations of*
 23 *employees. A consultation is not subject to the Federal Advisory Committee*
 24 *Act (5 App. U.S.C.), but minutes of the consultation shall be placed in the*
 25 *public docket of the regulatory proceeding.*

26 **§ 20134. Grade crossings and railroad rights of way**

27 *(a) GENERAL.—To the extent practicable, the Secretary of Transportation*
 28 *shall maintain a coordinated effort to develop and carry out solutions to the*
 29 *railroad grade crossing problem and measures to protect pedestrians in dense-*
 30 *ly populated areas along railroad rights of way. To carry out this subsection,*
 31 *the Secretary may use the authority of the Secretary under this chapter and*
 32 *over highway, traffic, and motor vehicle safety and over highway construction.*

33 *(b) SIGNAL SYSTEMS AND OTHER DEVICES.—Not later than June 22, 1989,*
 34 *the Secretary shall prescribe regulations and issue orders to ensure the safe*
 35 *maintenance, inspection, and testing of signal systems and devices at railroad*
 36 *highway grade crossings.*

37 *(c) DEMONSTRATION PROJECTS.—(1) The Secretary shall establish dem-*
 38 *onstration projects to evaluate whether accidents and incidents involving*
 39 *trains would be reduced by—*

40 *(A) reflective markers installed on the road surface or on a signal post*
 41 *at railroad grade crossings;*

1 (B) stop signs or yield signs installed at grade crossings; and

2 (C) speed bumps or rumble strips installed on the road surfaces at the
3 approaches to grade crossings.

4 (2) Not later than June 22, 1990, the Secretary shall submit a report on
5 the results of the demonstration projects to the Committee on Energy and
6 Commerce of the House of Representatives and the Committee on Commerce,
7 Science, and Transportation of the Senate.

8 **§20135. Licensing or certification of locomotive operators**

9 (a) *GENERAL.*—The Secretary of Transportation shall prescribe regulations
10 and issue orders to establish a program requiring the licensing or certifi-
11 cation, after one year after the program is established, of any operator of a
12 locomotive.

13 (b) *PROGRAM REQUIREMENTS.*—The program established under subsection
14 (a) of this section—

15 (1) shall be carried out through review and approval of each railroad
16 carrier's operator qualification standards;

17 (2) shall provide minimum training requirements;

18 (3) shall require comprehensive knowledge of applicable railroad car-
19 rier operating practices and rules;

20 (4) except as provided in subsection (c)(1) of this section, shall require
21 consideration, to the extent the information is available, of the motor ve-
22 hicle driving record of each individual seeking licensing or certification,
23 including—

24 (A) any denial, cancellation, revocation, or suspension of a motor
25 vehicle operator's license by a State for cause within the prior 5
26 years; and

27 (B) any conviction within the prior 5 years of an offense de-
28 scribed in section 30304(a)(3) (A) or (B) of this title;

29 (5) may require, based on the individual's driving record, disqualifica-
30 tion or the granting of a license or certification conditioned on require-
31 ments the Secretary prescribes; and

32 (6) shall require an individual seeking a license or certification—

33 (A) to request the chief driver licensing official of each State in
34 which the individual has held a motor vehicle operator's license
35 within the prior 5 years to provide information about the individ-
36 ual's driving record to the individual's employer, prospective em-
37 ployer, or the Secretary, as the Secretary requires; and

38 (B) to make the request provided for in section 30305(b)(4) of this
39 title for information to be sent to the individual's employer, pro-
40 spective employer, or the Secretary, as the Secretary requires.

1 (c) *WAIVERS.*—(1) *The Secretary shall prescribe standards and establish*
 2 *procedures for waiving subsection (b)(4) of this section for an individual or*
 3 *class of individuals who the Secretary decides are not currently unfit to oper-*
 4 *ate a locomotive. However, the Secretary may waive subsection (b)(4) for an*
 5 *individual or class of individuals with a conviction, cancellation, revocation,*
 6 *or suspension described in paragraph (2) (A) or (B) of this subsection only*
 7 *if the individual or class, after the conviction, cancellation, revocation, or sus-*
 8 *sension, successfully completes a rehabilitation program established by a rail-*
 9 *road carrier or approved by the Secretary.*

10 (2) *If an individual, after the conviction, cancellation, revocation, or sus-*
 11 *sension, successfully completes a rehabilitation program established by a rail-*
 12 *road carrier or approved by the Secretary, the individual may not be denied*
 13 *a license or certification under subsection (b)(4) of this section because of—*

14 (A) *a conviction for operating a motor vehicle when under the influ-*
 15 *ence of, or impaired by, alcohol or a controlled substance; or*

16 (B) *the cancellation, revocation, or suspension of the individual's*
 17 *motor vehicle operator's license for operating a motor vehicle when under*
 18 *the influence of, or impaired by, alcohol or a controlled substance.*

19 (d) *OPPORTUNITY FOR HEARING.*—*An individual denied a license or cer-*
 20 *tification or whose license or certification is conditioned on requirements pre-*
 21 *scribed under subsection (b)(4) of this section shall be entitled to a hearing*
 22 *under section 20103(e) of this title to decide whether the license has been prop-*
 23 *erly denied or conditioned.*

24 (e) *OPPORTUNITY TO EXAMINE AND COMMENT ON INFORMATION.*—*The Sec-*
 25 *retary, employer, or prospective employer, as appropriate, shall make infor-*
 26 *mation obtained under subsection (b)(6) of this section available to the indi-*
 27 *vidual. The individual shall be given an opportunity to comment in writing*
 28 *about the information. Any comment shall be included in any record or file*
 29 *maintained by the Secretary, employer, or prospective employer that contains*
 30 *information to which the comment is related.*

31 **§20136. Automatic train control and related systems**

32 *The Secretary of Transportation shall prescribe regulations and issue or-*
 33 *ders to require that—*

34 (1) *an individual performing a test of an automatic train stop, train*
 35 *control, or cab signal apparatus required by the Secretary to be per-*
 36 *formed before entering territory where the apparatus will be used shall*
 37 *certify in writing that the test was performed properly; and*

38 (2) *the certification required under clause (1) of this subsection shall*
 39 *be maintained in the same way and place as the daily inspection report*
 40 *for the locomotive.*

1 **§20137. Event recorders**

2 (a) *DEFINITION.*—In this section, “event recorder” means a device that—

3 (1) records train speed, hot box detection, throttle position, brake ap-
4 plication, brake operations, and any other function the Secretary of
5 Transportation considers necessary to record to assist in monitoring the
6 safety of train operation, such as time and signal indication; and

7 (2) is designed to resist tampering.

8 (b) *REGULATIONS AND ORDERS.*—Not later than December 22, 1989, the
9 Secretary shall prescribe regulations and issue orders that may be necessary
10 to enhance safety by requiring that a train be equipped with an event re-
11 corder not later than one year after the regulations are prescribed and the
12 orders are issued. However, if the Secretary finds it is impracticable to equip
13 trains within that one-year period, the Secretary may extend the period to
14 a date that is not later than 18 months after the regulations are prescribed
15 and the orders are issued.

16 **§20138. Tampering with safety and operational monitoring**
17 **devices**

18 (a) *GENERAL.*—The Secretary of Transportation shall prescribe regulations
19 and issue orders to prohibit the willful tampering with, or disabling of, any
20 specified railroad safety or operational monitoring device.

21 (b) *PENALTIES.*—(1) A railroad carrier operating a train on which a safe-
22 ty or operational monitoring device is tampered with or disabled in violation
23 of a regulation prescribed or order issued under subsection (a) of this section
24 is liable to the United States Government for a civil penalty under section
25 21301 of this title.

26 (2) An individual tampering with or disabling a safety or operational
27 monitoring device in violation of a regulation prescribed or order issued
28 under subsection (a) of this section, or knowingly operating or allowing to
29 be operated a train on which such a device has been tampered with or dis-
30 abled, is liable for penalties established by the Secretary. The penalties may
31 include—

32 (A) a civil penalty under section 21301 of this title;

33 (B) suspension from work; and

34 (C) suspension or loss of a license or certification issued under section
35 20135 of this title.

36 **§20139. Maintenance-of-way operations on railroad bridges**

37 Not later than June 22, 1989, the Secretary of Transportation shall pre-
38 scribe regulations and issue orders for the safety of maintenance-of-way em-
39 ployees on railroad bridges. The Secretary at least shall provide in those regu-
40 lations standards for bridge safety equipment, including nets, walkways,

1 *handrails, and safety lines, and requirements for the use of vessels when work*
2 *is performed on bridges located over bodies of water.*

3 **§20140. Alcohol and controlled substances testing**

4 (a) *DEFINITION.*—*In this section, “controlled substance” means any sub-*
5 *stance under section 102 of the Comprehensive Drug Abuse Prevention and*
6 *Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transpor-*
7 *tation.*

8 (b) *GENERAL.*—(1) *In the interest of safety, the Secretary of Transpor-*
9 *tation shall prescribe regulations and issue orders, not later than October 28,*
10 *1992, related to alcohol and controlled substances use in railroad operations.*
11 *The regulations shall establish a program requiring—*

12 (A) *a railroad carrier to conduct preemployment, reasonable sus-*
13 *picion, random, and post-accident testing of all railroad employees re-*
14 *sponsible for safety-sensitive functions (as decided by the Secretary) for*
15 *the use of alcohol or a controlled substance in violation of law or a*
16 *United States Government regulation; and*

17 (B) *when the Secretary considers it appropriate, disqualification for*
18 *an established period of time or dismissal of any employee found—*

19 (i) *to have used or been impaired by alcohol when on duty; or*

20 (ii) *to have used a controlled substance, whether or not on duty,*
21 *except as allowed for medical purposes by law or a regulation or*
22 *order under this chapter.*

23 (2) *When the Secretary of Transportation considers it appropriate in the*
24 *interest of safety, the Secretary may prescribe regulations and issue orders re-*
25 *quiring railroad carriers to conduct periodic recurring testing of railroad em-*
26 *ployees responsible for safety-sensitive functions (as decided by the Secretary)*
27 *for the use of alcohol or a controlled substance in violation of law or a Gov-*
28 *ernment regulation.*

29 (c) *TESTING AND LABORATORY REQUIREMENTS.*—*In carrying out this sec-*
30 *tion, the Secretary of Transportation shall develop requirements that shall—*

31 (1) *promote, to the maximum extent practicable, individual privacy*
32 *in the collection of specimens;*

33 (2) *for laboratories and testing procedures for controlled substances,*
34 *incorporate the Department of Health and Human Services scientific*
35 *and technical guidelines dated April 11, 1988, and any amendments to*
36 *those guidelines, including mandatory guidelines establishing—*

37 (A) *comprehensive standards for every aspect of laboratory con-*
38 *trolled substances testing and laboratory procedures to be applied in*
39 *carrying out this section, including standards requiring the use of*
40 *the best available technology to ensure the complete reliability and*
41 *accuracy of controlled substances tests and strict procedures govern-*

1 *ing the chain of custody of specimens collected for controlled sub-*
2 *stances testing;*

3 *(B) the minimum list of controlled substances for which individ-*
4 *uals may be tested; and*

5 *(C) appropriate standards and procedures for periodic review of*
6 *laboratories and criteria for certification and revocation of certifi-*
7 *cation of laboratories to perform controlled substances testing in*
8 *carrying out this section;*

9 *(3) require that a laboratory involved in controlled substances testing*
10 *under this section have the capability and facility, at the laboratory, of*
11 *performing screening and confirmation tests;*

12 *(4) provide that all tests indicating the use of alcohol or a controlled*
13 *substance in violation of law or a Government regulation be confirmed*
14 *by a scientifically recognized method of testing capable of providing*
15 *quantitative information about alcohol or a controlled substance;*

16 *(5) provide that each specimen be subdivided, secured, and labeled in*
17 *the presence of the tested individual and that a part of the specimen be*
18 *retained in a secure manner to prevent the possibility of tampering, so*
19 *that if the individual's confirmation test results are positive the individ-*
20 *ual has an opportunity to have the retained part tested by a 2d con-*
21 *firmation test done independently at another certified laboratory if the*
22 *individual requests the 2d confirmation test not later than 3 days after*
23 *being advised of the results of the first confirmation test;*

24 *(6) ensure appropriate safeguards for testing to detect and quantify*
25 *alcohol in breath and body fluid samples, including urine and blood,*
26 *through the development of regulations that may be necessary and in*
27 *consultation with the Secretary of Health and Human Services;*

28 *(7) provide for the confidentiality of test results and medical informa-*
29 *tion (other than information about alcohol or a controlled substance) of*
30 *employees, except that this clause does not prevent the use of test results*
31 *for the orderly imposition of appropriate sanctions under this section;*
32 *and*

33 *(8) ensure that employees are selected for tests by nondiscriminatory*
34 *and impartial methods, so that no employee is harassed by being treated*
35 *differently from other employees in similar circumstances.*

36 *(d) REHABILITATION.—The Secretary of Transportation shall prescribe reg-*
37 *ulations or issue orders establishing requirements for rehabilitation programs*
38 *that at least provide for the identification and opportunity for treatment of*
39 *railroad employees responsible for safety-sensitive functions (as decided by the*
40 *Secretary) in need of assistance in resolving problems with the use of alcohol*
41 *or a controlled substance in violation of law or a Government regulation. The*

1 Secretary shall decide on the circumstances under which employees shall be
 2 required to participate in a program. Each railroad carrier is encouraged to
 3 make such a program available to all of its employees in addition to employ-
 4 ees responsible for safety-sensitive functions. This subsection does not prevent
 5 a railroad carrier from establishing a program under this subsection in co-
 6 operation with another railroad carrier.

7 (e) *INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS AND REGULA-*
 8 *TIONS.*—In carrying out this section, the Secretary of Transportation—

9 (1) shall establish only requirements that are consistent with inter-
 10 national obligations of the United States; and

11 (2) shall consider applicable laws and regulations of foreign countries.

12 (f) *OTHER REGULATIONS ALLOWED.*—This section does not prevent the
 13 Secretary of Transportation from continuing in effect, amending, or further
 14 supplementing a regulation prescribed or order issued before October 28, 1991,
 15 governing the use of alcohol or a controlled substance in railroad operations.

16 **§20141. Power brake safety**

17 (a) *REVIEW AND REVISION OF EXISTING REGULATIONS.*—The Secretary of
 18 Transportation shall review existing regulations on railroad power brakes
 19 and, not later than December 31, 1993, revise the regulations based on safety
 20 information presented during the review. Where applicable, the Secretary
 21 shall prescribe regulations that establish standards on dynamic braking
 22 equipment.

23 (b) *2-WAY END-OF-TRAIN DEVICES.*—(1) The Secretary shall require 2-way
 24 end-of-train devices (or devices able to perform the same function) on road
 25 trains, except locals, road switchers, or work trains, to enable the initiation
 26 of emergency braking from the rear of a train. The Secretary shall prescribe
 27 regulations as soon as possible, but not later than December 31, 1993, requir-
 28 ing the 2-way end-of-train devices. The regulations at least shall—

29 (A) establish standards for the devices based on performance;

30 (B) prohibit a railroad carrier, on or after the date that is one year
 31 after the regulations are prescribed, from acquiring any end-of-train de-
 32 vice for use on trains that is not a 2-way device meeting the standards
 33 established under clause (A) of this paragraph;

34 (C) require that the trains be equipped with 2-way end-of-train devices
 35 meeting those standards not later than 4 years after the regulations are
 36 prescribed; and

37 (D) provide that any 2-way end-of-train device acquired for use on
 38 trains before the regulations are prescribed shall be deemed to meet the
 39 standards.

40 (2) The Secretary may consider petitions to amend the regulations pre-
 41 scribed under paragraph (1) of this subsection to allow the use of alternative

1 technologies that meet the same basic performance requirements established by
2 the regulations.

3 (3) In developing the regulations required by paragraph (1) of this sub-
4 section, the Secretary shall consider information presented under subsection
5 (a) of this section.

6 (c) *EXCLUSIONS.*—The Secretary may exclude from regulations prescribed
7 under subsections (a) and (b) of this section any category of trains or rail
8 operations if the Secretary decides that the exclusion is in the public interest
9 and is consistent with railroad safety. The Secretary shall make public the
10 reasons for the exclusion. The Secretary at least shall exclude from the regula-
11 tions prescribed under subsection (b)—

12 (1) trains that have manned cabooses;

13 (2) passenger trains with emergency brakes;

14 (3) trains that operate only on track that is not part of the general
15 railroad system;

16 (4) trains that do not exceed 30 miles an hour and do not operate on
17 heavy grades, except for any categories of trains specifically designated
18 by the Secretary; and

19 (5) trains that operate in a push mode.

20 **§20142. Track safety**

21 (a) *REVIEW OF EXISTING REGULATIONS.*—Not later than March 3, 1993,
22 the Secretary of Transportation shall begin a review of Department of Trans-
23 portation regulations related to track safety standards. The review at least
24 shall include an evaluation of—

25 (1) procedures associated with maintaining and installing continuous
26 welded rail and its attendant structure;

27 (2) the need for revisions to regulations on track excepted from track
28 safety standards; and

29 (3) employee safety.

30 (b) *REVISION OF REGULATIONS.*—Not later than September 3, 1994, the
31 Secretary shall prescribe regulations and issue orders to revise track safety
32 standards, considering safety information presented during the review under
33 subsection (a) of this section and the report of the Comptroller General sub-
34 mitted under subsection (c) of this section.

35 (c) *COMPTROLLER GENERAL'S STUDY AND REPORT.*—The Comptroller
36 General shall study the effectiveness of the Secretary's enforcement of track
37 safety standards, with particular attention to recent relevant railroad acci-
38 dent experience and information. Not later than September 3, 1993, the
39 Comptroller General shall submit a report to Congress and the Secretary on
40 the results of the study, with recommendations for improving enforcement of
41 those standards.

1 **§20143. Locomotive visibility**

2 (a) *DEFINITION.*—In this section, “locomotive visibility” means the en-
3 hancement of day and night visibility of the front end unit of a train, consid-
4 ering in particular the visibility and perspective of a driver of a motor vehi-
5 cle at a grade crossing.

6 (b) *INTERIM REGULATIONS.*—Not later than December 31, 1992, the Sec-
7 retary of Transportation shall prescribe temporary regulations identifying
8 ditch, crossing, strobe, and oscillating lights as temporary locomotive visi-
9 bility measures and authorizing and encouraging the installation and use of
10 those lights. Subchapter II of chapter 5 of title 5 does not apply to a tem-
11 porary regulation or to an amendment to a temporary regulation.

12 (c) *REVIEW OF REGULATIONS.*—The Secretary shall review the Secretary’s
13 regulations on locomotive visibility. Not later than December 31, 1993, the
14 Secretary shall complete the current research of the Department of Transpor-
15 tation on locomotive visibility. In conducting the review, the Secretary shall
16 collect relevant information from operational experience by rail carriers using
17 enhanced visibility measures.

18 (d) *REGULATORY PROCEEDING.*—Not later than June 30, 1994, the Sec-
19 retary shall begin a regulatory proceeding to prescribe final regulations re-
20 quiring substantially enhanced locomotive visibility measures. In the proceed-
21 ing, the Secretary shall consider at least—

22 (1) revisions to the existing locomotive headlight standards, including
23 standards for placement and intensity;

24 (2) requiring the use of reflective material to enhance locomotive visi-
25 bility;

26 (3) requiring the use of additional alerting lights, including ditch,
27 crossing, strobe, and oscillating lights;

28 (4) requiring the use of auxiliary lights to enhance locomotive visi-
29 bility when viewed from the side;

30 (5) the effect of an enhanced visibility measure on the vision, health,
31 and safety of train crew members; and

32 (6) separate standards for self-propelled, push-pull, and multi-unit
33 passenger operations without a dedicated head end locomotive.

34 (e) *FINAL REGULATIONS.*—(1) Not later than June 30, 1995, the Secretary
35 shall prescribe final regulations requiring enhanced locomotive visibility
36 measures. The Secretary shall require that not later than December 31, 1997,
37 a locomotive not excluded from the regulations be equipped with temporary
38 visibility measures under subsection (b) of this section or the visibility meas-
39 ures the final regulations require.

40 (2) In prescribing regulations under paragraph (1) of this subsection, the
41 Secretary may exclude a category of trains or rail operations from a specific

1 visibility requirement if the Secretary decides the exclusion is in the public
2 interest and is consistent with rail safety, including grade-crossing safety.

3 (3) A locomotive equipped with temporary visibility measures prescribed
4 under subsection (b) of this section when final regulations are prescribed
5 under paragraph (1) of this subsection is deemed to be complying with the
6 final regulations for 4 years after the final regulations are prescribed.

7 **§20144. Blue signal protection for on-track vehicles**

8 The Secretary of Transportation shall prescribe regulations applying blue
9 signal protection to on-track vehicles where rest is provided.

10 **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.

11 **§20301. Definition and nonapplication**

12 (a) *DEFINITION.*—In this chapter, “vehicle” means a car, locomotive, ten-
13 der, or similar vehicle.

14 (b) *NONAPPLICATION.*—This chapter does not apply to the following:

15 (1) a train of 4-wheel coal cars.

16 (2) a train of 8-wheel standard logging cars if the height of each car
17 from the top of the rail to the center of the coupling is not more than
18 25 inches.

19 (3) a locomotive used in hauling a train referred to in clause (2) of
20 this subsection when the locomotive and cars of the train are used only
21 to transport logs.

22 **§20302. General requirements**

23 (a) *GENERAL.*—Except as provided in subsection (c) of this section and sec-
24 tion 20303 of this title, a railroad carrier may use or allow to be used on
25 any of its railroad lines—

26 (1) a vehicle only if it is equipped with—

27 (A) couplers coupling automatically by impact, and capable of
28 being uncoupled, without the necessity of individuals going between
29 the ends of the vehicles;

30 (B) secure sill steps and efficient hand brakes; and

31 (C) secure ladders and running boards when required by the Sec-
32 retary of Transportation, and, if ladders are required, secure
33 handholds or grab irons on its roof at the top of each ladder;

34 (2) except as otherwise ordered by the Secretary, a vehicle only if it
35 is equipped with secure grab irons or handholds on its ends and sides
36 for greater security to individuals in coupling and uncoupling vehicles;

1 (3) a vehicle only if it complies with the standard height of drawbars
2 required by regulations prescribed by the Secretary;

3 (4) a locomotive only if it is equipped with a power-driving wheel
4 brake and appliances for operating the train-brake system; and

5 (5) a train only if—

6 (A) enough of the vehicles in the train are equipped with power
7 or train brakes so that the engineer on the locomotive hauling the
8 train can control the train's speed without the necessity of brake op-
9 erators using the common hand brakes for that purpose; and

10 (B) at least 50 percent of the vehicles in the train are equipped
11 with power or train brakes and the engineer is using the power or
12 train brakes on those vehicles and on all other vehicles equipped
13 with them that are associated with those vehicles in the train.

14 (b) *REFUSAL TO RECEIVE VEHICLES NOT PROPERLY EQUIPPED.*—A rail-
15 road carrier complying with subsection (a)(5)(A) of this section may refuse
16 to receive from a railroad line of a connecting railroad carrier or a shipper
17 a vehicle that is not equipped with power or train brakes that will work and
18 readily interchange with the power or train brakes in use on the vehicles of
19 the complying railroad carrier.

20 (c) *COMBINED VEHICLES LOADING AND HAULING LONG COMMODITIES.*—
21 Notwithstanding subsection (a)(1)(B) of this section, when vehicles are com-
22 bined to load and haul long commodities, only one of the vehicles must have
23 hand brakes during the loading and hauling.

24 (d) *AUTHORITY TO CHANGE REQUIREMENTS.*—The Secretary may—

25 (1) change the number, dimensions, locations, and manner of applica-
26 tion prescribed by the Secretary for safety appliances required by sub-
27 section (a)(1)(B) and (C) and (2) of this section only for good cause and
28 after providing an opportunity for a full hearing;

29 (2) amend regulations for installing, inspecting, maintaining, and re-
30 pairing power and train brakes only for the purpose of achieving safety;
31 and

32 (3) increase, after an opportunity for a full hearing, the minimum
33 percentage of vehicles in a train that are required by subsection
34 (a)(5)(B) of this section to be equipped and used with power or train
35 brakes.

36 (e) *SERVICES OF ASSOCIATION OF AMERICAN RAILROADS.*—In carrying out
37 subsection (d)(2) and (3) of this section, the Secretary may use the services
38 of the Association of American Railroads.

1 **§20303. Moving defective and insecure vehicles needing re-**
2 **pairs**

3 (a) *GENERAL.*—A vehicle that is equipped in compliance with this chapter
4 whose equipment becomes defective or insecure nevertheless may be moved
5 when necessary to make repairs, without a penalty being imposed under sec-
6 tion 21302 of this title, from the place at which the defect or insecurity was
7 first discovered to the nearest available place at which the repairs can be
8 made—

9 (1) on the railroad line on which the defect or insecurity was discov-
10 ered; or

11 (2) at the option of a connecting railroad carrier, on the railroad line
12 of the connecting carrier, if not farther than the place of repair described
13 in clause (1) of this subsection.

14 (b) *USE OF CHAINS INSTEAD OF DRAWBARS.*—A vehicle in a revenue train
15 or in association with commercially-used vehicles may be moved under this
16 section with chains instead of drawbars only when the vehicle contains live-
17 stock or perishable freight.

18 (c) *LIABILITY.*—The movement of a vehicle under this section is at the risk
19 only of the railroad carrier doing the moving. This section does not relieve
20 a carrier from liability in a proceeding to recover damages for death or in-
21 jury of a railroad employee arising from the movement of a vehicle with
22 equipment that is defective, insecure, or not maintained in compliance with
23 this chapter.

24 **§20304. Assumption of risk by employees**

25 An employee of a railroad carrier injured by a vehicle or train used in
26 violation of section 20302(a)(1)(A), (2), (4), or (5)(A) of this title does not
27 assume the risk of injury resulting from the violation, even if the employee
28 continues to be employed by the carrier after learning of the violation.

29 **§20305. Inspection of mail cars**

30 The Secretary of Transportation shall inspect the construction, adapt-
31 ability, design, and condition of mail cars used on railroads in the United
32 States. The Secretary shall make a report on the inspection and submit a
33 copy of the report to the United States Postal Service.

34 **§20306. Exemption for technological improvements**

35 (a) *GENERAL.*—Subject to subsection (b) of this section, the Secretary of
36 Transportation may exempt from the requirements of this chapter railroad
37 equipment or equipment that will be operated on rails, when those require-
38 ments preclude the development or implementation of more efficient railroad
39 transportation equipment or other transportation innovations under existing
40 law.

1 (b) *CONDITIONS FOR EXEMPTION.*—The Secretary may grant an exemption
2 under subsection (a) of this section only on the basis of—

3 (1) findings based on evidence developed at a hearing; or

4 (2) an agreement between national railroad labor representatives and
5 the developer of the new equipment or technology.

6 **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.

7 **§ 20501. Definition**

8 In this chapter, “signal system” means a block signal system, an interlock-
9 ing, automatic train stop, train control, or cab-signal device, or a similar ap-
10 pliance, method, device, or system intended to promote safety in railroad op-
11 erations.

12 **§ 20502. Requirements for installation and use**

13 (a) *INSTALLATION.*—(1) When the Secretary of Transportation decides after
14 an investigation that it is necessary in the public interest, the Secretary may
15 order a railroad carrier to install, on any part of its railroad line, a signal
16 system that complies with requirements of the Secretary. The order must
17 allow the carrier a reasonable time to complete the installation. A carrier
18 may discontinue or materially alter a signal system required under this para-
19 graph only with the approval of the Secretary.

20 (2) A railroad carrier ordered under paragraph (1) of this subsection to
21 install a signal system on one part of its railroad line may not be held neg-
22 ligent for not installing the system on any part of its line that was not in-
23 cluded in the order. If an accident or incident occurs on a part of the line
24 on which the signal system was not required to be installed and was not in-
25 stalled, the use of the system on another part of the line may not be considered
26 in a civil action brought because of the accident or incident.

27 (b) *USE.*—A railroad carrier may allow a signal system to be used on its
28 railroad line only when the system, including its controlling and operating
29 appurtenances—

30 (1) may be operated safely without unnecessary risk of personal in-
31 jury; and

32 (2) has been inspected and can meet any test prescribed under this
33 chapter.

1 **§20503. Amending regulations and changing requirements**

2 *The Secretary of Transportation may amend a regulation or change a re-*
 3 *quirement applicable to a railroad carrier for installing, maintaining, in-*
 4 *specting, or repairing a signal system under this chapter—*

5 *(1) when the carrier files with the Secretary a request for the amend-*
 6 *ment or change and the Secretary approves the request; or*

7 *(2) on the Secretary's own initiative for good cause shown.*

8 **§20504. Inspection, testing, and investigation**

9 *(a) SYSTEMS IN USE.—(1) The Secretary of Transportation may—*

10 *(A) inspect and test a signal system used by a railroad carrier; and*

11 *(B) decide whether the system is in safe operating condition.*

12 *(2) In carrying out this subsection, the Secretary may employ only an in-*
 13 *dividual who—*

14 *(A) has no interest in a patented article required to be used on or with*
 15 *a signal system; and*

16 *(B) has no financial interest in a railroad carrier or in a concern*
 17 *dealing in railroad supplies.*

18 *(b) SYSTEMS SUBMITTED FOR INVESTIGATION AND TESTING.—The Sec-*
 19 *retary may investigate, test, and report on the use of and need for a signal*
 20 *system, without cost to the United States Government, when the system is sub-*
 21 *mitted in completed shape for investigation and testing.*

22 **§20505. Reports of malfunctions and accidents**

23 *In the way and to the extent required by the Secretary of Transportation,*
 24 *a railroad carrier shall report to the Secretary a failure of a signal system*
 25 *to function as intended. If the failure results in an accident or incident caus-*
 26 *ing injury to an individual or property that is required to be reported under*
 27 *regulations prescribed by the Secretary, the carrier owning or maintaining*
 28 *the signal system shall report to the Secretary immediately in writing the fact*
 29 *of the accident or incident.*

30 **CHAPTER 207—LOCOMOTIVES**

Sec.

20701. *Requirements for use.*

20702. *Inspections, repairs, and inspection and repair reports.*

20703. *Accident reports and investigations.*

31 **§20701. Requirements for use**

32 *A railroad carrier may use or allow to be used a locomotive or tender on*
 33 *its railroad line only when the locomotive or tender and its parts and appur-*
 34 *tenances—*

35 *(1) are in proper condition and safe to operate without unnecessary*
 36 *danger of personal injury;*

37 *(2) have been inspected as required under this chapter and regulations*
 38 *prescribed by the Secretary of Transportation under this chapter; and*

1 (3) can withstand every test prescribed by the Secretary under this
2 chapter.

3 **§20702. Inspections, repairs, and inspection and repair re-**
4 **ports**

5 (a) GENERAL.—The Secretary of Transportation shall—

6 (1) become familiar, so far as practicable, with the condition of every
7 locomotive and tender and its parts and appurtenances;

8 (2) inspect every locomotive and tender and its parts and appur-
9 tenances as necessary to carry out this chapter, but not necessarily at
10 stated times or at regular intervals; and

11 (3) ensure that every railroad carrier makes inspections of locomotives
12 and tenders and their parts and appurtenances as required by regula-
13 tions prescribed by the Secretary and repairs every defect that is dis-
14 closed by an inspection before a defective locomotive, tender, part, or ap-
15 purtenance is used again.

16 (b) NONCOMPLYING LOCOMOTIVES, TENDERS, AND PARTS.—(1) When the
17 Secretary finds that a locomotive, tender, or locomotive or tender part or ap-
18 purtenance owned or operated by a railroad carrier does not comply with this
19 chapter or a regulation prescribed under this chapter, the Secretary shall give
20 the carrier written notice describing any defect resulting in noncompliance.
21 Not later than 5 days after receiving the notice of noncompliance, the carrier
22 may submit a written request for a reinspection. On receiving the request, the
23 Secretary shall provide for the reinspection by an officer or employee of the
24 Department of Transportation who did not make the original inspection. The
25 reinspection shall be made not later than 15 days after the date the Secretary
26 gives the notice of noncompliance.

27 (2) Immediately after the reinspection is completed, the Secretary shall give
28 written notice to the railroad carrier stating whether the locomotive, tender,
29 part, or appurtenance is in compliance. If the original finding of noncompli-
30 ance is sustained, the carrier has 30 days after receipt of the notice to file
31 an appeal with the Secretary. If the carrier files an appeal, the Secretary,
32 after providing an opportunity for a proceeding, may revise or set aside the
33 finding of noncompliance.

34 (3) A locomotive, tender, part, or appurtenance found not in compliance
35 under this subsection may be used only after it is—

36 (A) repaired to comply with this chapter and regulations prescribed
37 under this chapter; or

38 (B) found on reinspection or appeal to be in compliance.

39 (c) REPORTS.—A railroad carrier shall make and keep, in the way the Sec-
40 retary prescribes by regulation, a report of every—

1 (1) inspection made under regulations prescribed by the Secretary;
2 and

3 (2) repair made of a defect disclosed by such an inspection.

4 (d) *CHANGES IN INSPECTION PROCEDURES.*—A railroad carrier may
5 change a rule or instruction of the carrier governing the inspection by the
6 carrier of the locomotives and tenders and locomotive and tender parts and
7 appurtenances of the carrier when the Secretary approves a request filed by
8 the carrier to make the change.

9 **§ 20703. Accident reports and investigations**

10 (a) *ACCIDENT REPORTS AND SCENE PRESERVATION.*—When the failure of
11 a locomotive, tender, or locomotive or tender part or appurtenance results in
12 an accident or incident causing serious personal injury or death, the railroad
13 carrier owning or operating the locomotive or tender—

14 (1) immediately shall file with the Secretary of Transportation a writ-
15 ten statement of the fact of the accident or incident; and

16 (2) when the locomotive is disabled to the extent it cannot be operated
17 under its own power, shall preserve intact all parts affected by the acci-
18 dent or incident, if possible without interfering with traffic, until an in-
19 vestigation of the accident or incident is completed.

20 (b) *INVESTIGATIONS.*—The Secretary shall—

21 (1) investigate each accident and incident reported under subsection
22 (a) of this section;

23 (2) inspect each part affected by the accident or incident; and

24 (3) make a complete and detailed report on the cause of the accident
25 or incident.

26 (c) *PUBLICATION AND USE OF INVESTIGATION REPORTS.*—When the Sec-
27 retary considers publication to be in the public interest, the Secretary may
28 publish a report of an investigation made under this section, stating the cause
29 of the accident or incident and making appropriate recommendations. No
30 part of a report may be admitted into evidence or used in a civil action for
31 damages resulting from a matter mentioned in the report.

32 **CHAPTER 209—ACCIDENTS AND INCIDENTS**

Sec.

20901. Reports.

20902. Investigations.

20903. Reports not evidence in civil actions for damages.

33 **§ 20901. Reports**

34 (a) *GENERAL REQUIREMENTS.*—Not later than 30 days after the end of
35 each month, a railroad carrier shall file a report with the Secretary of Trans-
36 portation on all accidents and incidents resulting in injury or death to an
37 individual or damage to equipment or a roadbed arising from the carrier's
38 operations during the month. The report shall be under oath and shall state

1 *the nature, cause, and circumstances of each reported accident or incident.*
2 *If a railroad carrier assigns human error as a cause, the report shall include,*
3 *at the option of each employee whose error is alleged, a statement by the em-*
4 *ployee explaining any factors the employee alleges contributed to the accident*
5 *or incident.*

6 *(b) MONETARY THRESHOLD FOR REPORTING.—(1) In establishing or*
7 *changing a monetary threshold for the reporting of a railroad accident or in-*
8 *cident, the Secretary shall base damage cost calculations only on publicly*
9 *available information obtained from—*

10 *(A) the Bureau of Labor Statistics; or*

11 *(B) another department, agency, or instrumentality of the United*
12 *States Government if the information has been collected through objective,*
13 *statistically sound survey methods or has been previously subject to a*
14 *public notice and comment process in a proceeding of a Government de-*
15 *partment, agency, or instrumentality.*

16 *(2) If information is not available as provided in paragraph (1)(A) or (B)*
17 *of this subsection, the Secretary may use any other source to obtain the infor-*
18 *mation. However, use of the information shall be subject to public notice and*
19 *an opportunity for written comment.*

20 **§ 20902. Investigations**

21 *(a) GENERAL AUTHORITY.—The Secretary of Transportation, or an impar-*
22 *tial investigator authorized by the Secretary, may investigate—*

23 *(1) an accident or incident resulting in serious injury to an individ-*
24 *ual or to railroad property, occurring on the railroad line of a railroad*
25 *carrier; and*

26 *(2) an accident or incident reported under section 20505 of this title.*

27 *(b) OTHER DUTIES AND POWERS.—In carrying out an investigation, the*
28 *Secretary or authorized investigator may subpoena witnesses, require the pro-*
29 *duction of records, exhibits, and other evidence, administer oaths, and take*
30 *testimony. If the accident or incident is investigated by a commission of the*
31 *State in which it occurred, the Secretary, if convenient, shall carry out the*
32 *investigation at the same time as, and in coordination with, the commission's*
33 *investigation. The railroad carrier on whose railroad line the accident or in-*
34 *cident occurred shall provide reasonable facilities to the Secretary for the in-*
35 *vestigation.*

36 *(c) REPORTS.—When in the public interest, the Secretary shall make a re-*
37 *port of the investigation, stating the cause of the accident or incident and*
38 *making recommendations the Secretary considers appropriate. The Secretary*
39 *shall publish the report in a way the Secretary considers appropriate.*

1 **§20903. Reports not evidence in civil actions for damages**

2 *No part of an accident or incident report filed by a railroad carrier under*
 3 *section 20901 of this title or made by the Secretary of Transportation under*
 4 *section 20902 of this title may be used in a civil action for damages resulting*
 5 *from a matter mentioned in the report.*

6 **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.*

7 **§21101. Definitions**

8 *In this chapter—*

9 (1) *“designated terminal” means the home or away-from-home termi-*
 10 *nal for the assignment of a particular crew.*

11 (2) *“dispatching service employee” means an operator, train dis-*
 12 *patcher, or other train employee who by the use of an electrical or me-*
 13 *chanical device dispatches, reports, transmits, receives, or delivers orders*
 14 *related to or affecting train movements.*

15 (3) *“employee” means a dispatching service employee, a signal em-*
 16 *ployee, or a train employee.*

17 (4) *“signal employee” means an individual employed by a railroad*
 18 *carrier who is engaged in installing, repairing, or maintaining signal*
 19 *systems.*

20 (5) *“train employee” means an individual engaged in or connected*
 21 *with the movement of a train, including a hostler.*

22 **§21102. Nonapplication and exemption**

23 (a) *GENERAL.—This chapter does not apply to a situation involving any*
 24 *of the following:*

25 (1) *a casualty.*

26 (2) *an unavoidable accident.*

27 (3) *an act of God.*

28 (4) *a delay resulting from a cause unknown and unforeseeable to a*
 29 *railroad carrier or its officer or agent in charge of the employee when*
 30 *the employee left a terminal.*

31 (b) *EXEMPTION.—The Secretary of Transportation may exempt a railroad*
 32 *carrier having not more than 15 employees covered by this chapter from the*
 33 *limitations imposed by this chapter. The Secretary may allow the exemption*
 34 *after a full hearing, for good cause shown, and on deciding that the exemption*
 35 *is in the public interest and will not affect safety adversely. The exemption*

1 shall be for a specific period of time and is subject to review at least annually.
2 The exemption may not authorize a carrier to require or allow its employees
3 to be on duty more than a total of 16 hours in a 24-hour period.

4 **§21103. Limitations on duty hours of train employees**

5 (a) GENERAL.—Except as provided in subsection (c) of this section, a rail-
6 road carrier and its officers and agents may not require or allow a train em-
7 ployee to remain or go on duty—

8 (1) unless that employee has had at least 8 consecutive hours off duty
9 during the prior 24 hours; or

10 (2) after that employee has been on duty for 12 consecutive hours,
11 until that employee has had at least 10 consecutive hours off duty.

12 (b) DETERMINING TIME ON DUTY.—In determining under subsection (a)
13 of this section the time a train employee is on or off duty, the following rules
14 apply:

15 (1) Time on duty begins when the employee reports for duty and ends
16 when the employee is finally released from duty.

17 (2) Time the employee is engaged in or connected with the movement
18 of a train is time on duty.

19 (3) Time spent performing any other service for the railroad carrier
20 during a 24-hour period in which the employee is engaged in or con-
21 nected with the movement of a train is time on duty.

22 (4) Time spent in deadhead transportation to a duty assignment is
23 time on duty, but time spent in deadhead transportation from a duty
24 assignment to the place of final release is neither time on duty nor time
25 off duty.

26 (5) An interim period available for rest at a place other than a des-
27 ignated terminal is time on duty.

28 (6) An interim period available for less than 4 hours rest at a des-
29 ignated terminal is time on duty.

30 (7) An interim period available for at least 4 hours rest at a place
31 with suitable facilities for food and lodging is not time on duty when
32 the employee is prevented from getting to the employee's designated ter-
33 minal by any of the following:

34 (A) a casualty.

35 (B) a track obstruction.

36 (C) an act of God.

37 (D) a derailment or major equipment failure resulting from a
38 cause that was unknown and unforeseeable to the railroad carrier
39 or its officer or agent in charge of that employee when that employee
40 left the designated terminal.

1 (c) *EMERGENCIES.*—A train employee on the crew of a wreck or relief train
2 may be allowed to remain or go on duty for not more than 4 additional hours
3 in any period of 24 consecutive hours when an emergency exists and the work
4 of the crew is related to the emergency. In this subsection, an emergency ends
5 when the track is cleared and the railroad line is open for traffic.

6 **§21104. Limitations on duty hours of signal employees**

7 (a) *GENERAL.*—(1) In paragraph (2)(C) of this subsection, “24-hour pe-
8 riod” means the period beginning when a signal employee reports for duty
9 immediately after 8 consecutive hours off duty or, when required under para-
10 graph (2)(B) of this subsection, after 10 consecutive hours off duty.

11 (2) Except as provided in subsection (c) of this section, a railroad carrier
12 and its officers and agents may not require or allow a signal employee to
13 remain or go on duty—

14 (A) unless that employee has had at least 8 consecutive hours off duty
15 during the prior 24 hours;

16 (B) after that employee has been on duty for 12 consecutive hours,
17 until that employee has had at least 10 consecutive hours off duty; or

18 (C) after that employee has been on duty a total of 12 hours during
19 a 24-hour period, or after the end of that 24-hour period, whichever oc-
20 curs first, until that employee has had at least 8 consecutive hours off
21 duty.

22 (b) *DETERMINING TIME ON DUTY.*—In determining under subsection (a)
23 of this section the time a signal employee is on duty or off duty, the following
24 rules apply:

25 (1) Time on duty begins when the employee reports for duty and ends
26 when the employee is finally released from duty.

27 (2) Time spent performing any other service for the railroad carrier
28 during a 24-hour period in which the employee is engaged in installing,
29 repairing, or maintaining signal systems is time on duty.

30 (3) Time spent returning from a trouble call, whether the employee
31 goes directly to the employee’s residence or by way of the employee’s
32 headquarters, is neither time on duty nor time off duty, except that up
33 to one hour of that time spent returning from the final trouble call of
34 a period of continuous or broken service is time off duty.

35 (4) If, at the end of scheduled duty hours, an employee has not com-
36 pleted the trip from the final outlying worksite of the duty period to the
37 employee’s headquarters or directly to the employee’s residence, the time
38 after the scheduled duty hours necessarily spent in completing the trip
39 to the residence or headquarters is neither time on duty nor time off
40 duty.

1 (5) If an employee is released from duty at an outlying worksite before
2 the end of the employee's scheduled duty hours to comply with this sec-
3 tion, the time necessary for the trip from the worksite to the employee's
4 headquarters or directly to the employee's residence is neither time on
5 duty nor time off duty.

6 (6) Time spent in transportation on an ontrack vehicle, including
7 time referred to in paragraphs (3)–(5) of this subsection, is time on duty.

8 (7) A regularly scheduled meal period or another release period of at
9 least 30 minutes but not more than one hour is time off duty and does
10 not break the continuity of service of the employee under this section, but
11 a release period of more than one hour is time off duty and does break
12 the continuity of service.

13 (c) *EMERGENCIES.*—A signal employee may be allowed to remain or go on
14 duty for not more than 4 additional hours in any period of 24 consecutive
15 hours when an emergency exists and the work of that employee is related to
16 the emergency. In this subsection, an emergency ends when the signal system
17 is restored to service.

18 **§21105. Limitations on duty hours of dispatching service em-**
19 **ployees**

20 (a) *APPLICATION.*—This section applies, rather than section 21103 or
21 21104 of this title, to a train employee or signal employee during any period
22 of time the employee is performing duties of a dispatching service employee.

23 (b) *GENERAL.*—Except as provided in subsection (d) of this section, a dis-
24 patching service employee may not be required or allowed to remain or go
25 on duty for more than—

26 (1) a total of 9 hours during a 24-hour period in a tower, office, sta-
27 tion, or place at which at least 2 shifts are employed; or

28 (2) a total of 12 hours during a 24-hour period in a tower, office, sta-
29 tion, or place at which only one shift is employed.

30 (c) *DETERMINING TIME ON DUTY.*—Under subsection (b) of this section,
31 time spent performing any other service for the railroad carrier during a 24-
32 hour period in which the employee is on duty in a tower, office, station, or
33 other place is time on duty in that tower, office, station, or place.

34 (d) *EMERGENCIES.*—When an emergency exists, a dispatching service em-
35 ployee may be allowed to remain or go on duty for not more than 4 addi-
36 tional hours during a period of 24 consecutive hours for not more than 3 days
37 during a period of 7 consecutive days.

38 **§21106. Limitations on employee sleeping quarters**

39 A railroad carrier and its officers and agents—

40 (1) may provide sleeping quarters (including crew quarters, camp or
41 bunk cars, and trailers) for employees, and any individuals employed to

1 *maintain the right of way of a railroad carrier, only if the sleeping*
 2 *quarters are clean, safe, and sanitary and give those employees and indi-*
 3 *viduals an opportunity for rest free from the interruptions caused by*
 4 *noise under the control of the carrier; and*

5 *(2) may not begin, after July 7, 1976, construction or reconstruction*
 6 *of sleeping quarters referred to in clause (1) of this section in an area*
 7 *or in the immediate vicinity of an area, as determined under regulations*
 8 *prescribed by the Secretary of Transportation, in which railroad switch-*
 9 *ing or humping operations are performed.*

10 **§21107. Maximum duty hours and subjects of collective bar-**
 11 **gaining**

12 *The number of hours established by this chapter that an employee may be*
 13 *required or allowed to be on duty is the maximum number of hours consistent*
 14 *with safety. Shorter hours of service and time on duty of an employee are*
 15 *proper subjects for collective bargaining between a railroad carrier and its*
 16 *employees.*

17 **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.

18 SUBCHAPTER I—CIVIL PENALTIES

19 **§21301. Chapter 201 general violations**

20 *(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating*
 21 *a regulation prescribed or order issued by the Secretary of Transportation*
 22 *under chapter 201 of this title is liable to the United States Government for*
 23 *a civil penalty. The Secretary shall impose the penalty applicable under*
 24 *paragraph (2) of this subsection. A separate violation occurs for each day the*
 25 *violation continues.*

26 *(2) The Secretary shall include in, or make applicable to, each regulation*
 27 *prescribed and order issued under chapter 201 of this title a civil penalty for*
 28 *a violation. The amount of the penalty shall be at least \$500 but not more*
 29 *than \$10,000. However, when a grossly negligent violation or a pattern of re-*
 30 *peated violations has caused an imminent hazard of death or injury to indi-*
 31 *viduals, or has caused death or injury, the amount may be not more than*
 32 *\$20,000.*

33 *(3) The Secretary may compromise the amount of a civil penalty imposed*
 34 *under this subsection to not less than \$500 before referring the matter to the*

1 Attorney General for collection. In determining the amount of a compromise,
2 the Secretary shall consider—

3 (A) the nature, circumstances, extent, and gravity of the violation;

4 (B) with respect to the violator, the degree of culpability, any history
5 of violations, the ability to pay, and any effect on the ability to continue
6 to do business; and

7 (C) other matters that justice requires.

8 (b) *SETOFF*.—The Government may deduct the amount of a civil penalty
9 imposed or compromised under this section from amounts it owes the person
10 liable for the penalty.

11 (c) *DEPOSIT IN TREASURY*.—A civil penalty collected under this section or
12 section 20113(b) of this title shall be deposited in the Treasury as miscellane-
13 ous receipts.

14 **§21302. Chapter 201 accident and incident violations and**
15 **chapter 203–209 violations**

16 (a) *PENALTY*.—(1) Subject to section 21304 of this title, a person violating
17 a regulation prescribed or order issued under chapter 201 of this title related
18 to accident and incident reporting or investigation, or violating chapters
19 203–209 of this title or a regulation or requirement prescribed or order issued
20 under chapters 203–209, is liable to the United States Government for a civil
21 penalty. An act by an individual that causes a railroad carrier to be in viola-
22 tion is a violation. A separate violation occurs for each day the violation con-
23 tinues.

24 (2) The Secretary of Transportation imposes a civil penalty under this sub-
25 section. The amount of the penalty shall be at least \$500 but not more than
26 \$10,000. However, when a grossly negligent violation or a pattern of repeated
27 violations has caused an imminent hazard of death or injury to individuals,
28 or has caused death or injury, the amount may be not more than \$20,000.

29 (3) The Secretary may compromise the amount of the civil penalty under
30 section 3711 of title 31. In determining the amount of a compromise, the Sec-
31 retary shall consider—

32 (A) the nature, circumstances, extent, and gravity of the violation;

33 (B) with respect to the violator, the degree of culpability, any history
34 of violations, the ability to pay, and any effect on the ability to continue
35 to do business; and

36 (C) other matters that justice requires.

37 (4) If the Secretary does not compromise the amount of the civil penalty,
38 the Secretary shall refer the matter to the Attorney General for collection.

39 (b) *CIVIL ACTIONS TO COLLECT*.—The Attorney General shall bring a civil
40 action in a district court of the United States to collect a civil penalty that
41 is referred to the Attorney General for collection under subsection (a) of this

1 section. The action may be brought in the judicial district in which the viola-
2 tion occurred or the defendant has its principal executive office. If the action
3 is against an individual, the action also may be brought in the judicial dis-
4 trict in which the individual resides.

5 **§21303. Chapter 211 violations**

6 (a) *PENALTY.*—(1) Subject to section 21304 of this title, a person violating
7 chapter 211 of this title is liable to the United States Government for a civil
8 penalty. An act by an individual that causes a railroad carrier to be in viola-
9 tion is a violation. For a violation of section 21106 of this title, a separate
10 violation occurs for each day a facility is not in compliance.

11 (2) The Secretary of Transportation imposes a civil penalty under this sub-
12 section. The amount of the penalty shall be at least \$500 but not more than
13 \$10,000. However, when a grossly negligent violation or a pattern of repeated
14 violations has caused an imminent hazard of death or injury to individuals,
15 or has caused death or injury, the amount may be not more than \$20,000.

16 (3) The Secretary may compromise the amount of the civil penalty under
17 section 3711 of title 31. In determining the amount of a compromise, the Sec-
18 retary shall consider—

19 (A) the nature, circumstances, extent, and gravity of the violation;

20 (B) with respect to the violator, the degree of culpability, any history
21 of violations, the ability to pay, and any effect on the ability to continue
22 to do business; and

23 (C) other matters that justice requires.

24 (4) If the Secretary does not compromise the amount of the civil penalty,
25 the Secretary shall refer the matter to the Attorney General for collection.

26 (b) *CIVIL ACTIONS TO COLLECT.*—(1) The Attorney General shall bring a
27 civil action in a district court of the United States to collect a civil penalty
28 that is referred to the Attorney General for collection under subsection (a) of
29 this section after satisfactory information is presented to the Attorney Gen-
30 eral. The action may be brought in the judicial district in which the violation
31 occurred or the defendant has its principal executive office. If the action is
32 against an individual, the action also may be brought in the judicial district
33 in which the individual resides.

34 (2) A civil action under this subsection must be brought not later than 2
35 years after the date of the violation unless administrative notification under
36 section 3711 of title 31 is given within that 2-year period to the person com-
37 mitting the violation. However, even if notification is given, the action must
38 be brought within the period specified in section 2462 of title 28.

39 (c) *IMPUTATION OF KNOWLEDGE.*—In any proceeding under this section,
40 a railroad carrier is deemed to know the acts of its officers and agents.

1 **§21304. Willfulness requirement for penalties against indi-**
 2 **viduals**

3 A civil penalty under this subchapter may be imposed against an individ-
 4 ual only for a willful violation. An individual is deemed not to have commit-
 5 ted a willful violation if the individual was following the direct order of a
 6 railroad carrier official or supervisor under protest communicated to the offi-
 7 cial or supervisor. The individual is entitled to document the protest.

8 SUBCHAPTER II—CRIMINAL PENALTIES

9 **§21311. Records and reports**

10 (a) RECORDS AND REPORTS UNDER CHAPTER 201.—A person shall be
 11 fined under title 18, imprisoned for not more than 2 years, or both, if the
 12 person knowingly and willfully—

13 (1) makes a false entry in a record or report required to be made or
 14 preserved under chapter 201 of this title;

15 (2) destroys, mutilates, changes, or by another means falsifies such a
 16 record or report;

17 (3) does not enter required specified facts and transactions in such a
 18 record or report;

19 (4) makes or preserves such a record or report in violation of a regula-
 20 tion prescribed or order issued under chapter 201 of this title; or

21 (5) files a false record or report with the Secretary of Transportation.

22 (b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing the
 23 report required by section 20901 of this title shall be fined not more than
 24 \$500 for each violation and not more than \$500 for each day during which
 25 the report is overdue.

26 PART B—ASSISTANCE

27 **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.

28 **§22101. Financial assistance for State projects**

29 (a) GENERAL.—The Secretary of Transportation shall provide financial as-
 30 sistance to a State, as provided under this chapter, for a rail freight assist-
 31 ance project of the State when a rail carrier subject to subchapter I of chapter
 32 105 of this title maintains a rail line in the State. The assistance is for the
 33 cost of—

34 (1) acquiring, in any way the State considers appropriate, an interest
 35 in a rail line or rail property to maintain existing, or to provide future,

1 rail freight transportation, but only if the Interstate Commerce Commis-
2 sion has authorized, or exempted from the requirements of that author-
3 ization, the abandonment of, or the discontinuance of rail transportation
4 on, the rail line related to the project;

5 (2) improving and rehabilitating rail property on a rail line to the
6 extent necessary to allow adequate and efficient rail freight transpor-
7 tation on the line, but only if the rail carrier certifies that the rail line
8 related to the project carried not more than 5,000,000 gross ton-miles of
9 freight a mile in the prior year; and

10 (3) building rail or rail-related facilities (including new connections
11 between at least 2 existing rail lines, intermodal freight terminals, sid-
12 ings, bridges, and relocation of existing lines) to improve the quality and
13 efficiency of the rail freight transportation, but only if the rail carrier
14 certifies that the rail line related to the project carried not more than
15 5,000,000 gross ton-miles of freight a mile in the prior year.

16 (b) *CALCULATING COST-BENEFIT RATIO.*—The Secretary shall establish a
17 methodology for calculating the ratio of benefits to costs of projects proposed
18 under this chapter. In establishing the methodology, the Secretary shall con-
19 sider the need for equitable treatment of different regions of the United States
20 and different commodities transported by rail. The establishment of the meth-
21 odology is committed to the discretion of the Secretary.

22 (c) *CONDITIONS.*—(1) Assistance for a project shall be provided under this
23 chapter only if—

24 (A) a rail carrier certifies that the rail line related to the project car-
25 ried more than 20 carloads a mile during the most recent year during
26 which transportation was provided by the carrier on the line; and

27 (B) the ratio of benefits to costs for the project, as calculated using
28 the methodology established under subsection (b) of this section, is more
29 than 1.0.

30 (2) If the rail carrier that provided the transportation on the rail line is
31 no longer in existence, the applicant for the project shall provide the informa-
32 tion required by the certification under paragraph (1)(A) of this subsection
33 in the way the Secretary prescribes.

34 (3) The Secretary may waive the requirement of paragraph (1)(A) or (2)
35 of this subsection if the Secretary—

36 (A) decides that the rail line has contractual guarantees of at least 40
37 carloads a mile for each of the first 2 years of operation of the proposed
38 project; and

39 (B) finds that there is a reasonable expectation that the contractual
40 guarantees will be fulfilled.

1 (d) *LIMITATIONS ON AMOUNTS.*—A State may not receive more than 15
2 percent of the amounts provided in a fiscal year under this chapter. Not more
3 than 20 percent of the amounts available under this chapter may be provided
4 in a fiscal year for any one project.

5 **§22102. Eligibility**

6 A State is eligible to receive financial assistance under this chapter only
7 when the State complies with regulations the Secretary of Transportation pre-
8 scribes under this chapter and the Secretary decides that—

9 (1) the State has an adequate plan for rail transportation in the State
10 and a suitable process for updating, revising, and modifying the plan;

11 (2) the State plan is administered or coordinated by a designated
12 State authority and provides for a fair distribution of resources;

13 (3) the State authority—

14 (A) is authorized to develop, promote, supervise, and support safe,
15 adequate, and efficient rail transportation;

16 (B) employs or will employ sufficient qualified and trained per-
17 sonnel;

18 (C) maintains or will maintain adequate programs of investiga-
19 tion, research, promotion, and development with opportunity for
20 public participation; and

21 (D) is designated and directed to take all practicable steps (by
22 itself or with other State authorities) to improve rail transportation
23 safety and reduce energy use and pollution related to transpor-
24 tation; and

25 (4) the State has ensured that it maintains or will maintain adequate
26 procedures for financial control, accounting, and performance evaluation
27 for the proper use of assistance provided by the United States Govern-
28 ment.

29 **§22103. Applications**

30 (a) *FILING.*—A State must file an application with the Secretary of Trans-
31 portation for financial assistance for a project described under section
32 22101(a) of this title not later than January 1 of the fiscal year for which
33 amounts have been appropriated. However, for a fiscal year for which the au-
34 thorization of appropriations for assistance under this chapter has not been
35 enacted by the first day of the fiscal year, the State must file the application
36 not later than 90 days after the date of enactment of a law authorizing the
37 appropriations for that fiscal year. The Secretary shall prescribe the form of
38 the application.

39 (b) *CONSIDERATIONS.*—In considering an application under this sub-
40 section, the Secretary shall consider the following:

1 (1) the percentage of rail lines that rail carriers have identified to the
2 Interstate Commerce Commission for abandonment or potential abandon-
3 ment in the State.

4 (2) the likelihood of future abandonments in the State.

5 (3) the ratio of benefits to costs for a proposed project calculated using
6 the methodology established under section 22101(b) of this title.

7 (4) the likelihood that the rail line will continue operating with assist-
8 ance.

9 (5) the impact of rail bankruptcies, rail restructuring, and rail merg-
10 ers on the State.

11 **§22104. State rail plan financing**

12 (a) *ENTITLEMENT AND USES.*—On the first day of each fiscal year, each
13 State is entitled to \$36,000 of the amounts made available under section
14 22108 of this title during that fiscal year to be used—

15 (1) to establish, update, revise, and modify the State plan required by
16 section 22102 of this title; or

17 (2) to carry out projects described in section 22101(a)(1), (2), or (3)
18 of this title, as designated by the State, if those projects meet the require-
19 ments of section 22101(c)(1)(B) of this title.

20 (b) *APPLICATIONS.*—Each State must apply for amounts under this section
21 not later than the first day of the fiscal year for which the amounts are avail-
22 able. However, for any fiscal year for which the authorization of appropri-
23 ations for financial assistance under this chapter has not been enacted by the
24 first day of the fiscal year, the State must apply for amounts under this sec-
25 tion not later than 60 days after the date of enactment of a law authorizing
26 the appropriations for that fiscal year. Not later than 60 days after receiving
27 an application, the Secretary of Transportation shall consider the application
28 and notify the State of the approval or disapproval of the application.

29 (c) *AVAILABILITY OF AMOUNTS.*—Amounts provided under this section re-
30 main available to a State for obligation for the first 3 months after the end
31 of the fiscal year for which the amounts were made available. Amounts not
32 applied for under this section or that remain unobligated after the first 3
33 months after the end of the fiscal year for which the amounts were made
34 available are available to the Secretary for projects meeting the requirements
35 of this chapter.

36 **§22105. Sharing project costs**

37 (a) *GENERAL.*—(1) The United States Government's share of the costs of
38 financial assistance for a project under this chapter is 50 percent, except that
39 for assistance provided under section 22101(a)(2) of this title, the Govern-
40 ment's share is 70 percent. The State may pay its share of the costs in cash

1 or through the following benefits, to the extent that the benefits otherwise
2 would not be provided:

3 (A) forgiveness of taxes imposed on a rail carrier or its property.

4 (B) real and tangible personal property (provided by the State or a
5 person for the State) necessary for the safe and efficient operation of rail
6 freight transportation.

7 (C) track rights secured by the State for a rail carrier.

8 (D) the cash equivalent of State salaries for State employees working
9 on the State project, except overhead and general administrative costs.

10 (2) A State may pay more than its required percentage share of the costs
11 of a project under this chapter. When a State, or a person acting for a State,
12 pays more than the State share of the costs of its projects during a fiscal year,
13 the excess amount shall be applied to the State share for the costs of the State
14 projects for later fiscal years.

15 (b) AGREEMENTS TO COMBINE AMOUNTS.—States may agree to combine
16 any part of the amounts made available under this chapter to carry out a
17 project that is eligible for assistance under this chapter when—

18 (1) the project will benefit each State making the agreement; and

19 (2) the agreement is not a violation of State law.

20 **§ 22106. Limitations on financial assistance**

21 (a) GRANTS AND LOANS.—A State shall use financial assistance for projects
22 under this chapter to make a grant or lend money to the owner of rail prop-
23 erty, or a rail carrier providing rail transportation, related to a project being
24 assisted. The State shall decide on the financial terms of the grant or loan,
25 except that the time for making grant advances shall comply with regulations
26 of the Secretary of the Treasury.

27 (b) HOLDING AND USE OF GOVERNMENT'S SHARE.—The State shall place
28 the United States Government's share of money that is repaid in an interest-
29 bearing account. However, the Secretary of Transportation may allow a bor-
30 rower to place that money, for the benefit of the State, in a bank designated
31 by the Secretary of the Treasury under section 10 of the Act of June 11, 1942
32 (12 U.S.C. 265). The State shall use the money and accumulated interest to
33 make other grants and loans under this chapter.

34 (c) PAYMENT OF UNUSED MONEY AND ACCUMULATED INTEREST.—The
35 State may pay the Secretary of Transportation the Government's share of un-
36 used money and accumulated interest at any time. However, the State must
37 pay the unused money and accumulated interest to the Secretary when the
38 State ends its participation under this chapter.

39 (d) ENCOURAGING PARTICIPATION.—To the maximum extent possible, the
40 State shall encourage the participation of shippers, rail carriers, and local
41 communities in paying the State share of assistance costs.

1 (e) *RETENTION OF CONTINGENT INTEREST.*—Each State shall retain a con-
 2 tingent interest (redeemable preference shares) for the Government's share of
 3 amounts in a rail line receiving assistance under this chapter. The State may
 4 collect its share of the amounts used for the rail line if—

5 (1) an application for abandonment of the rail line is filed under
 6 chapter 109 of this title; or

7 (2) the rail line is sold or disposed of after it has received assistance
 8 under this chapter.

9 **§22107. Records, audits, and information**

10 (a) *RECORDS.*—Each recipient of financial assistance through an arrange-
 11 ment under this chapter shall keep records required by the Secretary of Trans-
 12 portation. The records shall be kept for 3 years after a project is completed
 13 and shall disclose—

14 (1) the amount of, and disposition by the recipient, of the assistance;

15 (2) the total costs of the project for which the assistance was given or
 16 used;

17 (3) the amount of that part of the costs of the project paid by other
 18 sources; and

19 (4) any other records that will make an effective audit easier.

20 (b) *AUDITS.*—The Secretary and the Comptroller General shall make regu-
 21 lar financial and performance audits, as provided under chapter 75 of title
 22 31, of activities and transactions assisted under this chapter.

23 (c) *INFORMATION.*—The Interstate Commerce Commission shall provide the
 24 Secretary with information the Secretary requests to assist in carrying out
 25 this chapter. The Commission shall provide the information not later than 30
 26 days after receiving a request from the Secretary.

27 (d) *LIST OF RAIL LINES.*—Not later than August 1 of each year, each rail
 28 carrier subject to subchapter I of chapter 105 of this title shall submit to the
 29 Secretary a list of the rail lines of the carrier that carried not more than
 30 5,000,000 gross ton-miles of freight a mile in the prior year.

31 **§22108. Authorization of appropriations**

32 (a) *GENERAL.*—(1) Not more than the following amounts may be appro-
 33 priated to the Secretary of Transportation to carry out this chapter:

34 (A) \$25,000,000 for the fiscal year ending September 30, 1993.

35 (B) \$30,000,000 for the fiscal year ending September 30, 1994.

36 (2) Amounts appropriated under paragraph (1) of this subsection remain
 37 available until expended.

38 (3) No amount may be appropriated to the Secretary for any period after
 39 September 30, 1994, to carry out this chapter.

40 (b) *DISTRIBUTION OF AMOUNTS.*—The Secretary shall establish procedures
 41 necessary to ensure that amounts available to the Secretary for projects under

1 *this chapter are distributed not later than April 1 of the fiscal year for which*
 2 *the amounts are appropriated. If any amounts are not distributed by April*
 3 *1, the Secretary shall report to the Committee on Energy and Commerce of*
 4 *the House of Representatives and the Committee on Commerce, Science, and*
 5 *Transportation of the Senate on the status of those amounts and the reasons*
 6 *for the delay in distribution.*

7 (c) *AVAILABILITY OF OTHER AMOUNTS.—Amounts appropriated to carry*
 8 *out section 5(i) of the Department of Transportation Act for fiscal year 1990*
 9 *that are not applied for or that remain unobligated on January 1, 1991, are*
 10 *available to the Secretary for projects under this chapter.*

11 **PART C—PASSENGER TRANSPORTATION**

12 **CHAPTER 241—GENERAL**

Sec.

24101. *Findings, purpose, and goals.*

24102. *Definitions.*

24103. *Enforcement.*

24104. *Authorization of appropriations.*

13 **§24101. Findings, purpose, and goals**

14 (a) *FINDINGS.—(1) Public convenience and necessity require that Amtrak,*
 15 *to the extent its budget allows, provide modern, cost-efficient, and energy-effi-*
 16 *cient intercity rail passenger transportation between crowded urban areas*
 17 *and in other areas of the United States.*

18 (2) *Rail passenger transportation can help alleviate overcrowding of air-*
 19 *ways and airports and on highways.*

20 (3) *A traveler in the United States should have the greatest possible choice*
 21 *of transportation most convenient to the needs of the traveler.*

22 (4) *A greater degree of cooperation is necessary among Amtrak, other rail*
 23 *carriers, State, regional, and local governments, the private sector, labor orga-*
 24 *nizations, and suppliers of services and equipment to Amtrak to achieve a*
 25 *performance level sufficient to justify expending public money.*

26 (5) *Modern and efficient commuter rail passenger transportation is impor-*
 27 *tant to the viability and well-being of major urban areas and to the energy*
 28 *conservation and self-sufficiency goals of the United States.*

29 (6) *As a rail passenger transportation entity, Amtrak should be available*
 30 *to operate commuter rail passenger transportation through its subsidiary,*
 31 *Amtrak Commuter, under contract with commuter authorities that do not*
 32 *provide the transportation themselves as part of the governmental function of*
 33 *the State.*

34 (7) *The Northeast Corridor is a valuable resource of the United States used*
 35 *by intercity and commuter rail passenger transportation and freight trans-*
 36 *portation.*

1 (8) Greater coordination between intercity and commuter rail passenger
2 transportation is required.

3 (b) *PURPOSE.*—By using innovative operating and marketing concepts,
4 Amtrak shall provide intercity and commuter rail passenger transportation
5 that completely develops the potential of modern rail transportation to meet
6 the intercity and commuter passenger transportation needs of the United
7 States.

8 (c) *GOALS.*—Amtrak shall—

9 (1) use its best business judgment in acting to minimize United States
10 Government subsidies, including—

11 (A) increasing fares;

12 (B) increasing revenue from the transportation of mail and ex-
13 press;

14 (C) reducing losses on food service;

15 (D) improving its contracts with operating rail carriers;

16 (E) reducing management costs; and

17 (F) increasing employee productivity;

18 (2) minimize Government subsidies by encouraging State, regional,
19 and local governments and the private sector to share the cost of provid-
20 ing rail passenger transportation, including the cost of operating facili-
21 ties;

22 (3) carry out strategies to achieve immediately maximum productivity
23 and efficiency consistent with safe and efficient transportation;

24 (4) operate Amtrak trains, to the maximum extent feasible, to all sta-
25 tion stops within 15 minutes of the time established in public timetables;

26 (5) develop transportation on rail corridors subsidized by States and
27 private parties;

28 (6) implement schedules based on a systemwide average speed of at
29 least 60 miles an hour that can be achieved with a degree of reliability
30 and passenger comfort;

31 (7) encourage rail carriers to assist in improving intercity rail pas-
32 senger transportation;

33 (8) improve generally the performance of Amtrak through comprehen-
34 sive and systematic operational programs and employee incentives;

35 (9) carry out policies that ensure equitable access to the Northeast Cor-
36 ridor by intercity and commuter rail passenger transportation;

37 (10) coordinate the uses of the Northeast Corridor, particularly inter-
38 city and commuter rail passenger transportation; and

39 (11) maximize the use of its resources, including the most cost-effective
40 use of employees, facilities, and real property.

1 (d) *MINIMIZING GOVERNMENT SUBSIDIES.*—To carry out subsection (c)(11)
 2 of this section, Amtrak is encouraged to make agreements with the private sec-
 3 tor and undertake initiatives that are consistent with good business judgment
 4 and designed to maximize its revenues and minimize Government subsidies.

5 **§ 24102. Definitions**

6 In this part—

7 (1) “auto-ferry transportation” means intercity rail passenger trans-
 8 portation—

9 (A) of automobiles or recreational vehicles and their occupants;

10 and

11 (B) when space is available, of used unoccupied vehicles.

12 (2) “avoidable loss” means the avoidable costs of providing rail pas-
 13 senger transportation, less revenue attributable to the transportation, as
 14 determined by the Interstate Commerce Commission under section 553
 15 of title 5.

16 (3) “basic system” means the system of intercity rail passenger trans-
 17 portation designated by the Secretary of Transportation under section 4
 18 of the Amtrak Improvement Act of 1978 and approved by Congress, and
 19 transportation required to be provided under section 24705(a) of this
 20 title and section 4(g) of the Act, including changes in the system or
 21 transportation that Amtrak makes using the route and service criteria.

22 (4) “commuter authority” means a State, local, or regional entity es-
 23 tablished to provide, or make a contract providing for, commuter rail
 24 passenger transportation.

25 (5) “commuter rail passenger transportation” means short-haul rail
 26 passenger transportation in metropolitan and suburban areas usually
 27 having reduced fare, multiple-ride, and commuter tickets and morning
 28 and evening peak period operations.

29 (6) “intercity rail passenger transportation” means rail passenger
 30 transportation, except commuter rail passenger transportation.

31 (7) “Northeast Corridor” means Connecticut, Delaware, the District of
 32 Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylva-
 33 nia, and Rhode Island.

34 (8) “rail carrier” means a person providing rail transportation for
 35 compensation.

36 (9) “rate” means a rate, fare, or charge for rail transportation.

37 (10) “regional transportation authority” means an entity established
 38 to provide passenger transportation in a region.

39 (11) “route and service criteria” means the criteria and procedures for
 40 making route and service decisions established under section 404(c)(1)-
 41 (3)(A) of the Rail Passenger Service Act.

1 **§24103. Enforcement**

2 (a) *GENERAL.*—(1) *Except as provided in paragraph (2) of this subsection,*
3 *only the Attorney General may bring a civil action for equitable relief in a*
4 *district court of the United States when Amtrak or a rail carrier—*

5 (A) *engages in or adheres to an action, practice, or policy inconsistent*
6 *with this part;*

7 (B) *obstructs or interferes with an activity authorized under this part;*

8 (C) *refuses, fails, or neglects to discharge its duties and responsibilities*
9 *under this part; or*

10 (D) *threatens—*

11 (i) *to engage in or adhere to an action, practice, or policy incon-*
12 *sistent with this part;*

13 (ii) *to obstruct or interfere with an activity authorized by this*
14 *part; or*

15 (iii) *to refuse, fail, or neglect to discharge its duties and respon-*
16 *sibilities under this part.*

17 (2) *An employee affected by any conduct or threat referred to in paragraph*
18 *(1) of this subsection, or an authorized employee representative, may bring*
19 *the civil action if the conduct or threat involves a labor agreement.*

20 (b) *REVIEW OF DISCONTINUANCE OR REDUCTION.*—*A discontinuance of a*
21 *route, a train, or transportation, or a reduction in the frequency of transpor-*
22 *tation, by Amtrak is reviewable only in a civil action for equitable relief*
23 *brought by the Attorney General.*

24 (c) *VENUE.*—*Except as otherwise prohibited by law, a civil action under*
25 *this section may be brought in the judicial district in which Amtrak or the*
26 *rail carrier resides or is found.*

27 **§24104. Authorization of appropriations**

28 (a) *CAPITAL ACQUISITION AND CORRIDOR DEVELOPMENT.*—(1) *Not more*
29 *than \$250,000,000 may be appropriated to the Secretary of Transportation*
30 *for each of the fiscal years ending September 30, 1993, and September 30,*
31 *1994, for the benefit of Amtrak to make capital expenditures under chapters*
32 *243–247 of this title.*

33 (2) *In addition to amounts that may be appropriated under section 24909*
34 *of this title, not more than the following amounts may be appropriated to*
35 *the Secretary for the benefit of Amtrak to make capital expenditures under*
36 *chapter 249 of this title:*

37 (A) *\$220,000,000 for the fiscal year ending September 30, 1993.*

38 (B) *\$250,000,000 for the fiscal year ending September 30, 1994.*

39 (3)(A) *Not more than 15 percent of each of the amounts appropriated*
40 *under paragraphs (1) and (2) of this subsection is available for transpor-*
41 *tation described in subparagraphs (B) and (C) of this paragraph.*

1 (B) Amounts made available under subparagraph (A) of this paragraph
2 shall be used to develop new intercity rail passenger transportation on cor-
3 ridors between cities undergoing significant population growth and in which
4 the transportation reasonably can be expected to provide travel times com-
5 parable with other surface transportation modes. An amount may be expended
6 for the transportation only if a State requests the transportation and the
7 State and Amtrak agree that—

8 (i) Amtrak will pay at least 90 percent of the cost of acquiring rolling
9 stock for the transportation; and

10 (ii) the State will pay at least 90 percent of the cost of improving the
11 right of way, including track structure, signal systems, passenger station
12 facilities, highway and pedestrian grade crossings, and other safety
13 equipment and facilities.

14 (C) Amounts made available under subparagraph (A) of this paragraph
15 shall be used to begin new long distance intercity rail passenger transpor-
16 tation. An amount may be expended for the transportation only if a State
17 requests the transportation and the State and Amtrak agree that—

18 (i) Amtrak will pay at least 75 percent of the cost of acquiring rolling
19 stock for the transportation; and

20 (ii) the State will pay at least 90 percent of the cost of improving the
21 right of way, including track structure, signal systems, passenger station
22 facilities, highway and pedestrian grade crossings, and other safety
23 equipment and facilities.

24 (D) Section 24704 of this title applies to the operating expenses of trans-
25 portation described in subparagraphs (B) and (C) of this paragraph.

26 (b) OPERATING EXPENSES.—(1) Not more than \$381,000,000 may be ap-
27 propriated to the Secretary for each of the fiscal years ending September 30,
28 1993, and September 30, 1994, for the benefit of Amtrak for operating ex-
29 penses. Not more than 5 percent of the amounts appropriated for each fiscal
30 year shall be used to pay operating expenses under section 24704 of this title
31 for transportation in operation on September 30, 1992.

32 (2)(A) Not more than the following amounts may be appropriated to the
33 Secretary for the benefit of Amtrak for operating losses under section 24704
34 of this title for transportation beginning after September 30, 1992:

35 (i) \$7,500,000 for the fiscal year ending September 30, 1993.

36 (ii) \$9,500,000 for the fiscal year ending September 30, 1994.

37 (B) The expenditure by Amtrak of an amount appropriated under subpara-
38 graph (A) of this paragraph is deemed not to be an operating expense when
39 calculating the revenue-to-operating expense ratio of Amtrak.

40 (c) MANDATORY PAYMENTS.—(1) Not more than \$150,000,000 for the fiscal
41 year ending September 30, 1993, and amounts that may be necessary for the

1 *fiscal year ending September 30, 1994, may be appropriated to the Secretary*
 2 *to pay—*

3 *(A) tax liabilities under section 3221 of the Internal Revenue Code of*
 4 *1986 (26 U.S.C. 3221) due in those fiscal years that are more than the*
 5 *amount needed for benefits for individuals who retire from Amtrak and*
 6 *for their beneficiaries;*

7 *(B) obligations of Amtrak under section 8(a) of the Railroad Unem-*
 8 *ployment Insurance Act (45 U.S.C. 358(a)) due in those fiscal years that*
 9 *are more than obligations of Amtrak calculated on an experience-related*
 10 *basis; and*

11 *(C) obligations of Amtrak due under section 3321 of the Code (26*
 12 *U.S.C. 3321).*

13 *(2) Amounts appropriated under this subsection are not a United States*
 14 *Government subsidy of Amtrak.*

15 *(d) PAYMENT TO AMTRAK.—Amounts appropriated under this section shall*
 16 *be paid to Amtrak under the budget request of the Secretary as approved or*
 17 *modified by Congress when the amounts are appropriated. A payment may*
 18 *not be made more frequently than once every 90 days, unless Amtrak, for good*
 19 *cause, requests more frequent payment before a 90-day period ends. In each*
 20 *fiscal year in which amounts are authorized to be appropriated under this*
 21 *section, amounts appropriated shall be paid to Amtrak as follows:*

22 *(1) 50 percent on October 1.*

23 *(2) 25 percent on January 1.*

24 *(3) 25 percent on April 1.*

25 *(e) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—(1)*
 26 *Amounts appropriated under this section remain available until expended.*

27 *(2) Amounts for capital acquisitions and improvements may be appro-*
 28 *priated in a fiscal year before the fiscal year in which the amounts will be*
 29 *obligated.*

30 *(f) LIMITATIONS ON USE.—Amounts appropriated under this section may*
 31 *not be used to subsidize operating losses of commuter rail passenger or rail*
 32 *freight transportation.*

33 **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.

1 **§24301. Status and applicable laws**

2 (a) *STATUS.—Amtrak—*

3 (1) *is a rail carrier under section 10102 of this title;*

4 (2) *shall be operated and managed as a for-profit corporation; and*

5 (3) *is not a department, agency, or instrumentality of the United*
 6 *States Government.*

7 (b) *PRINCIPAL OFFICE AND PLACE OF BUSINESS.—The principal office*
 8 *and place of business of Amtrak are in the District of Columbia. Amtrak is*
 9 *qualified to do business in each State in which Amtrak carries out an activity*
 10 *authorized under this part. Amtrak shall accept service of process by certified*
 11 *mail addressed to the secretary of Amtrak at its principal office and place*
 12 *of business. Amtrak is a citizen only of the District of Columbia when decid-*
 13 *ing original jurisdiction of the district courts of the United States in a civil*
 14 *action.*

15 (c) *APPLICATION OF SUBTITLE IV.—(1) Subtitle IV of this title applies to*
 16 *Amtrak, except for provisions related to the—*

17 (A) *regulation of rates;*

18 (B) *abandonment or extension of rail lines used only for passenger*
 19 *transportation and the abandonment or extension of operations over*
 20 *those lines;*

21 (C) *regulation of routes and service;*

22 (D) *discontinuance or change of rail passenger transportation oper-*
 23 *ations; and*

24 (E) *issuance of securities or the assumption of an obligation or liabil-*
 25 *ity related to the securities of others.*

26 (2) *Notwithstanding this subsection—*

27 (A) *sections 10721–10724 of this title apply to Amtrak; and*

28 (B) *on application of an adversely affected motor carrier, the Inter-*
 29 *state Commerce Commission under any provision of subtitle IV of this*
 30 *title applicable to a carrier subject to subchapter I of chapter 105 of this*
 31 *title may hear a complaint about an unfair or predatory rate or market-*
 32 *ing practice of Amtrak for a route or service operating at a loss.*

33 (d) *APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGU-*
 34 *LATIONS.—Laws and regulations governing safety, employee representation*
 35 *for collective bargaining purposes, the handling of disputes between carriers*
 36 *and employees, employee retirement, annuity, and unemployment systems,*
 37 *and other dealings with employees that apply to a common carrier subject*
 38 *to subchapter I of chapter 105 of this title apply to Amtrak.*

1 (e) *APPLICATION OF CERTAIN ADDITIONAL LAWS.*—Section 552 of title 5,
2 this part, and, to the extent consistent with this part, the District of Columbia
3 Business Corporation Act (D.C. Code § 29–301 et seq.) apply to Amtrak.

4 (f) *LAWS GOVERNING LEASES AND CONTRACTS.*—The laws of the District
5 of Columbia govern leases and contracts of Amtrak, regardless of where they
6 are executed.

7 (g) *NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.*—A State or
8 other law related to rates, routes, or service does not apply to Amtrak in con-
9 nection with rail passenger transportation.

10 (h) *NONAPPLICATION OF PAY PERIOD LAWS.*—A State or local law related
11 to pay periods or days for payment of employees does not apply to Amtrak.
12 Except when otherwise provided under a collective bargaining agreement, an
13 employee of Amtrak shall be paid at least as frequently as the employee was
14 paid on October 1, 1979.

15 (i) *PREEMPTION RELATED TO EMPLOYEE WORK REQUIREMENTS.*—A State
16 may not adopt or continue in force a law, rule, regulation, order, or standard
17 requiring Amtrak to employ a specified number of individuals to perform a
18 particular task, function, or operation.

19 (j) *NONAPPLICATION OF LAWS ON JOINT USE OR OPERATION OF FACILI-*
20 *TIES AND EQUIPMENT.*—Prohibitions of law applicable to an agreement for
21 the joint use or operation of facilities and equipment necessary to provide
22 quick and efficient rail passenger transportation do not apply to a person
23 making an agreement with Amtrak to the extent necessary to allow the person
24 to make and carry out obligations under the agreement.

25 (k) *EXEMPTION FROM ADDITIONAL TAXES.*—(1) In this subsection—

26 (A) “additional tax” means a tax or fee—

27 (i) on the acquisition, improvement, ownership, or operation of
28 personal property by Amtrak; and

29 (ii) on real property, except a tax or fee on the acquisition of real
30 property or on the value of real property not attributable to im-
31 provements made, or the operation of those improvements, by Am-
32 trak.

33 (B) “Amtrak” includes a rail carrier subsidiary of Amtrak and a les-
34 sor or lessee of Amtrak or one of its rail carrier subsidiaries.

35 (2) Amtrak is not required to pay an additional tax because of an expendi-
36 ture to acquire or improve real property, equipment, a facility, or right-of-
37 way material or structures used in providing rail passenger transportation,
38 even if that use is indirect.

39 (1) *EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.*—(1)
40 Amtrak or a rail carrier subsidiary of Amtrak is exempt from a tax or fee
41 imposed by a State, a political subdivision of a State, or a local taxing au-

1 *thority and levied on it after September 30, 1981. However, Amtrak is not*
 2 *exempt under this subsection from a tax or fee that it was required to pay*
 3 *as of September 10, 1982.*

4 *(2) The district courts of the United States have original jurisdiction over*
 5 *a civil action Amtrak brings to enforce this subsection and may grant equi-*
 6 *table or declaratory relief requested by Amtrak.*

7 *(m) WASTE DISPOSAL.—(1) An intercity rail passenger car manufactured*
 8 *after October 14, 1990, shall be built to provide for the discharge of human*
 9 *waste only at a servicing facility. Amtrak shall retrofit each of its intercity*
 10 *rail passenger cars that was manufactured after May 1, 1971, and before Oc-*
 11 *tober 15, 1990, with a human waste disposal system that provides for the dis-*
 12 *charge of human waste only at a servicing facility. Subject to appropria-*
 13 *tions—*

14 *(A) the retrofit program shall be completed not later than October 15,*
 15 *1996; and*

16 *(B) a car that does not provide for the discharge of human waste only*
 17 *at a servicing facility shall be removed from service after that date.*

18 *(2) Section 361 of the Public Health Service Act (42 U.S.C. 264) and other*
 19 *laws of the United States, States, and local governments do not apply to*
 20 *waste disposal from rail carrier vehicles operated in intercity rail passenger*
 21 *transportation. The district courts of the United States have original jurisdic-*
 22 *tion over a civil action Amtrak brings to enforce this paragraph and may*
 23 *grant equitable or declaratory relief requested by Amtrak.*

24 *(n) RAIL TRANSPORTATION TREATED EQUALLY.—When authorizing trans-*
 25 *portation in the continental United States for an officer, employee, or member*
 26 *of the uniformed services of a department, agency, or instrumentality of the*
 27 *Government, the head of that department, agency, or instrumentality shall*
 28 *consider rail transportation (including transportation by extra-fare trains)*
 29 *the same as transportation by another authorized mode. The Administrator*
 30 *of General Services shall include Amtrak in the contract air program of the*
 31 *Administrator in markets in which transportation provided by Amtrak is*
 32 *competitive with other carriers on fares and total trip times.*

33 **§24302. Board of directors**

34 *(a) COMPOSITION AND TERMS.—(1) The board of directors of Amtrak is*
 35 *composed of the following 9 directors, each of whom must be a citizen of the*
 36 *United States:*

37 *(A) the Secretary of Transportation.*

38 *(B) the President of Amtrak.*

39 *(C) 3 individuals appointed by the President of the United States, by*
 40 *and with the advice and consent of the Senate, as follows:*

1 (i) one individual selected from a list of 3 qualified individuals
2 submitted by the Railway Labor Executives Association.

3 (ii) one chief executive officer of a State selected from among the
4 chief executive officers of States with an interest in rail transpor-
5 tation. The chief executive officer may select an individual to act
6 as the officer's representative at board meetings.

7 (iii) one individual selected as a representative of business with
8 an interest in rail transportation.

9 (D) 2 individuals selected by the President of the United States from
10 a list of names consisting of one individual nominated by each commuter
11 authority for which Amtrak Commuter provides commuter rail passenger
12 transportation under section 24505 of this title and one individual nomi-
13 nated by each commuter authority in the region (as defined in section
14 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702))
15 that provides its own commuter rail passenger transportation or makes
16 a contract with an operator (except Amtrak Commuter), except that—

17 (i) one of the individuals selected must have been nominated by
18 a commuter authority for which Amtrak Commuter provides com-
19 muter rail transportation; or

20 (ii) if Amtrak Commuter does not provide commuter rail pas-
21 senger transportation for any authority, the 2 individuals shall be
22 selected from a list of 5 individuals submitted by commuter authori-
23 ties providing transportation over rail property of Amtrak.

24 (E) 2 individuals selected by the holders of the preferred stock of Am-
25 trak.

26 (2) An individual appointed under paragraph (1)(C) of this subsection
27 serves for 4 years or until the individual's successor is appointed and quali-
28 fied. Not more than 2 individuals appointed under paragraph (1)(C) may be
29 members of the same political party.

30 (3) An individual selected under paragraph (1)(D) of this subsection serves
31 for 2 years or until the individual's successor is selected.

32 (4) An individual selected under paragraph (1)(E) of this subsection serves
33 for one year or until the individual's successor is selected.

34 (5) The President of Amtrak serves as Chairman of the board.

35 (6) The Secretary may be represented at a meeting of the board only by
36 the Deputy Secretary of Transportation, the Administrator of the Federal
37 Railroad Administration, or the General Counsel of the Department of Trans-
38 portation.

39 (b) CUMULATIVE VOTING.—The articles of incorporation of Amtrak shall
40 provide for cumulative voting for all stockholders.

1 (c) *CONFLICTS OF INTEREST.*—When serving on the board, a director ap-
2 pointed by the President of the United States may not have—

3 (1) a financial or employment relationship with a rail carrier; and

4 (2) a significant financial relationship or an employment relationship
5 with a person competing with Amtrak in providing passenger transpor-
6 tation.

7 (d) *PAY AND EXPENSES.*—Each director not employed by the United States
8 Government is entitled to \$300 a day when performing board duties and pow-
9 ers. Each director is entitled to reimbursement for necessary travel, reasonable
10 secretarial and professional staff support, and subsistence expenses incurred
11 in attending board meetings.

12 (e) *VACANCIES.*—A vacancy on the board is filled in the same way as the
13 original selection, except that an individual appointed by the President of the
14 United States under subsection (a)(1)(C) of this section to fill a vacancy oc-
15 ccurring before the end of the term for which the predecessor of that individual
16 was appointed is appointed for the remainder of that term. A vacancy re-
17 quired to be filled by appointment under subsection (a)(1)(C) must be filled
18 not later than 120 days after the vacancy occurs.

19 (f) *BYLAWS.*—The board may adopt and amend bylaws governing the oper-
20 ation of Amtrak. The bylaws shall be consistent with this part and the articles
21 of incorporation.

22 **§24303. Officers**

23 (a) *APPOINTMENT AND TERMS.*—Amtrak has a President and other officers
24 that are named and appointed by the board of directors of Amtrak. An officer
25 of Amtrak must be a citizen of the United States. Officers of Amtrak serve
26 at the pleasure of the board.

27 (b) *PAY.*—The board may fix the pay of the officers of Amtrak. An officer
28 may not be paid more than the general level of pay for officers of rail carriers
29 with comparable responsibility.

30 (c) *CONFLICTS OF INTEREST.*—When employed by Amtrak, an officer may
31 not have a financial or employment relationship with another rail carrier,
32 except that holding securities issued by a rail carrier is not deemed to be a
33 violation of this subsection if the officer holding the securities makes a com-
34 plete public disclosure of the holdings and does not participate in any deci-
35 sion directly affecting the rail carrier.

36 **§24304. Capitalization**

37 (a) *STOCK.*—Amtrak may have outstanding one issue of common stock and
38 one issue of preferred stock. Each type of stock is eligible for a dividend. The
39 articles of incorporation of Amtrak shall provide that—

40 (1) each type of stock must be fully paid and nonassessable;

41 (2) common stock has a par value of \$10 a share; and

1 (3) preferred stock has a par value of \$100 a share.

2 (b) *LIMITATIONS ON OWNERSHIP AND VOTING.*—(1) A rail carrier or per-
3 son controlling a rail carrier—

4 (A) may not hold preferred stock of Amtrak; and

5 (B) may vote not more than one-third of the total number of shares
6 of outstanding common stock of Amtrak.

7 (2) Additional common stock owned by a rail carrier or person controlling
8 a rail carrier is deemed to be not outstanding for voting and quorum pur-
9 poses.

10 (c) *PREFERRED STOCK DIVIDENDS AND LIQUIDATION PREFERENCES.*—The
11 articles of incorporation of Amtrak shall provide that—

12 (1) its preferred stock has a cumulative dividend of at least 6 percent
13 a year;

14 (2) if a dividend on the preferred stock is not declared and paid or
15 set aside for payment, the deficiency shall be declared and paid or set
16 aside for payment before a dividend or other distribution is made on its
17 common stock;

18 (3) the preferred stock has a liquidation preference over the common
19 stock entitling holders of preferred stock to receive a liquidation payment
20 of at least par value plus all accrued unpaid dividends before a liquida-
21 tion payment is made to holders of common stock; and

22 (4) the preferred stock may be converted to common stock.

23 (d) *ISSUANCE OF PREFERRED STOCK TO SECRETARY.*—(1) Not later than
24 30 days after the close of each fiscal quarter, Amtrak shall issue to the Sec-
25 retary of Transportation preferred stock equal, to the nearest whole share, to
26 the amount paid to Amtrak under section 24104(d) of this title during the
27 quarter.

28 (2) Preferred stock issued under this subsection or section 304(c)(1) of the
29 Rail Passenger Service Act is deemed to be issued on the date Amtrak receives
30 the amounts for which the stock is issued.

31 (3) An amendment to the articles of incorporation of Amtrak is not re-
32 quired for issuing preferred stock under this subsection.

33 (e) *TAXES AND FEES ON PREFERRED STOCK.*—A tax or fee applies to pre-
34 ferred stock issued under this section only if specifically prescribed by Con-
35 gress.

36 (f) *NONVOTING CERTIFICATES OF INDEBTEDNESS.*—Amtrak may issue
37 nonvoting certificates of indebtedness, except that an obligation with a liq-
38 uidation interest superior to preferred stock issued to the Secretary or secured
39 by a lien on property of Amtrak may be incurred when preferred stock issued
40 to the Secretary is outstanding only if the Secretary consents.

1 (g) *INSPECTION RIGHTS.*—Stockholders of Amtrak have the rights of in-
2 specting and copying set forth in section 45(b) of the District of Columbia
3 Business Corporation Act (D.C. Code §29–345(b)) regardless of the amount
4 of stock they hold.

5 **§24305. General authority**

6 (a) *ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES.*—(1)
7 Amtrak may acquire, operate, maintain, and make contracts for the operation
8 and maintenance of equipment and facilities necessary for intercity and com-
9 muter rail passenger transportation, the transportation of mail and express,
10 and auto-ferry transportation.

11 (2) Amtrak shall operate and control directly, to the extent practicable, all
12 aspects of the rail passenger transportation it provides.

13 (b) *MAINTENANCE AND REHABILITATION.*—Amtrak may maintain and re-
14 habilitate rail passenger equipment and shall maintain a regional mainte-
15 nance plan that includes—

16 (1) a review panel at the principal office of Amtrak consisting of
17 members the President of Amtrak designates;

18 (2) a systemwide inventory of spare equipment parts in each oper-
19 ational region;

20 (3) enough maintenance employees for cars and locomotives in each re-
21 gion;

22 (4) a systematic preventive maintenance program;

23 (5) periodic evaluations of maintenance costs, time lags, and parts
24 shortages and corrective actions; and

25 (6) other elements or activities Amtrak considers appropriate.

26 (c) *MISCELLANEOUS AUTHORITY.*—Amtrak may—

27 (1) make and carry out appropriate agreements;

28 (2) transport mail and express and shall use all feasible methods to
29 obtain the bulk mail business of the United States Postal Service;

30 (3) improve its reservation system and advertising;

31 (4) provide food and beverage services on its trains only if revenues
32 from the services each year at least equal the cost of providing the serv-
33 ices;

34 (5) conduct research, development, and demonstration programs relat-
35 ed to the mission of Amtrak; and

36 (6) buy or lease rail rolling stock and develop and demonstrate im-
37 proved rolling stock.

38 (d) *THROUGH ROUTES AND JOINT FARES.*—(1) Establishing through routes
39 and joint fares between Amtrak and other intercity rail passenger carriers
40 and motor carriers of passengers is consistent with the public interest and the

1 transportation policy of the United States. Congress encourages establishing
2 those routes and fares.

3 (2) Amtrak may establish through routes and joint fares with any domestic
4 or international motor carrier, air carrier, or water carrier.

5 (e) RAIL POLICE.—Amtrak may employ rail police to provide security for
6 rail passengers and property of Amtrak. Rail police employed by Amtrak who
7 have complied with a State law establishing requirements applicable to rail
8 police or individuals employed in a similar position may be employed with-
9 out regard to the law of another State containing those requirements.

10 (f) DOMESTIC BUYING PREFERENCES.—(1) In this subsection, “United
11 States” means the States, territories, and possessions of the United States and
12 the District of Columbia.

13 (2) Amtrak shall buy only—

14 (A) unmanufactured articles, material, and supplies mined or pro-
15 duced in the United States; or

16 (B) manufactured articles, material, and supplies manufactured in the
17 United States substantially from articles, material, and supplies mined,
18 produced, or manufactured in the United States.

19 (3) Paragraph (2) of this subsection applies only when the cost of those ar-
20 ticles, material, or supplies bought is at least \$1,000,000.

21 (4) On application of Amtrak, the Secretary of Transportation may exempt
22 Amtrak from this subsection if the Secretary decides that—

23 (A) for particular articles, material, or supplies—

24 (i) the requirements of paragraph (2) of this subsection are incon-
25 sistent with the public interest;

26 (ii) the cost of imposing those requirements is unreasonable; or

27 (iii) the articles, material, or supplies, or the articles, material,
28 or supplies from which they are manufactured, are not mined, pro-
29 duced, or manufactured in the United States in sufficient and rea-
30 sonably available commercial quantities and are not of a satisfac-
31 tory quality; or

32 (B) rolling stock or power train equipment cannot be bought and de-
33 livered in the United States within a reasonable time.

34 **§ 24306. Mail, express, and auto-ferry transportation**

35 (a) ACTIONS TO INCREASE REVENUES.—Amtrak shall take necessary ac-
36 tion to increase its revenues from the transportation of mail and express. To
37 increase its revenues, Amtrak may provide auto-ferry transportation as part
38 of the basic passenger transportation authorized by this part. When requested
39 by Amtrak, a department, agency, or instrumentality of the United States
40 Government shall assist in carrying out this section.

1 (b) *AUTHORITY OF OTHERS TO PROVIDE AUTO-FERRY TRANSPORTATION.*—(1) A person primarily providing auto-ferry transportation and
 2 any other person not a rail carrier may provide auto-ferry transportation
 3 over any route under a certificate issued by the Interstate Commerce Commis-
 4 sion if the Commission finds that the auto-ferry transportation—

5 (A) will not impair the ability of Amtrak to reduce its losses or in-
 6 crease its revenues; and

7 (B) is required to meet the public demand.

8 (2) A rail carrier that has not made a contract with Amtrak to provide
 9 rail passenger transportation may provide auto-ferry transportation over its
 10 own rail lines.

11 (3) State and local laws and regulations that impair the provision of auto-
 12 ferry transportation do not apply to Amtrak or a rail carrier providing auto-
 13 ferry transportation. A rail carrier may not refuse to participate with Am-
 14 trak in providing auto-ferry transportation because a State or local law or
 15 regulation makes the transportation unlawful.

16 **§24307. Special transportation**

17 (a) *REDUCED FARE PROGRAM.*—Amtrak shall maintain a reduced fare
 18 program for the following:

19 (1) individuals at least 65 years of age.

20 (2) individuals (except alcoholics and drug abusers) who—

21 (A) have a physical or mental impairment that substantially lim-
 22 its a major life activity of the individual;

23 (B) have a record of an impairment; or

24 (C) are regarded as having an impairment.

25 (b) *ACTIONS TO ENSURE ACCESS.*—Amtrak may act to ensure access to
 26 intercity transportation for elderly or handicapped individuals on passenger
 27 trains operated by or for Amtrak. That action may include—

28 (1) acquiring special equipment;

29 (2) conducting special training for employees;

30 (3) designing and acquiring new equipment and facilities;

31 (4) eliminating barriers in existing equipment and facilities to comply
 32 with the highest standards of design, construction, and alteration of
 33 property to accommodate elderly and handicapped individuals; and

34 (5) providing special assistance to elderly and handicapped individ-
 35 uals when getting on and off trains and in terminal areas.

36 (c) *EMPLOYEE TRANSPORTATION.*—(1) In this subsection, “rail carrier em-
 37 ployee” means—

38 (A) an active full-time employee of a rail carrier or terminal company
 39 and includes an employee on furlough or leave of absence;

40 (B) a retired employee of a rail carrier or terminal company; and
 41

1 (C) a dependent of an employee referred to in clause (A) or (B) of
2 this paragraph.

3 (2) Amtrak shall ensure that a rail carrier employee eligible for free or re-
4 duced-rate rail transportation on April 30, 1971, under an agreement in ef-
5 fect on that date is eligible, to the greatest extent practicable, for free or re-
6 duced-rate intercity rail passenger transportation provided by Amtrak under
7 this part, if space is available, on terms similar to those available on that
8 date under the agreement. However, Amtrak may apply to all rail carrier em-
9 ployees eligible to receive free or reduced-rate transportation under any agree-
10 ment a single systemwide schedule of terms that Amtrak decides applied to
11 a majority of employees on that date under all those agreements. Unless Am-
12 trak and a rail carrier make a different agreement, the carrier shall reim-
13 burse Amtrak at the rate of 25 percent of the systemwide average monthly
14 yield of each revenue passenger-mile. The reimbursement is in place of costs
15 Amtrak incurs related to free or reduced-rate transportation, including liabil-
16 ity related to travel of a rail carrier employee eligible for free or reduced-
17 rate transportation.

18 (3) This subsection does not prohibit the Interstate Commerce Commission
19 from ordering retroactive relief in a proceeding begun or reopened after Octo-
20 ber 1, 1981.

21 **§24308. Use of facilities and providing services to Amtrak**

22 (a) GENERAL AUTHORITY.—(1) Amtrak may make an agreement with a
23 rail carrier or regional transportation authority to use facilities of, and have
24 services provided by, the carrier or authority under terms on which the par-
25 ties agree. The terms shall include a penalty for untimely performance.

26 (2)(A) If the parties cannot agree and if the Interstate Commerce Commis-
27 sion finds it necessary to carry out this part, the Commission shall—

28 (i) order that the facilities be made available and the services provided
29 to Amtrak; and

30 (ii) prescribe reasonable terms and compensation for using the facili-
31 ties and providing the services.

32 (B) When prescribing reasonable compensation under subparagraph (A) of
33 this paragraph, the Commission shall consider quality of service as a major
34 factor when determining whether, and the extent to which, the amount of com-
35 pensation shall be greater than the incremental costs of using the facilities
36 and providing the services.

37 (C) The Commission shall decide the dispute not later than 90 days after
38 Amtrak submits the dispute to the Commission.

39 (3) Amtrak's right to use the facilities or have the services provided is con-
40 ditioned on payment of the compensation. If the compensation is not paid

1 promptly, the rail carrier or authority entitled to it may bring an action
2 against Amtrak to recover the amount owed.

3 (4) Amtrak shall seek immediate and appropriate legal remedies to enforce
4 its contract rights when track maintenance on a route over which Amtrak op-
5 erates falls below the contractual standard.

6 (b) OPERATING DURING EMERGENCIES.—To facilitate operation by Am-
7 trak during an emergency, the Commission, on application by Amtrak, shall
8 require a rail carrier to provide facilities immediately during the emergency.
9 The Commission then shall promptly prescribe reasonable terms, including in-
10 demnification of the carrier by Amtrak against personal injury risk to which
11 the carrier may be exposed. The rail carrier shall provide the facilities for
12 the duration of the emergency.

13 (c) PREFERENCE OVER FREIGHT TRANSPORTATION.—Except in an emer-
14 gency, intercity and commuter rail passenger transportation provided by or
15 for Amtrak has preference over freight transportation in using a rail line,
16 junction, or crossing unless the Secretary of Transportation orders otherwise
17 under this subsection. A rail carrier affected by this subsection may apply
18 to the Secretary for relief. If the Secretary, after an opportunity for a hearing
19 under section 553 of title 5, decides that preference for intercity and com-
20 muter rail passenger transportation materially will lessen the quality of
21 freight transportation provided to shippers, the Secretary shall establish the
22 rights of the carrier and Amtrak on reasonable terms.

23 (d) ACCELERATED SPEEDS.—If a rail carrier refuses to allow accelerated
24 speeds on trains operated by or for Amtrak, Amtrak may apply to the Sec-
25 retary for an order requiring the carrier to allow the accelerated speeds. The
26 Secretary shall decide whether accelerated speeds are unsafe or impracticable
27 and which improvements would be required to make accelerated speeds safe
28 and practicable. After an opportunity for a hearing, the Secretary shall estab-
29 lish the maximum allowable speeds of Amtrak trains on terms the Secretary
30 decides are reasonable.

31 (e) ADDITIONAL TRAINS.—(1) When a rail carrier does not agree to pro-
32 vide, or allow Amtrak to provide, for the operation of additional trains over
33 a rail line of the carrier, Amtrak may apply to the Secretary for an order
34 requiring the carrier to provide or allow for the operation of the requested
35 trains. After a hearing on the record, the Secretary may order the carrier,
36 within 60 days, to provide or allow for the operation of the requested trains
37 on a schedule based on legally permissible operating times. However, if the
38 Secretary decides not to hold a hearing, the Secretary, not later than 30 days
39 after receiving the application, shall publish in the Federal Register the rea-
40 sons for the decision not to hold the hearing.

41 (2) The Secretary shall consider—

1 (A) when conducting a hearing, whether an order would impair un-
2 reasonably freight transportation of the rail carrier, with the carrier
3 having the burden of demonstrating that the additional trains will im-
4 pair the freight transportation; and

5 (B) when establishing scheduled running times, the statutory goal of
6 Amtrak to implement schedules that attain a system-wide average speed
7 of at least 60 miles an hour that can be adhered to with a high degree
8 of reliability and passenger comfort.

9 (3) Unless the parties have an agreement that establishes the compensation
10 Amtrak will pay the carrier for additional trains provided under an order
11 under this subsection, the Commission shall decide the dispute under sub-
12 section (a) of this section.

13 **§24309. Retaining and maintaining facilities**

14 (a) DEFINITIONS.—In this section—

15 (1) “facility” means a rail line, right of way, fixed equipment, facil-
16 ity, or real property related to a rail line, right of way, fixed equipment,
17 or facility, including a signal system, passenger station and repair
18 tracks, a station building, a platform, and a related facility, including
19 a water, fuel, steam, electric, and air line.

20 (2) downgrading a facility means reducing a track classification as
21 specified in the Federal Railroad Administration track safety standards
22 or altering a facility so that the time required for rail passenger trans-
23 portation to be provided over the route on which a facility is located may
24 be increased.

25 (b) APPROVAL REQUIRED FOR DOWNGRADING OR DISPOSAL.—A facility of
26 a rail carrier or regional transportation authority that Amtrak used to pro-
27 vide rail passenger transportation on February 1, 1979, may be downgraded
28 or disposed of only after approval by the Secretary of Transportation under
29 this section.

30 (c) NOTIFICATION AND ANALYSIS.—(1) A rail carrier intending to down-
31 grade or dispose of a facility Amtrak currently is not using to provide trans-
32 portation shall notify Amtrak of its intention. If, not later than 60 days after
33 Amtrak receives the notice, Amtrak and the carrier do not agree to retain or
34 maintain the facility or to convey an interest in the facility to Amtrak, the
35 carrier may apply to the Secretary for approval to downgrade or dispose of
36 the facility.

37 (2) After a rail carrier notifies Amtrak of its intention to downgrade or
38 dispose of a facility, Amtrak shall survey population centers with rail pas-
39 senger transportation facilities to assist in preparing a valid and timely
40 analysis of the need for the facility and shall update the survey as appro-
41 priate. Amtrak also shall maintain a system for collecting information gath-

1 ered in the survey. The system shall collect the information based on geo-
2 graphic regions and on whether the facility would be part of a short haul or
3 long haul route. The survey should facilitate an analysis of—

4 (A) ridership potential by ascertaining existing and changing travel
5 patterns that would provide maximum efficient rail passenger transpor-
6 tation;

7 (B) the quality of transportation of competitors or likely competitors;

8 (C) the likelihood of Amtrak offering transportation at a competitive
9 fare;

10 (D) opportunities to target advertising and fares to potential classes
11 of riders;

12 (E) economic characteristics of rail passenger transportation related to
13 the facility and the extent to which the characteristics are consistent with
14 sound economic principles of short haul or long haul rail transportation;
15 and

16 (F) the feasibility of applying effective internal cost controls to the fa-
17 cility and route served by the facility to improve the ratio of passenger
18 revenue to transportation expenses (excluding maintenance of tracks,
19 structures, and equipment and depreciation).

20 (d) APPROVAL OF APPLICATION AND PAYMENT OF AVOIDABLE COSTS.—(1)
21 If Amtrak does not object to an application not later than 30 days after it
22 is submitted, the Secretary shall approve the application promptly.

23 (2) If Amtrak objects to an application, the Secretary shall decide by not
24 later than 180 days after the objection those costs the rail carrier may avoid
25 if it does not have to retain or maintain a facility in the condition Amtrak
26 requests. If Amtrak does not agree by not later than 60 days after the decision
27 to pay the carrier these avoidable costs, the Secretary shall approve the appli-
28 cation. When deciding whether to pay a carrier the avoidable costs of retain-
29 ing or maintaining a facility, Amtrak shall consider—

30 (A) the potential importance of restoring rail passenger transportation
31 on the route on which the facility is located;

32 (B) the market potential of the route;

33 (C) the availability, adequacy, and energy efficiency of an alternate
34 rail line or alternate mode of transportation to provide passenger trans-
35 portation to or near the places that would be served by the route;

36 (D) the extent to which major population centers would be served by
37 the route;

38 (E) the extent to which providing transportation over the route would
39 encourage the expansion of an intercity rail passenger system in the
40 United States; and

1 (F) the possibility of increased ridership on a rail line that connects
2 with the route.

3 (e) *COMPLIANCE WITH OTHER OBLIGATIONS.*—Downgrading or disposing
4 of a facility under this section does not relieve a rail carrier from complying
5 with its other common carrier or legal obligations related to the facility.

6 **§24310. Assistance for upgrading facilities**

7 (a) *TO CORRECT DANGEROUS CONDITIONS.*—(1) Amtrak or the owner of
8 a facility presenting a danger to the employees, passengers, or property of
9 Amtrak may petition the Secretary of Transportation for assistance to the
10 owner for relocation or other measures undertaken after December 31, 1977,
11 to minimize or eliminate the danger.

12 (2) The Secretary shall recommend to Congress that Congress authorize
13 amounts for the relocation or other measures if the Secretary decides that—

14 (A) the facility presents a danger of death or serious injury to an em-
15 ployee or passenger or of serious damage to that property; and

16 (B) the owner should not be expected to bear the cost of that relocation
17 or other measures.

18 (b) *TO CORRECT STATE AND LOCAL VIOLATIONS.*—(1) Amtrak, by itself or
19 jointly with an owner or operator of a rail station Amtrak uses to provide
20 rail passenger transportation, may apply to the Secretary for amounts that
21 may be appropriated under paragraph (2) of this subsection to pay or reim-
22 burse expenses incurred after October 1, 1987, related to the station complying
23 with an official notice received before October 1, 1987, from a State or local
24 authority stating that the station violates or allegedly violates the building,
25 construction, fire, electric, sanitation, mechanical, or plumbing code.

26 (2) Not more than \$1,000,000, may be appropriated to the Secretary to
27 carry out paragraph (1) of this subsection. Amounts appropriated under this
28 paragraph remain available until expended.

29 **§24311. Acquiring interests in property by eminent domain**

30 (a) *GENERAL AUTHORITY.*—(1) To the extent financial resources are avail-
31 able, Amtrak may acquire by eminent domain under subsection (b) of this
32 section interests in property—

33 (A) necessary for intercity rail passenger transportation, except prop-
34 erty of a rail carrier, a State, a political subdivision of a State, or a
35 governmental authority; or

36 (B) requested by the Secretary of Transportation in carrying out the
37 Secretary's duty to design and build an intermodal transportation ter-
38 minal at Union Station in the District of Columbia if the Secretary
39 assures Amtrak that the Secretary will reimburse Amtrak.

40 (2) Amtrak may exercise the power of eminent domain only if it cannot—

41 (A) acquire the interest in the property by contract; or

1 (B) agree with the owner on the purchase price for the interest.

2 (b) CIVIL ACTIONS.—(1) A civil action to acquire an interest in property
3 by eminent domain under subsection (a) of this section must be brought in
4 the district court of the United States for the judicial district in which the
5 property is located or, if a single piece of property is located in more than
6 one judicial district, in any judicial district in which any piece of the prop-
7 erty is located. An interest is condemned and taken by Amtrak for its use
8 when a declaration of taking is filed under this subsection and an amount
9 of money estimated in the declaration to be just compensation for the interest
10 is deposited in the court. The declaration may be filed with the complaint
11 in the action or at any time before judgment. The declaration must contain
12 or be accompanied by—

13 (A) a statement of the public use for which the interest is taken;

14 (B) a description of the property sufficient to identify it;

15 (C) a statement of the interest in the property taken;

16 (D) a plan showing the interest taken; and

17 (E) a statement of the amount of money Amtrak estimates is just com-
18 pensation for the interest.

19 (2) When the declaration is filed and the deposit is made under paragraph
20 (1) of this subsection, title to the property vests in Amtrak in fee simple abso-
21 lute or in the lesser interest shown in the declaration, and the right to the
22 money vests in the person entitled to the money. When the declaration is filed,
23 the court may decide—

24 (A) the time by which, and the terms under which, possession of the
25 property is given to Amtrak; and

26 (B) the disposition of outstanding charges related to the property.

27 (3) After a hearing, the court shall make a finding on the amount that is
28 just compensation for the interest in the property and enter judgment award-
29 ing that amount and interest on it. The rate of interest is 6 percent a year
30 and is computed on the amount of the award less the amount deposited in
31 the court from the date of taking to the date of payment.

32 (4) On application of a party, the court may order immediate payment
33 of any part of the amount deposited in the court for the compensation to be
34 awarded. If the award is more than the amount received, the court shall enter
35 judgment against Amtrak for the deficiency.

36 (c) AUTHORITY TO CONDEMN RAIL CARRIER PROPERTY INTERESTS.—(1)
37 If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest
38 in property of a rail carrier necessary for intercity rail passenger transpor-
39 tation, Amtrak may apply to the Interstate Commerce Commission for an
40 order establishing the need of Amtrak for the interest and requiring the car-
41 rier to convey the interest on reasonable terms, including just compensation.

1 *The need of Amtrak is deemed to be established, and the Commission, after*
2 *holding an expedited proceeding and not later than 120 days after receiving*
3 *the application, shall order the interest conveyed unless the Commission de-*
4 *cides that—*

5 *(A) conveyance would impair significantly the ability of the carrier*
6 *to carry out its obligations as a common carrier; and*

7 *(B) the obligations of Amtrak to provide modern, efficient, and eco-*
8 *nomical rail passenger transportation can be met adequately by acquir-*
9 *ing an interest in other property, either by sale or by exercising its right*
10 *of eminent domain under subsection (a) of this section.*

11 *(2) If the amount of compensation is not determined by the date of the*
12 *Commission's order, the order shall require, as part of the compensation, in-*
13 *terest at 6 percent a year from the date prescribed for the conveyance until*
14 *the compensation is paid.*

15 *(3) Amtrak subsequently may reconvey to a third party an interest con-*
16 *veyed to Amtrak under this subsection or prior comparable provision of law*
17 *if the Commission decides that the reconveyance will carry out the purposes*
18 *of this part, regardless of when the proceeding was brought (including a pro-*
19 *ceeding pending before a United States court on November 28, 1990).*

20 **§24312. Labor standards**

21 *(a) PREVAILING WAGES AND HEALTH AND SAFETY STANDARDS.—(1) Am-*
22 *trak shall ensure that laborers and mechanics employed by contractors and*
23 *subcontractors in construction work financed under an agreement made under*
24 *section 24308(a), 24701(a), or 24704(b)(2) of this title will be paid wages not*
25 *less than those prevailing on similar construction in the locality, as deter-*
26 *mined by the Secretary of Labor under the Act of March 3, 1931 (known as*
27 *the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). Amtrak may make such an*
28 *agreement only after being assured that required labor standards will be*
29 *maintained on the construction work. Health and safety standards prescribed*
30 *by the Secretary under section 107 of the Contract Work Hours and Safety*
31 *Standards Act (40 U.S.C. 333) apply to all construction work performed*
32 *under such an agreement, except for construction work performed by a rail*
33 *carrier.*

34 *(2) Wage rates in a collective bargaining agreement negotiated under the*
35 *Railway Labor Act (45 U.S.C. 151 et seq.) are deemed to comply with the*
36 *Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—*
37 *276a-5).*

38 *(b) CONTRACTING OUT.—(1) Amtrak may not contract out work normally*
39 *performed by an employee in a bargaining unit covered by a contract between*
40 *a labor organization and Amtrak or a rail carrier that provided intercity rail*

1 passenger transportation on October 30, 1970, if contracting out results in
2 the layoff of an employee in the bargaining unit.

3 (2) This subsection does not apply to food and beverage services provided
4 on trains of Amtrak.

5 **§24313. Rail safety system program**

6 In consultation with rail labor organizations, Amtrak shall maintain a
7 rail safety system program for employees working on property owned by Am-
8 trak. The program shall be a model for other rail carriers to use in developing
9 safety programs. The program shall include—

10 (1) periodic analyses of accident information, including primary and
11 secondary causes;

12 (2) periodic evaluations of the activities of the program, particularly
13 specific steps taken in response to an accident;

14 (3) periodic reports on amounts spent for occupational health and
15 safety activities of the program;

16 (4) periodic reports on reduced costs and personal injuries because of
17 accident prevention activities of the program;

18 (5) periodic reports on direct accident costs, including claims related
19 to accidents; and

20 (6) reports and evaluations of other information Amtrak considers ap-
21 propriate.

22 **§24314. Demonstration of new technology**

23 (a) *PLAN.*—Amtrak shall develop a plan for demonstrating new technology
24 in rail passenger equipment. The plan shall provide that new equipment that
25 Amtrak procures that may increase train speed significantly over existing
26 rail facilities shall be demonstrated, to the extent practicable, throughout the
27 intercity rail passenger system.

28 (b) *REPORT.*—Not later than September 30, 1993, Amtrak shall submit to
29 the Committee on Energy and Commerce of the House of Representatives and
30 the Committee on Commerce, Science, and Transportation of the Senate a re-
31 port summarizing the plan developed under subsection (a) of this section, in-
32 cluding its goals, locations for technology demonstration, and a schedule for
33 carrying out the plan.

34 (c) *COOPERATION.*—To make efforts to increase train speed throughout the
35 intercity rail passenger system easier, Amtrak shall consult and cooperate, to
36 the extent feasible, on request of eligible applicants proposing a technology
37 demonstration authorized and financed under a law of the United States,
38 with those applicants.

39 **§24315. Reports and audits**

40 (a) *AMTRAK ANNUAL OPERATIONS REPORT.*—Not later than February 15
41 of each year, Amtrak shall submit to Congress a report that—

1 (1) for each route on which Amtrak provided intercity rail passenger
2 transportation during the prior fiscal year, includes information on—

3 (A) ridership;

4 (B) passenger-miles;

5 (C) the short-term avoidable profit or loss for each passenger-mile;

6 (D) the revenue-to-cost ratio;

7 (E) revenues;

8 (F) the United States Government subsidy;

9 (G) the subsidy not provided by the United States Government;

10 and

11 (H) on-time performance;

12 (2) provides relevant information about a decision to pay an officer
13 of Amtrak more than the rate for level I of the Executive Schedule under
14 section 5312 of title 5; and

15 (3) specifies—

16 (A) significant operational problems Amtrak identifies; and

17 (B) proposals by Amtrak to solve those problems.

18 (b) *AMTRAK GENERAL AND LEGISLATIVE ANNUAL REPORT.*—(1) Not later
19 than February 15 of each year, Amtrak shall submit to the President and
20 Congress a complete report of its operations, activities, and accomplishments,
21 including a statement of revenues and expenditures for the prior fiscal year.
22 The report—

23 (A) shall include a discussion and accounting of Amtrak's success in
24 meeting the goal of section 24902(b) of this title; and

25 (B) may include recommendations for legislation, including the
26 amount of financial assistance needed for operations and capital im-
27 provements, the method of computing the assistance, and the sources of
28 the assistance.

29 (2) Amtrak may submit reports to the President and Congress at other
30 times Amtrak considers desirable.

31 (c) *SECRETARY'S REPORT ON EFFECTIVENESS OF THIS PART.*—The Sec-
32 retary of Transportation shall prepare a report on the effectiveness of this
33 part in meeting the requirements for a balanced transportation system in the
34 United States. The report may include recommendations for legislation. The
35 Secretary shall include this report as part of the annual report the Secretary
36 submits under section 308(a) of this title.

37 (d) *INDEPENDENT AUDITS.*—An independent certified public accountant
38 shall audit the financial statements of Amtrak each year. The audit shall be
39 carried out at the place at which the financial statements normally are kept
40 and under generally accepted auditing standards. A report of the audit shall
41 be included in the report required by subsection (a) of this section.

1 (e) *COMPTROLLER GENERAL AUDITS.*—The Comptroller General may con-
 2 duct performance audits of the activities and transactions of Amtrak. Each
 3 audit shall be conducted at the place at which the Comptroller General decides
 4 and under generally accepted management principles. The Comptroller Gen-
 5 eral may prescribe regulations governing the audit.

6 (f) *AVAILABILITY OF RECORDS AND PROPERTY OF AMTRAK AND RAIL CAR-*
 7 *RIERS.*—Amtrak and, if required by the Comptroller General, a rail carrier
 8 with which Amtrak has made a contract for intercity rail passenger transpor-
 9 tation shall make available for an audit under subsection (d) or (e) of this
 10 section all records and property of, or used by, Amtrak or the carrier that
 11 are necessary for the audit. Amtrak and the carrier shall provide facilities
 12 for verifying transactions with the balances or securities held by depositories,
 13 fiscal agents, and custodians. Amtrak and the carrier may keep all reports
 14 and property.

15 (g) *COMPTROLLER GENERAL'S REPORT TO CONGRESS.*—The Comptroller
 16 General shall submit to Congress a report on each audit, giving comments
 17 and information necessary to inform Congress on the financial operations and
 18 condition of Amtrak and recommendations related to those operations and
 19 conditions. The report also shall specify any financial transaction or under-
 20 taking the Comptroller General considers is carried out without authority of
 21 law. When the Comptroller General submits a report to Congress, the Comp-
 22 troller General shall submit a copy of it to the President, the Secretary, and
 23 Amtrak at the same time.

24 **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.*

25 **§ 24501. Status and applicable laws**

26 (a) *STATUS.*—Amtrak Commuter—

27 (1) *is a wholly-owned subsidiary of Amtrak;*

28 (2) *provides by contract commuter rail passenger transportation for*
 29 *a commuter authority with which Amtrak Commuter makes a contract*
 30 *to provide the transportation under this chapter;*

31 (3) *has no common carrier obligations to provide rail passenger or*
 32 *rail freight transportation; and*

33 (4) *is not a department, agency, or instrumentality of the United*
 34 *States Government.*

35 (b) *APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGU-*
 36 *LATIONS.*—Chapter 105 of this title does not apply to Amtrak Commuter.

1 *However, laws and regulations governing safety, employee representation for*
2 *collective bargaining purposes, the handling of disputes between carriers and*
3 *employees, employee retirement, annuity, and unemployment systems, and*
4 *other dealings with employees that apply to a rail carrier providing transpor-*
5 *tation subject to subchapter I of chapter 105 apply to Amtrak Commuter.*

6 (c) *APPLICATION OF CERTAIN ADDITIONAL LAWS.—This part and, to the*
7 *extent consistent with this part, the District of Columbia Business Corpora-*
8 *tion Act (D.C. Code §29–301 et seq.) apply to Amtrak Commuter.*

9 (d) *NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State or*
10 *other law related to rates, routes, or service in connection with rail passenger*
11 *transportation does not apply to Amtrak Commuter.*

12 (e) *PREEMPTION RELATED TO EMPLOYEE WORK REQUIREMENTS.—A State*
13 *may not adopt or continue in force a law, rule, regulation, order, or standard*
14 *requiring Amtrak Commuter to employ a specified number of individuals to*
15 *perform a particular task, function, or operation.*

16 (f) *EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection, “addi-*
17 *tional tax” means a tax or fee—*

18 (A) *on the acquisition, improvement, ownership, or operation of per-*
19 *sonal property by Amtrak Commuter; and*

20 (B) *on real property, except a tax or fee on the acquisition of real*
21 *property or on the value of real property not attributable to improve-*
22 *ments made, or the operation of those improvements, by Amtrak Com-*
23 *muter.*

24 (2) *Amtrak Commuter is not required to pay an additional tax because of*
25 *an expenditure to acquire or improve real property, equipment, a facility, or*
26 *right-of-way material or structures used to provide rail passenger transpor-*
27 *tation.*

28 (g) *TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A com-*
29 *muter authority with which Amtrak Commuter could have made a contract*
30 *to provide commuter rail passenger transportation under this chapter but*
31 *which decided to provide its own rail passenger transportation beginning on*
32 *January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or*
33 *fee to the same extent Amtrak is exempt.*

34 (h) *NONAPPLICATION OF AGREEMENTS FOR FINANCIAL SUPPORT AND*
35 *TRACKAGE RIGHTS.—An agreement under which financial support was pro-*
36 *vided on January 2, 1974, to a commuter authority to continue rail pas-*
37 *senger transportation does not apply to Amtrak Commuter. However, Amtrak*
38 *and the Consolidated Rail Corporation retain appropriate trackage rights*
39 *over rail property owned or leased by the authority. Compensation for the*
40 *rights shall be reasonable.*

§24502. Board of directors

(a) *COMPOSITION.*—The board of directors of Amtrak Commuter is composed of the following directors:

(1) the President of Amtrak Commuter.

(2) one individual from the board of directors of Amtrak selected as a representative of commuter authorities that make contracts with Amtrak Commuter for the operation of commuter rail passenger transportation.

(3) 2 individuals selected by the board of directors of Amtrak.

(4) 2 individuals selected by commuter authorities for which Amtrak Commuter provides commuter rail transportation under this chapter. However, only one individual shall be selected under this clause if Amtrak Commuter provides the transportation for only one authority.

(b) *TERMS.*—Except as otherwise provided in this section, individuals shall serve for 2 years.

(c) *CHAIRMAN.*—The board shall select annually one of its members to serve as Chairman.

(d) *PAY AND EXPENSES.*—Each director not employed by the United States Government is entitled to \$300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

(e) *VACANCIES.*—A vacancy on the board is filled in the same way as the original selection.

(f) *BYLAWS.*—The board may adopt and amend bylaws governing the operation of Amtrak Commuter. The bylaws shall be consistent with this part and the articles of incorporation.

§24503. Officers

(a) *APPOINTMENT AND TERMS.*—Amtrak Commuter has a President and other officers that are named and appointed by the board of directors of Amtrak Commuter. An officer of Amtrak Commuter must be a citizen of the United States. Officers of Amtrak Commuter serve at the pleasure of the board.

(b) *PAY.*—The board may fix the pay of the officers of Amtrak Commuter. An officer may be paid not more than the general level of pay for officers of rail carriers with comparable responsibility.

(c) *CONFLICTS OF INTEREST.*—When employed by Amtrak Commuter, an officer may not have a financial or employment relationship with a rail carrier, except that holding securities issued by a rail carrier is not deemed to be a violation of this subsection if the officer holding the securities makes a

1 complete public disclosure of the holdings and does not participate in any de-
2 cision directly affecting the rail carrier.

3 **§24504. General authority**

4 (a) *GENERAL.*—Amtrak Commuter may—

5 (1) acquire, operate, maintain, and make contracts for the operation
6 of equipment and facilities necessary for commuter rail passenger trans-
7 portation;

8 (2) conduct research and development related to the mission of Amtrak
9 Commuter; and

10 (3) issue common stock to Amtrak.

11 (b) *OPERATION AND CONTROL.*—To the extent consistent with this part and
12 with an agreement with a commuter authority, Amtrak Commuter shall oper-
13 ate and control all aspects of the commuter rail passenger transportation it
14 provides.

15 (c) *AGREEMENT TO AVOID DUPLICATING EMPLOYEE FUNCTIONS.*—To the
16 maximum extent practicable, Amtrak Commuter and Amtrak shall make an
17 agreement that avoids duplicating employee functions and voluntarily estab-
18 lishes a consolidated work force.

19 **§24505. Commuter rail passenger transportation**

20 (a) *GENERAL AUTHORITY.*—Amtrak Commuter—

21 (1) shall provide commuter rail passenger transportation that the Con-
22 solidated Rail Corporation was obligated to provide on August 13, 1981,
23 under section 303(b)(2) or 304(e) of the Regional Rail Reorganization
24 Act of 1973 (45 U.S.C. 743(b)(2), 744(e)); and

25 (2) may provide other commuter rail passenger transportation if the
26 commuter authority for which the transportation will be provided offers
27 to provide a commuter rail passenger transportation payment equal to
28 the—

29 (A) avoidable costs of providing the transportation (including the
30 avoidable cost of necessary capital improvements) and a reasonable
31 return on the value; less

32 (B) revenue attributable to the transportation.

33 (b) *OFFER REQUIREMENTS.*—(1) A commuter authority making an offer
34 under subsection (a)(2) of this section shall—

35 (A) show that it has obtained access to all rail property necessary to
36 provide the additional commuter rail passenger transportation; and

37 (B) make the offer according to regulations the Rail Services Planning
38 Office prescribes under section 10362(b)(5)(A) and (6) of this title.

39 (2) The Office may revise and update the regulations when necessary to
40 carry out this section.

1 (c) *ADDITIONAL EMPLOYEE REQUIREMENTS.*—Additional employee re-
 2 quirements shall be met through existing seniority arrangements agreed to in
 3 the implementing agreement negotiated under section 508 of the Rail Pas-
 4 senger Service Act.

5 (d) *WHEN OBLIGATION DOES NOT APPLY.*—Amtrak Commuter is not obli-
 6 gated to provide commuter rail passenger transportation if a commuter au-
 7 thority provides the transportation or makes a contract under which a person,
 8 except Amtrak Commuter, will provide the transportation. When appropriate,
 9 Amtrak Commuter shall give the authority or person access to the rail prop-
 10 erty needed to provide the transportation.

11 (e) *DISCONTINUANCE OF COMMUTER RAIL PASSENGER TRANSPOR-*
 12 *TATION.*—(1) Amtrak Commuter may discontinue commuter rail passenger
 13 transportation provided under this section on 60 days' notice if—

14 (A) a commuter authority does not offer a commuter rail passenger
 15 transportation payment under subsection (a)(2) of this section; or

16 (B) a payment is not paid when due.

17 (2) The Office shall prescribe regulations on the necessary contents of the
 18 notice required under this subsection.

19 (f) *COMPENSATION FOR RIGHT-OF-WAY RELATED COSTS.*—Compensation
 20 by a commuter authority to Amtrak or Amtrak Commuter for right-of-way
 21 related costs for transportation over property Amtrak owns shall be deter-
 22 mined under a method the Interstate Commerce Commission establishes under
 23 section 1163 of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C.
 24 1111) or to which the parties agree.

25 (g) *APPLICATION OF OTHER LAWS.*—All laws related to commuter rail pas-
 26 senger transportation apply to a commuter authority providing commuter
 27 rail passenger transportation under this section.

28 **§24506. Certain duties and powers unaffected**

29 This chapter does not affect a duty or power of the Consolidated Rail Cor-
 30 poration or its successor and any bi-state commuter authority under an
 31 agreement, lease, or contract under which property was conveyed to the Cor-
 32 poration under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701
 33 et seq.).

34 **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.

1 **§24701. Operation of basic system**

2 (a) *BY AMTRAK.*—Amtrak shall provide intercity rail passenger transpor-
3 tation within the basic system unless the transportation is provided by—

4 (1) a rail carrier with which Amtrak did not make a contract under
5 section 401(a) of the Rail Passenger Service Act; or

6 (2) a regional transportation authority under contract with Amtrak.

7 (b) *BY OTHERS WITH CONSENT OF AMTRAK.*—Except as provided in sec-
8 tion 24306 of this title, a person may provide intercity rail passenger trans-
9 portation over a route over which Amtrak provides scheduled intercity rail
10 passenger transportation under a contract under section 401(a) of the Act
11 only with the consent of Amtrak.

12 **§24702. Improving rail passenger transportation**

13 (a) *PLAN TO IMPROVE TRANSPORTATION.*—Amtrak shall continue to carry
14 out its plan, submitted under section 305(f) of the Rail Passenger Service Act,
15 to improve intercity rail passenger transportation provided in the basic sys-
16 tem. The plan shall include—

17 (1) a zero-based assessment of all operating practices;

18 (2) changes to achieve the minimum use of employees consistent with
19 safe operations and adequate transportation;

20 (3) a systematic program for achieving the greatest ratio of train size
21 to passenger demand;

22 (4) a systematic program to reduce trip time in the basic system;

23 (5) establishing training programs to achieve on-time departures;

24 (6) establishing priorities for passenger trains over freight trains;

25 (7) adjusting the buying and pricing of food and beverages so that food
26 and beverage services ultimately will be profitable;

27 (8) cooperative marketing opportunities between Amtrak and govern-
28 mental authorities that have intercity rail passenger transportation; and

29 (9) cooperative marketing campaigns sponsored by Amtrak and the
30 Secretary of Energy, the Administrator of the Federal Highway Admin-
31 istration, and the Administrator of the Environmental Protection Agen-
32 cy.

33 (b) *STATE AND LOCAL SPEED RESTRICTIONS.*—Amtrak shall—

34 (1) identify any speed restriction a State or local government imposes
35 on a train of Amtrak that Amtrak decides impedes Amtrak from achiev-
36 ing high-speed intercity rail passenger transportation; and

37 (2) consult with that State or local government—

38 (A) to evaluate alternatives to the speed restriction, considering
39 the local safety hazard that is the basis for the restriction; and

40 (B) to consider modifying or eliminating the restriction to allow
41 safe operation at higher speeds.

1 (c) *HIGH-SPEED RAIL TRANSPORTATION DEVELOPMENT.*—On reasonable
 2 request by a State, political subdivision of a State, regional partnership, pri-
 3 vate sector representative, or other qualified person, Amtrak shall consult and
 4 cooperate to the extent feasible with that person to assist the efforts of that
 5 person to achieve high-speed rail transportation through equipment upgrades,
 6 grade-crossing safety improvements, and incremental infrastructure improve-
 7 ments on existing rail facilities that Amtrak uses (except the Northeast Cor-
 8 ridor facilities). Not later than September 30, 1993, Amtrak shall submit to
 9 the Committee on Energy and Commerce of the House of Representatives and
 10 the Committee on Commerce, Science, and Transportation of the Senate a re-
 11 port on its efforts under this subsection.

12 (d) *ROUTES CONNECTING CORRIDORS.*—Amtrak shall begin or improve ap-
 13 propriate rail passenger transportation on a route between corridors that Am-
 14 trak decides is justified because it will increase ridership on trains of Amtrak
 15 on the route and in the connecting corridors.

16 **§24703. Route and service criteria**

17 (a) *ROUTE DISCONTINUANCES AND ADDITIONS.*—Except as provided in
 18 this part, route discontinuances and route additions shall comply with the
 19 route and service criteria.

20 (b) *CONGRESSIONAL REVIEW OF CRITERIA AMENDMENTS.*—(1) Amtrak
 21 shall submit to Congress a draft of an amendment to the route and service
 22 criteria when Amtrak decides an amendment is appropriate. The amendment
 23 is effective at the end of the first period of 120 calendar days of continuous
 24 session of Congress after it is submitted unless there is enacted into law dur-
 25 ing the period a joint resolution stating Congress does not approve the amend-
 26 ment.

27 (2) *In this subsection—*

28 (A) a continuous session of Congress is broken only by an adjournment
 29 *sine die*; and

30 (B) the 120-day period does not include days on which either House
 31 is not in session because of adjournment of more than 3 days to a day
 32 certain.

33 (c) *NONAPPLICATION.*—The route and service criteria do not apply to—

34 (1) increasing or, because of construction schedules or other temporary
 35 disruptive facts or seasonal fluctuations in ridership, decreasing the
 36 number of trains on an existing route or a part of an existing route or
 37 on a route on which additional trains are being tested;

38 (2) carrying out the recommendations developed under section 4 of the
 39 Amtrak Improvement Act of 1978;

40 (3) rerouting transportation between major population centers on an
 41 existing route; or

1 (4)(A) *modifying transportation operations under section 24707(a) of*
2 *this title; and*

3 (B) *modifying the route system or discontinuing transportation under*
4 *section 24707(b) of this title.*

5 **§24704. *Transportation requested by States, authorities, and***
6 ***other persons***

7 (a) *APPLICATIONS TO BEGIN OR KEEP TRANSPORTATION.—(1) A State, a*
8 *regional or local authority, or another person may apply to Amtrak and re-*
9 *quest Amtrak to provide rail passenger transportation or keep any part of*
10 *a train, route, or service that Amtrak intends to discontinue under section*
11 *24706(a) or (b) or 24707(a) or (b) of this title. An application shall—*

12 (A) *assure Amtrak that the State, authority, or person has sufficient*
13 *resources to meet its share of the cost of the transportation for the time*
14 *the transportation will be provided;*

15 (B) *contain a market analysis acceptable to Amtrak to ensure that*
16 *there is adequate demand for the transportation; and*

17 (C) *commit the State, authority, or person to provide at least 45 per-*
18 *cent of the short term avoidable loss of providing the transportation the*
19 *first year the transportation is provided and at least 65 percent of the*
20 *short term avoidable loss each of the following years, and, except as pro-*
21 *vided in section 24104(a) of this title, at least 50 percent of associated*
22 *capital costs each year the transportation is provided.*

23 (2) *An application submitted by more than one State shall be considered*
24 *in the same way as an application submitted by one State, without it being*
25 *necessary for each State to comply with paragraph (1) of this subsection.*

26 (b) *ACTIONS ON APPLICATIONS.—(1) Amtrak shall review each application*
27 *submitted under subsection (a) of this section to decide whether—*

28 (A) *the application complies with subsection (a); and*

29 (B) *there is a reasonable probability that Amtrak can provide the*
30 *transportation from available resources.*

31 (2) *Amtrak may make an agreement with an applicant under this section*
32 *to begin or keep the transportation if Amtrak decides that the transportation*
33 *can be provided with resources available to Amtrak. An agreement may be*
34 *renewed for additional periods of not more than 2 years each.*

35 (c) *SELECTING AMONG COMPETING APPLICATIONS.—If more than one ap-*
36 *plication is made for transportation consistent with the requirements of sub-*
37 *section (a) of this section, but all the transportation applied for cannot be*
38 *provided with the available resources of Amtrak, the board of directors of Am-*
39 *trak shall select the transportation that best serves the public interest and can*
40 *be provided with the available resources of Amtrak.*

1 (d) *FARE INCREASES.*—(1) Before increasing a fare applicable to transportation provided under subsection (b)(2) of this section by more than 5 percent during a 6-month period, Amtrak shall consult with officials of each State affected by the increase and explain why the increase is necessary.

2 (2) Except as provided in paragraph (3) of this subsection, a fare increase described in paragraph (1) of this subsection takes effect 90 days after Amtrak first consults with the affected States. However, not later than 30 days after the first consultation, a State may submit proposals to Amtrak for reducing costs and increasing revenues of the transportation. Amtrak shall consider the proposals in deciding how much of the proposed increase shall go into effect.

3 (3)(A) Amtrak may increase a fare without regard to the restrictions of this subsection during—

4 (i) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; or

5 (ii) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

6 (B) Amtrak shall notify each affected State of an increase under subparagraph (A) of this paragraph as soon as possible after Amtrak decides to increase a fare.

7 (e) *DETERMINING LOSS, COSTS, AND REVENUES.*—After consulting with officials of each State contributing to providing transportation under subsection (b)(2) of this section, the board shall establish the basis for determining short term avoidable loss and associated capital costs of, and revenues from, the transportation. Amtrak shall give State officials the basis for determining the loss, cost, and revenue for each route on which transportation is provided under subsection (b)(2).

8 (f) *AVAILABILITY OF AMOUNTS.*—Amounts provided by Amtrak under an agreement with an applicant under subsection (b)(2) of this section that are allocated for associated capital costs remain available until expended.

9 (g) *ADVERTISING AND PROMOTION.*—At least 2 percent but not more than 5 percent of the revenue generated by transportation provided under subsection (b)(2) of this section shall be used for advertising and promotion at the local level.

10 **§24705. Additional qualifying routes**

11 (a) *ROUTES RECOMMENDED FOR DISCONTINUANCE.*—(1) To maintain a national intercity rail passenger system in the United States and if a reduction in operating expenses can be achieved, Amtrak shall provide rail passenger transportation over each route the Secretary of Transportation recommended be discontinued under section 4 of the Amtrak Improvement Act of 1978 and may restructure a route to serve a major population center as

1 an ending place or principal intermediate place. Transportation over a long
 2 distance route shall be maintained if the Amtrak estimate for the fiscal year
 3 ending September 30, 1980, was that the short term avoidable loss for each
 4 passenger mile on the route was not more than 7 cents. Transportation over
 5 a short distance route shall be maintained if the Amtrak estimate for the fis-
 6 cal year ending September 30, 1980, was that the short term avoidable loss
 7 for each passenger mile on the route was not more than 9 cents.

8 (2) For all routes, Amtrak shall calculate short term avoidable loss for each
 9 passenger-mile based on consistently defined factors. Calculations shall be
 10 based on the most recent available statistics for a 90-day period, except that
 11 Amtrak may use historical information adjusted to reflect the most recent
 12 available statistics.

13 (b) DEFERRAL OF SECRETARY'S RECOMMENDATIONS.—(1) To provide
 14 equivalent or improved transportation consistent with the goals of section 4(a)
 15 of the Act, Amtrak may defer carrying out a recommendation of the Secretary
 16 under section 4 of the Act that requires providing transportation over a rail
 17 line not used in intercity rail passenger transportation on May 24, 1979, re-
 18 quires using a new facility, or requires making a new labor agreement, until
 19 any necessary capital improvements are made in the line or facility or the
 20 agreement is made.

21 (2) Notwithstanding another law and the route and service criteria, during
 22 the period a decision of the Secretary under section 4 of the Act is deferred,
 23 Amtrak shall provide substitute transportation over existing routes rec-
 24 ommended for restructuring and over other existing feasible routes. Except for
 25 transportation concentrating on commuter ridership over a short haul route,
 26 transportation provided under this paragraph may be provided only if the
 27 route complies with subsection (a) of this section, adjusted to reflect constant
 28 1979 dollars.

29 (c) SHORT HAUL DEMONSTRATION ROUTES.—Notwithstanding this part,
 30 Amtrak may provide short haul trains on additional routes totaling not more
 31 than 200 miles that link at least 2 major metropolitan areas—

32 (1) on a demonstration basis to establish the feasibility and benefits
 33 of the transportation; and

34 (2) to the extent available resources allow.

35 (d) ROUTES DISCONTINUED BY RAIL CARRIERS.—Amtrak may undertake
 36 to provide rail passenger transportation between places served by a rail car-
 37 rier filing a notice of discontinuance under section 10908 or 10909 of this
 38 title.

39 **§24706. Discontinuance**

40 (a) NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b)
 41 of this section, at least 90 days before a discontinuance under section 24704

1 or 24707(a) or (b) of this title, Amtrak shall give notice of the discontinuance
2 in the way Amtrak decides will give a State, a regional or local authority,
3 or another person the opportunity to agree to share the cost of any part of
4 the train, route, or service to be discontinued.

5 (2) Notice of the discontinuance under section 24704 or 24707(a) or (b) of
6 this title shall be posted in all stations served by the train to be discontinued
7 at least 14 days before the discontinuance.

8 (b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may
9 discontinue service under section 24704 or 24707(a) or (b) of this title dur-
10 ing—

11 (A) the first month of a fiscal year if the authorization of appropria-
12 tions and the appropriations for Amtrak are not enacted at least 90 days
13 before the beginning of the fiscal year; and

14 (B) the 30 days following enactment of an appropriation for Amtrak
15 or a rescission of an appropriation.

16 (2) Amtrak shall notify each affected State or regional or local transpor-
17 tation authority of a discontinuance under this subsection as soon as possible
18 after Amtrak decides to discontinue the service.

19 (c) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) Amtrak or a rail carrier
20 (including a terminal company) shall provide fair and equitable arrange-
21 ments to protect the interests of employees of Amtrak or a rail carrier, as the
22 case may be, affected by a discontinuance of intercity rail passenger service,
23 including a discontinuance of service provided by a rail carrier under a facil-
24 ity or service agreement under section 24308(a) of this title under a modifica-
25 tion or ending of the agreement or because Amtrak begins providing that serv-
26 ice. Arrangements shall include—

27 (A) the preservation of rights, privileges, and benefits (including con-
28 tinuation of pension rights and benefits) under existing collective bar-
29 gaining agreements or otherwise;

30 (B) the continuation of collective bargaining rights;

31 (C) the protection of employees against a worsening of their positions
32 related to employment;

33 (D) assurances of priority of reemployment of employees whose em-
34 ployment is ended or who are laid off; and

35 (E) paid training and retraining programs.

36 (2) With respect to Amtrak's obligations under this subsection and in an
37 agreement to carry out this subsection involving only Amtrak and its employ-
38 ees, a discontinuance of intercity rail passenger service does not include an
39 adjustment in frequency, or seasonal suspension of intercity rail passenger
40 trains that causes a temporary suspension of service, unless the adjustment

1 or suspension reduces passenger train operations on a particular route to
2 fewer than 3 round trips a week at any time during a calendar year.

3 (3) Arrangements under this subsection shall provide benefits at least equal
4 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 car-
8 rier related to a right, privilege, or benefit earned by an employee because
9 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 evaluation
16 of the potential market demand for, and the cost of providing transportation
17 on, a part of the route and an alternative route. Amtrak shall submit the re-
18 sults of the review to the House of Representatives, the Senate, and the Sec-
19 retary of Transportation. If Amtrak decides that a route will not meet the
20 criterion under section 24705(a)(1), as adjusted, Amtrak shall modify or dis-
21 continue rail passenger transportation operations on the route so that it will
22 meet the criterion.

23 (b) *FINANCIAL REQUIREMENTS AND PERFORMANCE STANDARDS.*—Not later
24 than 30 days after the beginning of each fiscal year, Amtrak shall evaluate
25 the financial requirements for operating the basic system and the progress in
26 achieving the system-wide performance standards prescribed under this part
27 during the fiscal year. If Amtrak decides amounts available for the fiscal year
28 are not enough to meet estimated operating costs, or if Amtrak estimates it
29 cannot meet the performance standards, Amtrak shall act to reduce costs and
30 improve performance. Action under this subsection shall be designed to con-
31 tinue the maximum level of transportation practicable, including—

32 (1) changing the frequency of transportation;

33 (2) increasing fares;

34 (3) reducing the cost of sleeper car and dining car service on certain
35 routes;

36 (4) increasing the passenger capacity of cars used on certain routes;

37 and

38 (5) modifying the route system or discontinuing transportation over
39 routes, considering short term avoidable loss and the number of pas-
40 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 Am-
 9 trak to report to Amtrak any inadequacy of train operation. The report shall
 10 be signed by the conductor, contain sufficient information to locate equipment
 11 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 section
 15 403(d) of the Rail Passenger Service Act before October 1, 1981, if, after con-
 16 sidering estimated fare increases and State and local contributions to the
 17 transportation, the transportation meets the short distance route criterion
 18 under section 24705(a)(1) of this title, as adjusted. Transportation continued
 19 under this section shall be financed consistent with the method of financing
 20 in effect on September 30, 1981. If the transportation is not estimated to meet
 21 the criterion, as adjusted, Amtrak may modify or discontinue the transpor-
 22 tation 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 before
 25 October 1, 1995, transportation provided under subsection (a) on a route dur-
 26 ing the prior 6 months has a short-term avoidable loss (excluding the cost of
 27 providing passenger equipment needed to provide the transportation), Amtrak
 28 may choose to consider modifying or discontinuing the transportation. If Am-
 29 trak does make such a choice, Amtrak shall solicit public comment for at least
 30 30 days on alternatives to the modification or discontinuance. Not later than
 31 60 days after the comment period ends, Amtrak may modify or discontinue
 32 the transportation so that there is no short-term avoidable loss under this sec-
 33 tion for providing the transportation on the route.

34 **§24709. International transportation**

35 Amtrak may develop and operate international intercity rail passenger
 36 transportation between the United States and Canada and between the United
 37 States and Mexico. The Secretary of the Treasury and the Attorney General,
 38 in cooperation with Amtrak, shall maintain, consistent with the effective en-
 39 forcement of the immigration and customs laws, en route customs inspection
 40 and immigration procedures for international intercity rail passenger trans-
 41 portation that will—

- 1 (1) be convenient for passengers; and
 2 (2) result in the quickest possible international intercity rail passenger
 3 transportation.

4 **CHAPTER 249—NORTHEAST CORRIDOR IMPROVEMENT**
 5 **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.

6 **§24901. Definitions**

- 7 In this chapter—
 8 (1) “final system plan” means the final system plan (including addi-
 9 tions) adopted by the United States Railway Association under the Re-
 10 gional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).
 11 (2) “rail carrier” means an express carrier and a rail carrier as de-
 12 fined in section 10102 of this title, including Amtrak.

13 **§24902. Goals and requirements**

- 14 (a) *NORTHEAST CORRIDOR IMPROVEMENT PLAN.*—To the extent of
 15 amounts appropriated under section 24909 of this title, Amtrak shall carry
 16 out a Northeast Corridor improvement program to achieve the following goals:
 17 (1) establish not later than September 30, 1985, regularly scheduled
 18 and dependable intercity rail passenger transportation between—
 19 (A) Boston, Massachusetts, and New York, New York, in not more
 20 than 3 hours and 40 minutes, including intermediate stops; and
 21 (B) New York, New York, and the District of Columbia, in not
 22 more than 2 hours and 40 minutes, including intermediate stops;
 23 (2) improve facilities, under route criteria approved by Congress, on
 24 routes to Harrisburg, Pennsylvania, Albany, New York, and Atlantic
 25 City, New Jersey, from the Northeast Corridor main line, and to Boston,
 26 Massachusetts, and New Haven, Connecticut, from Springfield, Massa-
 27 chusetts, to make those facilities more compatible with improved high-
 28 speed transportation provided on the Northeast Corridor main line;
 29 (3) improve nonoperational parts of stations, related facilities, and
 30 fencing used in intercity rail passenger transportation;
 31 (4) facilitate improvements in, and usage of, commuter rail passenger,
 32 rail rapid transit, and local public transportation, to the extent compat-
 33 ible with clauses (1)–(3) of this subsection and subsections (f) and (h)
 34 of this section;

1 (5) maintain and improve rail freight transportation in or adjacent
2 to the Northeast Corridor and through-freight transportation in the
3 Northeast Corridor, to the extent compatible with clauses (1)–(4) of this
4 subsection and subsections (f) and (h) of this section;

5 (6) continue and improve passenger radio mobile telephone service on
6 high-speed rail passenger transportation between Boston, Massachusetts,
7 and the District of Columbia, to the extent compatible with clauses (1)–
8 (3) of this subsection and subsections (f) and (h) of this section; and

9 (7) eliminate to the maximum extent practicable congestion in rail
10 freight and rail passenger transportation at the Baltimore and Potomac
11 Tunnel in Baltimore, Maryland, by rehabilitating and improving the
12 tunnel and the rail lines approaching the tunnel.

13 (b) *MANAGING COSTS AND REVENUES.*—Amtrak shall manage its operating
14 costs, pricing policies, and other factors with the goal of having revenues de-
15 rived each fiscal year from providing intercity rail passenger transportation
16 over the Northeast Corridor route between the District of Columbia and Bos-
17 ton, Massachusetts, equal at least the operating costs of providing that trans-
18 portation in that fiscal year.

19 (c) *COST SHARING FOR NONOPERATIONAL FACILITIES.*—(1) Fifty percent
20 of the cost of improvements under subsection (a)(3) of this section shall be
21 paid by a State, local or regional transportation authority or other respon-
22 sible party. However, Amtrak may finance entirely a safety-related improve-
23 ment.

24 (2) When a part of the cost of improvements under subsection (a)(3) of this
25 section will be paid by a responsible party under paragraph (1) of this sub-
26 section, Amtrak may make an agreement with the party under which Am-
27 trak—

28 (A) shall carry out the improvements with amounts appropriated
29 under section 24909 of this title and the party shall reimburse Amtrak;
30 and

31 (B) to the extent provided in an appropriation law, may incur obliga-
32 tions for contracts to carry out the improvements in anticipation of re-
33 imbursement.

34 (3) Amounts reimbursed to Amtrak under paragraph (2) of this subsection
35 shall be credited to the appropriation originally charged for the cost of the
36 improvements and are available for further obligation.

37 (d) *PASSENGER RADIO MOBILE TELEPHONE SERVICE.*—The President and
38 departments, agencies, and instrumentalities of the United States Government
39 shall assist Amtrak under subsection (a)(6) of this section, subject to the Com-
40 munications Act of 1934 (47 U.S.C. 151 et seq.) and radio services standards,

1 when the Federal Communications Commission decides the assistance is in
2 the public interest, convenience, and necessity.

3 (e) *PRIORITIES IN SELECTING AND SCHEDULING PROJECTS.*—When select-
4 ing and scheduling specific projects, Amtrak shall apply the following consid-
5 erations, in the following order of priority:

6 (1) *Safety-related items should be completed before other items because*
7 *the safety of the passengers and users of the Northeast Corridor is para-*
8 *mount.*

9 (2) *Activities that benefit the greatest number of passengers should be*
10 *completed before activities involving fewer passengers.*

11 (3) *Reliability of intercity rail passenger transportation must be em-*
12 *phasized.*

13 (4) *Trip-time requirements of this section must be achieved to the ex-*
14 *tent compatible with the priorities referred to in paragraphs (1)–(3) of*
15 *this subsection.*

16 (5) *Improvements that will pay for the investment by achieving lower*
17 *operating or maintenance costs should be carried out before other im-*
18 *provements.*

19 (6) *Construction operations should be scheduled so that the fewest pos-*
20 *sible passengers are inconvenienced, transportation is maintained, and*
21 *the on-time performance of Northeast Corridor commuter rail passenger*
22 *and rail freight transportation is optimized.*

23 (7) *Planning should focus on completing activities that will provide*
24 *immediate benefits to users of the Northeast Corridor.*

25 (f) *COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF*
26 *MAXIMUM LABOR BENEFITS.*—Improvements under this section shall be com-
27 patible with future improvements in transportation and shall produce the
28 maximum labor benefit from hiring individuals presently unemployed.

29 (g) *AUTOMATIC TRAIN CONTROL SYSTEMS.*—A train operating on the
30 Northeast Corridor main line or between the main line and Atlantic City
31 shall be equipped with an automatic train control system designed to slow
32 or stop the train in response to an external signal.

33 (h) *HIGH-SPEED TRANSPORTATION.*—If practicable, Amtrak shall establish
34 intercity rail passenger transportation in the Northeast Corridor that carries
35 out section 703(1)(E) of the Railroad Revitalization and Regulatory Reform
36 Act of 1976 (Public Law 94–210, 90 Stat. 121).

37 (i) *EQUIPMENT DEVELOPMENT.*—Amtrak shall develop economical and reli-
38 able equipment compatible with track, operating, and marketing charac-
39 teristics of the Northeast Corridor, including the capability to meet reliable trip
40 times under section 703(1)(E) of the Railroad Revitalization and Regulatory
41 Reform Act of 1976 (Public Law 94–210, 90 Stat. 121) in regularly scheduled

1 revenue transportation in the Corridor, when the Northeast Corridor improve-
2 ment program is completed. Amtrak must decide that equipment complies
3 with this subsection before buying equipment with financial assistance of the
4 Government. Amtrak shall submit a request for an authorization of appro-
5 priations for production of the equipment.

6 (j) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT TRANS-
7 PORTATION.—(1) Amtrak may make an agreement with a rail freight carrier
8 or a regional transportation authority under which the carrier will carry out
9 an alternate off-corridor routing of rail freight transportation over rail lines
10 in the Northeast Corridor between the District of Columbia and New York
11 metropolitan areas, including intermediate points. The agreement shall be for
12 at least 5 years.

13 (2) Amtrak shall apply to the Interstate Commerce Commission for ap-
14 proval of the agreement and all related agreements accompanying the applica-
15 tion as soon as the agreement is made. If the Commission finds that approval
16 is necessary to carry out this chapter, the Commission shall approve the ap-
17 plication and related agreements not later than 90 days after receiving the
18 application.

19 (3) If an agreement is not made under paragraph (1) of this subsection,
20 Amtrak, with the consent of the other parties, may apply to the Interstate
21 Commerce Commission. Not later than 90 days after the application, the
22 Commission shall decide on the terms of an agreement if it decides that doing
23 so is necessary to carry out this chapter. The decision of the Commission is
24 binding on the other parties.

25 (k) COORDINATION.—(1) The Secretary of Transportation shall coordi-
26 nate—

27 (A) transportation programs related to the Northeast Corridor to en-
28 sure that the programs are integrated and consistent with the Northeast
29 Corridor improvement program; and

30 (B) amounts from departments, agencies, and instrumentalities of the
31 Government to achieve urban redevelopment and revitalization in the vi-
32 cinity of urban rail stations in the Northeast Corridor served by inter-
33 city and commuter rail passenger transportation.

34 (2) If the Secretary finds significant noncompliance with this section, the
35 Secretary may deny financing to a noncomplying program until the non-
36 compliance is corrected.

37 (l) COMPLETION.—Amtrak shall give the highest priority to completing the
38 program.

1 **§24903. Program master plan for Boston-New York main**
2 **line**

3 (a) *CONTENTS.*—Not later than October 27, 1993, in consultation with Am-
4 trak and the commuter and freight rail carriers operating over the Northeast
5 Corridor main line between Boston, Massachusetts, and New York, New York,
6 the Secretary of Transportation shall submit to the Committee on Energy and
7 Commerce of the House of Representatives and the Committee on Commerce,
8 Science, and Transportation of the Senate a program master plan for a co-
9 ordinated program of improvements to that main line that will allow the es-
10 tablishment of regularly scheduled, safe, and dependable rail passenger trans-
11 portation between Boston, Massachusetts, and New York, New York, in not
12 more than 3 hours, including intermediate stops. The plan shall include—

13 (1) a description of the implications of the improvements for the re-
14 gional transportation system, including the probable effects on general
15 travel trends and on travel volumes in other transportation modes and
16 the implications for State and local governments in achieving compli-
17 ance with the Clean Air Act (42 U.S.C. 7401 et seq.);

18 (2) an identification of the coordinated program of improvements and
19 the specific projects of that program, including the estimated costs, sched-
20 ules, timing, and relationship of those projects with other projects;

21 (3) an identification of the financial responsibility for the specific
22 projects of that program and the sources of the amounts for the projects;

23 (4) an operating plan for the construction period of the improvements
24 that shows a coordinated approach to scheduling intercity and commuter
25 trains;

26 (5) an operating plan for the coordinated scheduling of intercity and
27 commuter trains for the period after the program is completed, including
28 priority scheduling, dispatching, and occupancy of tracks for appro-
29 priately frequent, regularly scheduled intercity rail passenger transpor-
30 tation between Boston, Massachusetts, and New York, New York, in not
31 more than 3 hours, including intermediate stops;

32 (6) a comprehensive plan to control future congestion in the Northeast
33 Corridor attributable to increases in intercity and commuter rail pas-
34 senger transportation;

35 (7) an assessment of long-term operational safety needs and a list of
36 specific projects designed to maximize operational safety; and

37 (8) comments that Amtrak submits to the Secretary on the plan.

38 (b) *SUBMITTING MODIFICATIONS OF PLAN TO CONGRESS.*—The Secretary
39 shall submit to Congress any modification made to the program master plan
40 and comments that Amtrak submits on the modification.

1 **§24904. General authority**

2 (a) *GENERAL.*—To carry out this chapter and the Regional Rail Reorga-
3 nization Act of 1973 (45 U.S.C. 701 et seq.), Amtrak may—

4 (1) *acquire, maintain, and dispose of any interest in property used*
5 *to provide improved high-speed rail transportation under section 24902*
6 *of this title;*

7 (2) *acquire any interest in real property that Amtrak considers nec-*
8 *essary to carry out the goals of section 24902;*

9 (3) *provide for rail freight, intercity rail passenger, and commuter*
10 *rail passenger transportation over property acquired under this section;*

11 (4) *improve rail rights of way between Boston, Massachusetts, and the*
12 *District of Columbia (including the route through Springfield, Massachu-*
13 *setts, and routes to Harrisburg, Pennsylvania, and Albany, New York,*
14 *from the Northeast Corridor main line) to achieve the goals of section*
15 *24902 of providing improved high-speed rail passenger transportation*
16 *between Boston, Massachusetts, and the District of Columbia, and inter-*
17 *mediate intercity markets;*

18 (5) *acquire, build, improve, and install passenger stations, commu-*
19 *nications and electric power facilities and equipment, public and private*
20 *highway and pedestrian crossings, and other facilities and equipment*
21 *necessary to provide improved high-speed rail passenger transportation*
22 *over rights of way improved under clause (4) of this subsection;*

23 (6) *make agreements with other carriers and commuter authorities to*
24 *grant, acquire, or make arrangements for rail freight or commuter rail*
25 *passenger transportation over, rights of way and facilities acquired*
26 *under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et*
27 *seq.) and the Railroad Revitalization and Regulatory Reform Act of*
28 *1976 (45 U.S.C. 801 et seq.);*

29 (7) *appoint a general manager of the Northeast Corridor improvement*
30 *program; and*

31 (8) *make agreements with telecommunications common carriers, sub-*
32 *ject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), to con-*
33 *tinue existing, and establish new and improved, passenger radio mobile*
34 *telephone service in the high-speed rail passenger transportation area*
35 *specified in section 24902(a)(1) and (2).*

36 (b) *COMPENSATORY AGREEMENTS.*—Rail freight and commuter rail pas-
37 senger transportation provided under subsection (a)(3) of this section shall be
38 provided under compensatory agreements with the responsible carriers.

39 (c) *COMPENSATION FOR TRANSPORTATION OVER CERTAIN RIGHTS OF WAY*
40 *AND FACILITIES.*—(1) An agreement under subsection (a)(6) of this section
41 shall provide for reasonable reimbursement of costs but may not cross-sub-

1 *sidize intercity rail passenger, commuter rail passenger, and rail freight*
2 *transportation.*

3 *(2) If the parties do not agree, the Interstate Commerce Commission shall*
4 *order that the transportation continue over facilities acquired under the Re-*
5 *gional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Rail-*
6 *road Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et*
7 *seq.) and shall determine compensation (without allowing cross-subsidization*
8 *between intercity rail passenger and rail freight transportation) for the trans-*
9 *portation not later than 120 days after the dispute is submitted. The Commis-*
10 *sion shall assign to a rail freight carrier obtaining transportation under this*
11 *subsection the costs Amtrak incurs only for the benefit of the carrier, plus a*
12 *proportionate share of all other costs of providing transportation under this*
13 *paragraph incurred for the common benefit of Amtrak and the carrier. The*
14 *proportionate share shall be based on relative measures of volume of car oper-*
15 *ations, tonnage, or other factors that reasonably reflect the relative use of rail*
16 *property covered by this subsection.*

17 *(3) This subsection does not prevent the parties from making an agreement*
18 *under subsection (a)(6) of this section after the Commission makes a decision*
19 *under this subsection.*

20 **§24905. Coordination board and safety committee**

21 *(a) NORTHEAST CORRIDOR COORDINATION BOARD.—(1) The Northeast*
22 *Corridor Coordination Board is composed of the following members:*

23 *(A) one individual from each commuter authority (as defined in sec-*
24 *tion 1135(a) of the Omnibus Budget Reconciliation Act of 1981 (45*
25 *U.S.C. 1104)) that provides or makes a contract to provide commuter*
26 *rail passenger transportation over the main line of the Northeast Cor-*
27 *ridor.*

28 *(B) 2 individuals selected by Amtrak.*

29 *(C) one individual selected by the Consolidated Rail Corporation.*

30 *(2) The Board shall recommend to Amtrak—*

31 *(A) policies that ensure equitable access to the Northeast Corridor, con-*
32 *sidering the need for equitable access by commuter and intercity rail*
33 *passenger transportation and the requirements of section 24308(c) of this*
34 *title; and*

35 *(B) equitable policies for the Northeast Corridor related to—*

36 *(i) dispatching;*

37 *(ii) public information;*

38 *(iii) maintaining equipment and facilities;*

39 *(iv) major capital facility investments; and*

40 *(v) harmonizing equipment acquisitions, rates, and schedules.*

1 (3) *The Board may recommend to the board of directors and President of*
 2 *Amtrak action necessary to resolve differences on providing transportation,*
 3 *except for facilities and transportation matters under section 24308(a) or*
 4 *24904(a)(5) and (c) of this title.*

5 (b) *NORTHEAST CORRIDOR SAFETY COMMITTEE.—(1) The Northeast Cor-*
 6 *ridor Safety Committee is composed of members appointed by the Secretary*
 7 *of Transportation. The members shall be representatives of—*

8 (A) *the Secretary;*

9 (B) *Amtrak;*

10 (C) *freight carriers operating more than 150,000 train miles a year*
 11 *on the main line of the Northeast Corridor;*

12 (D) *commuter agencies;*

13 (E) *rail passengers;*

14 (F) *rail labor; and*

15 (G) *other individuals and organizations the Secretary decides have a*
 16 *significant interest in rail safety.*

17 (2) *The Secretary shall consult with the Committee about safety improve-*
 18 *ments on the Northeast Corridor main line. The Committee shall meet at least*
 19 *once every 2 years to consider safety matters on the main line.*

20 (3) *At the beginning of the first session of each Congress, the Secretary shall*
 21 *submit a report to Congress on the status of efforts to improve safety on the*
 22 *Northeast Corridor main line. The report shall include the safety rec-*
 23 *ommendations of the Committee and the comments of the Secretary on those*
 24 *recommendations.*

25 (4) *The Committee shall cease to exist on January 1, 1999, or on another*
 26 *date the Secretary decides is appropriate. The Secretary shall notify Congress*
 27 *in writing of a decision to terminate the Committee on another date.*

28 **§24906. Eliminating highway at-grade crossings**

29 (a) *PLAN.—In consultation with the States on the main line of the North-*
 30 *east Corridor, the Secretary of Transportation shall develop a plan not later*
 31 *than September 30, 1993, to eliminate all highway at-grade crossings of the*
 32 *main line by not later than December 31, 1997. The plan may provide that*
 33 *eliminating a crossing is not required if—*

34 (1) *impracticable or unnecessary; and*

35 (2) *using the crossing is consistent with conditions the Secretary con-*
 36 *siders appropriate to ensure safety.*

37 (b) *AMTRAK'S SHARE OF COSTS.—Amtrak shall pay 20 percent of the cost*
 38 *of eliminating each highway at-grade crossing under the plan.*

39 **§24907. Note and mortgage**

40 (a) *GENERAL AUTHORITY.—To secure amounts expended by the United*
 41 *States Government to acquire and improve rail property designated under*

1 *section 206(c)(1)(C) and (D) of the Regional Rail Reorganization Act of 1973*
 2 *(45 U.S.C. 716(c)(1)(C) and (D)), the Secretary of Transportation may ob-*
 3 *tain a note of indebtedness from, and make a mortgage agreement with, Am-*
 4 *trak to establish a mortgage lien on the property for the Government. The note*
 5 *and mortgage may not supersede section 24904 of this title.*

6 *(b) EXEMPTIONS FROM LAWS AND REGULATIONS.—The note and agree-*
 7 *ment under subsection (a) of this section, and a transaction related to the note*
 8 *or agreement, are exempt from any United States, State, or local law or regu-*
 9 *lation that regulates securities or the issuance of securities. The note, agree-*
 10 *ment, or transaction under this section has the same immunities from other*
 11 *laws that section 601 of the Act (45 U.S.C. 791) gives to transactions that*
 12 *comply with or carry out the final system plan. The transfer of rail property*
 13 *because of the note, agreement, or transaction has the same exemptions, privi-*
 14 *leges, and immunities that the Act (45 U.S.C. 701 et seq.) gives to a transfer*
 15 *ordered or approved by the special court under section 303(b) of the Act (45*
 16 *U.S.C. 743(b)).*

17 *(c) IMMUNITY FROM LIABILITY AND INDEMNIFICATION.—Amtrak, its board*
 18 *of directors, and its individual directors are not liable because Amtrak has*
 19 *given or issued the note or agreement to the Government under subsection (a)*
 20 *of this section. Immunity granted under this subsection also applies to a*
 21 *transaction related to the note or agreement. The Government shall indemnify*
 22 *Amtrak, its board, and individual directors against costs and expenses actu-*
 23 *ally and reasonably incurred in defending a civil action testing the validity*
 24 *of the note, agreement, or transaction.*

25 **§24908. Transfer taxes and levies and recording charges**

26 *A transfer of an interest in rail property under this chapter is exempt from*
 27 *a tax or levy related to the transfer that is imposed by the United States Gov-*
 28 *ernment, a State, or a political subdivision of a State. On payment of the*
 29 *appropriate and generally applicable charge for the service performed, a*
 30 *transferee or transferor may record an instrument and, consistent with the*
 31 *final system plan, the release or removal of a pre-existing lien or encumbrance*
 32 *of record related to the interest transferred.*

33 **§24909. Authorization of appropriations**

34 *(a) GENERAL.—(1) Not more than \$2,313,000,000 may be appropriated to*
 35 *the Secretary of Transportation to achieve the goals of section 24902(a)(1) of*
 36 *this title. From this amount, the following amounts shall be expended by Am-*
 37 *trak:*

38 *(A) at least \$27,000,000 for equipment modification and replacement*
 39 *that a State or a local or regional transportation authority must bear*
 40 *because of the electrification conversion system of the Northeast Corridor*
 41 *under this chapter.*

1 (B) \$30,000,000—

2 (i) to improve the main line track between the Northeast Corridor
3 main line and Atlantic City, New Jersey, to ensure that the track,
4 consistent with a plan New Jersey developed in consultation with
5 Amtrak to provide rail passenger transportation between the North-
6 east Corridor main line and Atlantic City, New Jersey, would be
7 of sufficient quality to allow safe rail passenger transportation at
8 a minimum of 79 miles an hour not later than September 30, 1985;
9 and

10 (ii) to promote rail passenger use of the track.

11 (C) necessary amounts to—

12 (i) develop Union Station in the District of Columbia;

13 (ii) install 189 track-miles, and renew 133 track-miles, of con-
14 crete ties with continuously welded rail between the District of Co-
15 lumbia and New York, New York;

16 (iii) install reverse signaling between Philadelphia, Pennsylva-
17 nia, and Morrisville, Pennsylvania, on numbers 2 and 3 track;

18 (iv) restore ditch drainage in concrete tie locations between the
19 District of Columbia and New York, New York;

20 (v) undercut 83 track-miles between the District of Columbia and
21 New York, New York;

22 (vi) rehabilitate bridges between the District of Columbia and
23 New York, New York (including Hi line);

24 (vii) develop a maintenance of way equipment repair facility be-
25 tween the District of Columbia and New York, New York, and build
26 maintenance of way bases at Philadelphia, Pennsylvania, Sunnyside,
27 New York, and Cedar Hill, Connecticut;

28 (viii) stabilize the roadbed between the District of Columbia and
29 New York, New York;

30 (ix) automate the Bush River Drawbridge at milepost 72.14;

31 (x) improve the New York Service Facility to develop rolling stock
32 repair capability;

33 (xi) install a rail car washer facility at Philadelphia, Pennsylva-
34 nia;

35 (xii) restore storage tracks and buildings at the Washington Serv-
36 ice Facility;

37 (xiii) install centralized traffic control from Landlith, Delaware,
38 to Philadelphia, Pennsylvania;

39 (xiv) improve track, including high speed surfacing, ballast clean-
40 ing, and associated equipment repair and material distribution;

1 (xv) rehabilitate interlockings between the District of Columbia
2 and New York, New York;

3 (xvi) paint the Connecticut River, Groton, and Pelham Bay
4 bridges;

5 (xvii) provide additional catenary renewal and power supply up-
6 grading between the District of Columbia and New York, New York;

7 (xviii) rehabilitate structural, electrical, and mechanical systems
8 at the 30th Street Station in Philadelphia, Pennsylvania;

9 (xix) install evacuation and fire protection facilities in tunnels
10 in New York, New York;

11 (xx) improve the communication and signal systems between Wil-
12 mington, Delaware, and Boston, Massachusetts, on the Northeast
13 Corridor main line, and between Philadelphia, Pennsylvania, and
14 Harrisburg, Pennsylvania, on the Harrisburg Line;

15 (xxi) improve the electric traction systems between Wilmington,
16 Delaware, and Newark, New Jersey;

17 (xxii) install baggage rack restraints, seat back guards, and seat
18 lock devices on 348 passenger cars operating in the Northeast Cor-
19 ridor;

20 (xxiii) install 44 event recorders and 10 electronic warning de-
21 vices on locomotives operating within the Northeast Corridor; and

22 (xxiv) acquire cab signal test boxes and install 9 wayside loop
23 code transmitters for use within the Northeast Corridor.

24 (2) The following additional amounts may be appropriated to the Secretary
25 for expenditure by Amtrak:

26 (A) not more than \$150,000,000 to achieve the goal of section
27 24902(a)(3) of this title.

28 (B) not more than \$120,000,000 to acquire interests in property in
29 the Northeast Corridor.

30 (C) not more than \$650,000 to develop and use mobile radio fre-
31 quencies for passenger radio mobile telephone service on high-speed rail
32 passenger transportation.

33 (D) not more than \$20,000,000 to acquire and improve interests in
34 rail property designated under section 206(c)(1)(D) of the Regional Rail
35 Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).

36 (E) not more than \$37,000,000 to carry out section 24902(a)(7) and
37 (j) of this title.

38 (b) EMERGENCY MAINTENANCE.—Not more than \$25,000,000 of the amount
39 appropriated under the Act of February 28, 1975 (Public Law 94–6, 89 Stat.
40 11), may be used by Amtrak for emergency maintenance on rail property des-

1 *igned under section 206(c)(1)(C) of the Regional Rail Reorganization Act*
 2 *of 1973 (45 U.S.C. 716(c)(1)(C)).*

3 *(c) PRIORITY IN USING CERTAIN AMOUNTS.—Amounts appropriated under*
 4 *subsection (a)(2)(B) and (D) of this section shall be used first to repay, with*
 5 *interest, obligations guaranteed under section 602 of the Rail Passenger Serv-*
 6 *ice Act, if the proceeds of those obligations were used to pay the expenses of*
 7 *acquiring interests in property referred to in subsection (a)(2)(B) and (D).*

8 *(d) PROHIBITION ON SUBSIDIZING COMMUTER AND FREIGHT OPERATING*
 9 *LOSSES.—Amounts appropriated under this section may not be used to sub-*
 10 *sidize operating losses of commuter rail or rail freight transportation.*

11 *(e) SUBSTITUTING AND DEFERRING CERTAIN IMPROVEMENTS.—(1) A*
 12 *project for which amounts are authorized under subsection (a)(1)(C) of this*
 13 *section is a part of the Northeast Corridor improvement program and is not*
 14 *a substitute for improvements specified in the document “Corridor Master*
 15 *Plan II, NECIP Restructured Program” of January, 1982. However, Amtrak*
 16 *may defer the project to carry out the improvement and rehabilitation for*
 17 *which amounts are authorized under subsection (a)(1)(B) of this section. The*
 18 *total cost of the project that Amtrak defers may not be substantially more*
 19 *than the amount Amtrak is required to expend or reserve under subsection*
 20 *(a)(1)(B).*

21 *(2) Section 24902 of this title is deemed not to be fulfilled until the projects*
 22 *under subsection (a)(1)(C) of this section are completed.*

23 *(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection*
 24 *(a)(1) and (2)(A) and (C)–(E) of this section remain available until ex-*
 25 *pended.*

26 *(g) AUTHORIZATIONS INCREASED BY PRIOR YEAR DEFICIENCIES.—An*
 27 *amount greater than that authorized for a fiscal year may be appropriated*
 28 *to the extent that the amount appropriated for any prior fiscal year is less*
 29 *than the amount authorized for that year.*

30 *PART D—MISCELLANEOUS*

31 **CHAPTER 261—LAW ENFORCEMENT**

32 *Sec.*

33 *26101. Rail police officers.*

34 *26102. Limit on certain accident or incident liability.*

35 **§ 26101. Rail police officers**

36 *Under regulations prescribed by the Secretary of Transportation, a rail po-*
 37 *lice officer who is employed by a rail carrier and certified or commissioned*
 38 *as a police officer under the laws of a State may enforce the laws of any juris-*
isdiction in which the rail carrier owns property, to the extent of the authority
of a police officer certified or commissioned under the laws of that jurisdic-
tion, to protect—

- 1 (1) employees, passengers, or patrons of the rail carrier;
- 2 (2) property, equipment, and facilities owned, leased, operated, or
- 3 maintained by the rail carrier;
- 4 (3) property moving in interstate or foreign commerce in the posses-
- 5 sion of the rail carrier; and
- 6 (4) personnel, equipment, and material moving by rail that are vital
- 7 to the national defense.

8 **§26102. Limit on certain accident or incident liability**

9 (a) GENERAL.—When a publicly financed commuter transportation author-
 10 ity established under Virginia law makes a contract to indemnify Amtrak for
 11 liability for operations conducted by or for the authority or to indemnify a
 12 rail carrier over whose tracks those operations are conducted, liability against
 13 Amtrak, the authority, or the carrier for all claims (including punitive dam-
 14 ages) arising from an accident or incident in the District of Columbia related
 15 to those operations may not be more than the limits of the liability coverage
 16 the authority maintains to indemnify Amtrak or the carrier.

17 (b) MINIMUM REQUIRED LIABILITY COVERAGE.—A publicly financed com-
 18 muter transportation authority referred to in subsection (a) of this section
 19 must maintain a total minimum liability coverage of at least \$200,000,000.

20 (c) EFFECTIVENESS.—This section is effective only after Amtrak or a rail
 21 carrier seeking an indemnification contract under this section makes an oper-
 22 ating agreement with a publicly financed commuter transportation authority
 23 established under Virginia law to provide access to its property for revenue
 24 transportation related to the operations of the authority.

25 **SUBTITLE VI—MOTOR VEHICLE AND DRIVER**
 26 **PROGRAMS**

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1
2

PART A—GENERAL

CHAPTER 301—MOTOR VEHICLE SAFETY

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 30102. Definitions.
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3

SUBCHAPTER I—GENERAL

4

§30101. Purpose and policy

5

The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—

6

(1) to prescribe motor vehicle safety standards for motor vehicles and

7

motor vehicle equipment in interstate commerce; and

8

(2) to carry out needed safety research and development.

9

§30102. Definitions

10

(a) GENERAL DEFINITIONS.—In this chapter—

11

1 (1) “dealer” means a person selling and distributing new motor vehi-
2 cles or motor vehicle equipment primarily to purchasers that in good
3 faith purchase the vehicles or equipment other than for resale.

4 (2) “defect” includes any defect in performance, construction, a com-
5 ponent, or material of a motor vehicle or motor vehicle equipment.

6 (3) “distributor” means a person primarily selling and distributing
7 motor vehicles or motor vehicle equipment for resale.

8 (4) “interstate commerce” means commerce between a place in a State
9 and a place in another State or between places in the same State through
10 another State.

11 (5) “manufacturer” means a person—

12 (A) manufacturing or assembling motor vehicles or motor vehicle
13 equipment; or

14 (B) importing motor vehicles or motor vehicle equipment for re-
15 sale.

16 (6) “motor vehicle” means a vehicle driven or drawn by mechanical
17 power and manufactured primarily for use on public streets, roads, and
18 highways, but does not include a vehicle operated only on a rail line.

19 (7) “motor vehicle equipment” means—

20 (A) any system, part, or component of a motor vehicle as origi-
21 nally manufactured;

22 (B) any similar part or component manufactured or sold for re-
23 placement or improvement of a system, part, or component, or as
24 an accessory or addition to a motor vehicle; or

25 (C) any device or an article or apparel (except medicine or eye-
26 glasses prescribed by a licensed practitioner) that is not a system,
27 part, or component of a motor vehicle and is manufactured, sold,
28 delivered, offered, or intended to be used only to safeguard motor ve-
29 hicles and highway users against risk of accident, injury, or death.

30 (8) “motor vehicle safety” means the performance of a motor vehicle
31 or motor vehicle equipment in a way that protects the public against un-
32 reasonable risk of accidents occurring because of the design, construction,
33 or performance of a motor vehicle, and against unreasonable risk of
34 death or injury in an accident, and includes nonoperational safety of a
35 motor vehicle.

36 (9) “motor vehicle safety standard” means a minimum standard for
37 motor vehicle or motor vehicle equipment performance.

38 (10) “State” means a State of the United States, the District of Co-
39 lumbia, Puerto Rico, the Northern Mariana Islands, Guam, American
40 Samoa, and the Virgin Islands.

1 (11) “United States district court” means a district court of the Unit-
2 ed States, a United States court for Guam, the Virgin Islands, and
3 American Samoa, and the district court for the Northern Mariana Is-
4 lands.

5 (b) LIMITED DEFINITIONS.—(1) In sections 30117(b), 30118–30121, and
6 30166(f) of this title—

7 (A) “adequate repair” does not include repair resulting in substan-
8 tially impaired operation of a motor vehicle or motor vehicle equipment;

9 (B) “first purchaser” means the first purchaser of a motor vehicle or
10 motor vehicle equipment other than for resale;

11 (C) “original equipment” means motor vehicle equipment (including
12 a tire) installed in or on a motor vehicle at the time of delivery to the
13 first purchaser;

14 (D) “replacement equipment” means motor vehicle equipment (includ-
15 ing a tire) that is not original equipment;

16 (E) a brand name owner of a tire marketed under a brand name not
17 owned by the manufacturer of the tire is deemed to be the manufacturer
18 of the tire;

19 (F) a defect in original equipment, or noncompliance of original
20 equipment with a motor vehicle safety standard prescribed under this
21 chapter, is deemed to be a defect or noncompliance of the motor vehicle
22 in or on which the equipment was installed at the time of delivery to
23 the first purchaser;

24 (G) a manufacturer of a motor vehicle in or on which original equip-
25 ment was installed when delivered to the first purchaser is deemed to be
26 the manufacturer of the equipment; and

27 (H) a retreader of a tire is deemed to be the manufacturer of the tire.

28 (2) The Secretary of Transportation may prescribe regulations changing
29 paragraph (1)(C), (D), (F), or (G) of this subsection.

30 **§ 30103. Relationship to other laws**

31 (a) UNIFORMITY OF REGULATIONS.—The Secretary of Transportation may
32 not prescribe a safety regulation related to a motor vehicle subject to sub-
33 chapter II of chapter 105 of this title that differs from a motor vehicle safety
34 standard prescribed under this chapter. However, the Secretary may pre-
35 scribe, for a motor vehicle operated by a carrier subject to subchapter II of
36 chapter 105, a safety regulation that imposes a higher standard of perform-
37 ance after manufacture than that required by an applicable standard in effect
38 at the time of manufacture.

39 (b) PREEMPTION.—(1) When a motor vehicle safety standard is in effect
40 under this chapter, a State or a political subdivision of a State may prescribe
41 or continue in effect a standard applicable to the same aspect of performance

1 of a motor vehicle or motor vehicle equipment only if the standard is identical
 2 to the standard prescribed under this chapter. However, the United States
 3 Government, a State, or a political subdivision of a State may prescribe a
 4 standard for a motor vehicle or motor vehicle equipment obtained for its own
 5 use that imposes a higher performance requirement than that required by the
 6 otherwise applicable standard under this chapter.

7 (2) A State may enforce a standard that is identical to a standard pre-
 8 scribed under this chapter.

9 (c) *ANTITRUST LAWS.*—This chapter does not—

10 (1) exempt from the antitrust laws conduct that is unlawful under
 11 those laws; or

12 (2) prohibit under the antitrust laws conduct that is lawful under
 13 those laws.

14 (d) *WARRANTY OBLIGATIONS AND ADDITIONAL LEGAL RIGHTS AND REM-*
 15 *EDIES.*—Sections 30117(b), 30118–30121, 30166(f), and 30167(a) and (b) of
 16 this title do not establish or affect a warranty obligation under a law of the
 17 United States or a State. A remedy under those sections and sections 30161
 18 and 30162 of this title is in addition to other rights and remedies under other
 19 laws of the United States or a State.

20 (e) *COMMON LAW LIABILITY.*—Compliance with a motor vehicle safety
 21 standard prescribed under this chapter does not exempt a person from liabil-
 22 ity at common law.

23 **§ 30104. Authorization of appropriations**

24 The following amounts may be appropriated to the Secretary of Transporta-
 25 tion for the National Highway Traffic Safety Administration to carry out
 26 this chapter:

27 (1) \$71,333,436 for the fiscal year ending September 30, 1993.

28 (2) \$74,044,106 for the fiscal year ending September 30, 1994.

29 (3) \$76,857,782 for the fiscal year ending September 30, 1995.

30 SUBCHAPTER II—STANDARDS AND COMPLIANCE

31 **§ 30111. Standards**

32 (a) *GENERAL REQUIREMENTS.*—The Secretary of Transportation shall pre-
 33 scribe motor vehicle safety standards. Each standard shall be practicable, meet
 34 the need for motor vehicle safety, and be stated in objective terms.

35 (b) *CONSIDERATIONS AND CONSULTATION.*—When prescribing a motor ve-
 36 hicle safety standard under this chapter, the Secretary shall—

37 (1) consider relevant available motor vehicle safety information;

38 (2) consult with the agency established under the Act of August 20,
 39 1958 (Public Law 85–684, 72 Stat. 635), and other appropriate State
 40 or interstate authorities (including legislative committees);

1 (3) consider whether a proposed standard is reasonable, practicable,
2 and appropriate for the particular type of motor vehicle or motor vehicle
3 equipment for which it is prescribed; and

4 (4) consider the extent to which the standard will carry out section
5 30101 of this title.

6 (c) *COOPERATION.*—The Secretary may advise, assist, and cooperate with
7 departments, agencies, and instrumentalities of the United States Govern-
8 ment, States, and other public and private agencies in developing motor vehi-
9 cle safety standards.

10 (d) *EFFECTIVE DATES OF STANDARDS.*—The Secretary shall specify the ef-
11 fective date of a motor vehicle safety standard prescribed under this chapter
12 in the order prescribing the standard. A standard may not become effective
13 before the 180th day after the standard is prescribed or later than one year
14 after it is prescribed. However, the Secretary may prescribe a different effec-
15 tive date after finding, for good cause shown, that a different effective date
16 is in the public interest and publishing the reasons for the finding.

17 (e) *5-YEAR PLAN FOR TESTING STANDARDS.*—The Secretary shall establish
18 and periodically review and update on a continuing basis a 5-year plan for
19 testing motor vehicle safety standards prescribed under this chapter that the
20 Secretary considers capable of being tested. In developing the plan and estab-
21 lishing testing priorities, the Secretary shall consider factors the Secretary
22 considers appropriate, consistent with section 30101 of this title and the Sec-
23 retary's other duties and powers under this chapter. The Secretary may
24 change at any time those priorities to address matters the Secretary considers
25 of greater priority. The initial plan may be the 5-year plan for compliance
26 testing in effect on December 18, 1991.

27 **§30112. Prohibitions on manufacturing, selling, and import-**
28 **ing noncomplying motor vehicles and equipment**

29 (a) *GENERAL.*—Except as provided in this section, sections 30113 and
30 30114 of this title, and subchapter III of this chapter, a person may not man-
31 ufacture for sale, sell, offer for sale, introduce or deliver for introduction in
32 interstate commerce, or import into the United States, any motor vehicle or
33 motor vehicle equipment manufactured on or after the date an applicable
34 motor vehicle safety standard prescribed under this chapter takes effect unless
35 the vehicle or equipment complies with the standard and is covered by a cer-
36 tification issued under section 30115 of this title.

37 (b) *NONAPPLICATION.*—This section does not apply to—

38 (1) the sale, offer for sale, or introduction or delivery for introduction
39 in interstate commerce of a motor vehicle or motor vehicle equipment
40 after the first purchase of the vehicle or equipment in good faith other
41 than for resale;

- 1 (2) a person—
- 2 (A) establishing that the person had no reason to know, despite
- 3 exercising reasonable care, that a motor vehicle or motor vehicle
- 4 equipment does not comply with applicable motor vehicle safety
- 5 standards prescribed under this chapter; or
- 6 (B) holding, without knowing about the noncompliance and before
- 7 the vehicle or equipment is first purchased in good faith other than
- 8 for resale, a certificate issued by a manufacturer or importer stating
- 9 the vehicle or equipment complies with applicable standards pre-
- 10 scribed under this chapter;
- 11 (3) a motor vehicle or motor vehicle equipment intended only for ex-
- 12 port, labeled for export on the vehicle or equipment and on the outside
- 13 of any container of the vehicle or equipment, and exported;
- 14 (4) a motor vehicle the Secretary of Transportation decides under sec-
- 15 tion 30141 of this title is capable of complying with applicable standards
- 16 prescribed under this chapter;
- 17 (5) a motor vehicle imported for personal use by an individual who
- 18 receives an exemption under section 30142 of this title;
- 19 (6) a motor vehicle under section 30143 of this title imported by an
- 20 individual employed outside the United States;
- 21 (7) a motor vehicle under section 30144 of this title imported on a
- 22 temporary basis;
- 23 (8) a motor vehicle or item of motor vehicle equipment under section
- 24 30145 of this title requiring further manufacturing; or
- 25 (9) a motor vehicle that is at least 25 years old.

26 **§ 30113. General exemptions**

27 (a) *DEFINITION.*—In this section, “low-emission motor vehicle” means a

28 motor vehicle meeting the standards for new motor vehicles applicable to the

29 vehicle under section 202 of the Clean Air Act (42 U.S.C. 7521) when the ve-

30 hicle is manufactured and emitting an air pollutant in an amount signifi-

31 cantly below one of those standards.

32 (b) *AUTHORITY TO EXEMPT AND PROCEDURES.*—(1) The Secretary of

33 Transportation may exempt, on a temporary basis, motor vehicles from a

34 motor vehicle safety standard prescribed under this chapter on terms the Sec-

35 retary considers appropriate. An exemption may be renewed. A renewal may

36 be granted only on reapplication and must conform to the requirements of

37 this subsection.

38 (2) The Secretary may begin a proceeding under this subsection when a

39 manufacturer applies for an exemption or a renewal of an exemption. The

40 Secretary shall publish notice of the application and provide an opportunity

41 to comment. An application for an exemption or for a renewal of an exemp-

1 tion shall be filed at a time and in the way, and contain information, this
2 section and the Secretary require.

3 (3) The Secretary may act under this subsection on finding that—

4 (A) an exemption is consistent with the public interest and this chap-
5 ter; and

6 (B)(i) compliance with the standard would cause substantial economic
7 hardship to a manufacturer that has tried to comply with the standard
8 in good faith;

9 (ii) the exemption would make easier the development or field evalua-
10 tion of a new motor vehicle safety feature providing a safety level at least
11 equal to the safety level of the standard;

12 (iii) the exemption would make the development or field evaluation of
13 a low-emission motor vehicle easier and would not unreasonably lower
14 the safety level of that vehicle; or

15 (iv) compliance with the standard would prevent the manufacturer
16 from selling a motor vehicle with an overall safety level at least equal
17 to the overall safety level of nonexempt vehicles.

18 (c) *CONTENTS OF APPLICATIONS.*—A manufacturer applying for an exemp-
19 tion under subsection (b) of this section shall include the following informa-
20 tion in the application:

21 (1) if the application is made under subsection (b)(3)(B)(i) of this sec-
22 tion, a complete financial statement describing the economic hardship
23 and a complete description of the manufacturer's good faith effort to
24 comply with each motor vehicle safety standard prescribed under this
25 chapter from which the manufacturer is requesting an exemption.

26 (2) if the application is made under subsection (b)(3)(B)(ii) of this
27 section, a record of the research, development, and testing establishing the
28 innovative nature of the safety feature and a detailed analysis establish-
29 ing that the safety level of the feature at least equals the safety level of
30 the standard.

31 (3) if the application is made under subsection (b)(3)(B)(iii) of this
32 section, a record of the research, development, and testing establishing
33 that the motor vehicle is a low-emission motor vehicle and that the safety
34 level of the vehicle is not lowered unreasonably by exemption from the
35 standard.

36 (4) if the application is made under subsection (b)(3)(B)(iv) of this
37 section, a detailed analysis showing how the vehicle provides an overall
38 safety level at least equal to the overall safety level of nonexempt vehicles.

39 (d) *ELIGIBILITY.*—A manufacturer is eligible for an exemption under sub-
40 section (b)(3)(B)(i) of this section only if the Secretary determines that the
41 manufacturer's total motor vehicle production in the most recent year of pro-

1 duction is not more than 10,000. A manufacturer is eligible for an exemption
 2 under subsection (b)(3)(B)(ii), (iii), or (iv) of this section only if the Sec-
 3 retary determines the exemption is for not more than 2,500 vehicles to be sold
 4 in the United States in any 12-month period.

5 (e) *MAXIMUM PERIOD.*—An exemption or renewal under subsection
 6 (b)(3)(B)(i) of this section may be granted for not more than 3 years. An ex-
 7 emption or renewal under subsection (b)(3)(B)(ii), (iii), or (iv) of this section
 8 may be granted for not more than 2 years.

9 (f) *DISCLOSURE.*—The Secretary may make public, by the 10th day after
 10 an application is filed, information contained in the application or relevant
 11 to the application unless the information concerns or is related to a trade se-
 12 cret or other confidential information not relevant to the application.

13 (g) *NOTICE OF DECISION.*—The Secretary shall publish in the Federal Reg-
 14 ister a notice of each decision granting an exemption under this section and
 15 the reasons for granting it.

16 (h) *PERMANENT LABEL REQUIREMENT.*—The Secretary shall require a per-
 17 manent label to be fixed to a motor vehicle granted an exemption under this
 18 section. The label shall either name or describe each motor vehicle safety
 19 standard prescribed under this chapter from which the vehicle is exempt. The
 20 Secretary may require that written notice of an exemption be delivered by
 21 appropriate means to the dealer and the first purchaser of the vehicle other
 22 than for resale.

23 **§ 30114. Special exemptions**

24 The Secretary of Transportation may exempt a motor vehicle or item of
 25 motor vehicle equipment from section 30112(a) of this title on terms the Sec-
 26 retary decides are necessary for research, investigations, demonstrations,
 27 training, or competitive racing events.

28 **§ 30115. Certification of compliance**

29 A manufacturer or distributor of a motor vehicle or motor vehicle equip-
 30 ment shall certify to the distributor or dealer at delivery that the vehicle or
 31 equipment complies with applicable motor vehicle safety standards prescribed
 32 under this chapter. A person may not issue the certificate if, in exercising
 33 reasonable care, the person has reason to know the certificate is false or mis-
 34 leading in a material respect. Certification of a vehicle must be shown by a
 35 label or tag permanently fixed to the vehicle. Certification of equipment may
 36 be shown by a label or tag on the equipment or on the outside of the container
 37 in which the equipment is delivered.

38 **§ 30116. Defects and noncompliance found before sale to** 39 **purchaser**

40 (a) *ACTIONS REQUIRED OF MANUFACTURERS AND DISTRIBUTORS.*—If,
 41 after a manufacturer or distributor sells a motor vehicle or motor vehicle

1 equipment to a distributor or dealer and before the distributor or dealer sells
2 the vehicle or equipment, it is decided that the vehicle or equipment contains
3 a defect related to motor vehicle safety or does not comply with applicable
4 motor vehicle safety standards prescribed under this chapter—

5 (1) the manufacturer or distributor immediately shall repurchase the
6 vehicle or equipment at the price paid by the distributor or dealer, plus
7 transportation charges and reasonable reimbursement of at least one per-
8 cent a month of the price paid prorated from the date of notice of non-
9 compliance or defect to the date of repurchase; or

10 (2) if a vehicle, the manufacturer or distributor immediately shall give
11 to the distributor or dealer at the manufacturer's or distributor's own ex-
12 pense, the part or equipment needed to make the vehicle comply with the
13 standards or correct the defect.

14 (b) *DISTRIBUTOR OR DEALER INSTALLATION.*—The distributor or dealer
15 shall install the part or equipment referred to in subsection (a)(2) of this sec-
16 tion. If the distributor or dealer installs the part or equipment with reason-
17 able diligence after it is received, the manufacturer shall reimburse the dis-
18 tributor or dealer for the reasonable value of the installation and a reasonable
19 reimbursement of at least one percent a month of the manufacturer's or dis-
20 tributor's selling price prorated from the date of notice of noncompliance or
21 defect to the date the motor vehicle complies with applicable motor vehicle
22 safety standards prescribed under this chapter or the defect is corrected.

23 (c) *ESTABLISHING AMOUNT DUE AND CIVIL ACTIONS.*—The parties shall
24 establish the value of installation and the amount of reimbursement under
25 this section. If the parties do not agree, or if a manufacturer or distributor
26 refuses to comply with subsection (a) or (b) of this section, the distributor or
27 dealer purchasing the motor vehicle or motor vehicle equipment may bring
28 a civil action. The action may be brought in a United States district court
29 for the judicial district in which the manufacturer or distributor resides, is
30 found, or has an agent, to recover damages, court costs, and a reasonable at-
31 torney's fee. An action under this section must be brought not later than 3
32 years after the claim accrues.

33 **§30117. Providing information to, and maintaining records**
34 **on, purchasers**

35 (a) *PROVIDING INFORMATION AND NOTICE.*—The Secretary of Transpor-
36 tation may require that each manufacturer of a motor vehicle or motor vehicle
37 equipment provide technical information related to performance and safety
38 required to carry out this chapter. The Secretary may require the manufac-
39 turer to give the following notice of that information when the Secretary de-
40 cides it is necessary:

1 (1) to each prospective purchaser of a vehicle or equipment before the
2 first sale other than for resale at each location at which the vehicle or
3 equipment is offered for sale by a person having a legal relationship with
4 the manufacturer, in a way the Secretary decides is appropriate.

5 (2) to the first purchaser of a vehicle or equipment other than for re-
6 sale when the vehicle or equipment is bought, in printed matter placed
7 in the vehicle or attached to or accompanying the equipment.

8 (b) MAINTAINING PURCHASER RECORDS AND PROCEDURES.—(1) A manu-
9 facturer of a motor vehicle or tire (except a retreaded tire) shall cause to be
10 maintained a record of the name and address of the first purchaser of each
11 vehicle or tire it produces and, to the extent prescribed by regulations of the
12 Secretary, shall cause to be maintained a record of the name and address of
13 the first purchaser of replacement equipment (except a tire) that the manufac-
14 turer produces. The Secretary may prescribe by regulation the records to be
15 maintained and reasonable procedures for maintaining the records under this
16 subsection, including procedures to be followed by distributors and dealers to
17 assist the manufacturer in obtaining the information required by this sub-
18 section. A procedure shall be reasonable for the type of vehicle or tire involved,
19 and shall provide reasonable assurance that a customer list of a distributor
20 or dealer, or similar information, will be made available to a person (except
21 the distributor or dealer) only when necessary to carry out this subsection and
22 sections 30118–30121, 30166(f), and 30167(a) and (b) of this title. Availabil-
23 ity of assistance from a distributor or dealer does not affect an obligation of
24 a manufacturer under this subsection.

25 (2)(A) Except as provided in paragraph (3) of this subsection, the Sec-
26 retary may require a distributor or dealer to maintain a record under para-
27 graph (1) of this subsection only if the business of the distributor or dealer
28 is owned or controlled by a manufacturer of tires.

29 (B) The Secretary shall require each distributor and dealer whose business
30 is not owned or controlled by a manufacturer of tires to give a registration
31 form (containing the tire identification number) to the first purchaser of a
32 tire. The Secretary shall prescribe the form, which shall be standardized for
33 all tires and designed to allow the purchaser to complete and return it di-
34 rectly to the manufacturer of the tire. The manufacturer shall give sufficient
35 copies of forms to distributors and dealers.

36 (3)(A) The Secretary shall evaluate from time to time how successful the
37 procedures under paragraph (2) of this subsection have been in helping to
38 maintain records about first purchasers of tires. After each evaluation, the
39 Secretary shall decide—

40 (i) the extent to which distributors and dealers have complied with the
41 procedures;

1 (ii) the extent to which distributors and dealers have encouraged first
2 purchasers of tires to register the tires; and

3 (iii) whether to prescribe for manufacturers, distributors, or dealers
4 other requirements that the Secretary decides will increase significantly
5 the percentage of first purchasers of tires about whom records are main-
6 tained.

7 (B) The Secretary may prescribe a requirement under subparagraph (A)
8 of this paragraph only if the Secretary decides it is necessary to reduce the
9 risk to motor vehicle safety, after considering—

10 (i) the cost of the requirement to manufacturers and the burden of the
11 requirement on distributors and dealers, compared to the increase in the
12 percentage of first purchasers of tires about whom records would be
13 maintained as a result of the requirement;

14 (ii) the extent to which distributors and dealers have complied with
15 the procedures in paragraph (2) of this subsection; and

16 (iii) the extent to which distributors and dealers have encouraged first
17 purchasers of tires to register the tires.

18 (C) A manufacturer of tires shall reimburse distributors and dealers of that
19 manufacturer's tires for all reasonable costs incurred by the distributors and
20 dealers in complying with a requirement prescribed by the Secretary under
21 subparagraph (A) of this paragraph.

22 (D) After making a decision under subparagraph (A) of this paragraph,
23 the Secretary shall submit to each House of Congress a report containing a
24 detailed statement of the decision and an explanation of the reasons for the
25 decision.

26 **§ 30118. Notification of defects and noncompliance**

27 (a) NOTIFICATION BY SECRETARY.—The Secretary of Transportation shall
28 notify the manufacturer of a motor vehicle or replacement equipment imme-
29 diately after making an initial decision (through testing, inspection, inves-
30 tigation, or research carried out under this chapter, examining communica-
31 tions under section 30166(f) of this title, or otherwise) that the vehicle or
32 equipment contains a defect related to motor vehicle safety or does not comply
33 with an applicable motor vehicle safety standard prescribed under this chap-
34 ter. The notification shall include the information on which the decision is
35 based. The Secretary shall publish a notice of each decision under this sub-
36 section in the Federal Register. Subject to section 30167(a) of this title, the
37 notification and information are available to any interested person.

38 (b) DEFECT AND NONCOMPLIANCE PROCEEDINGS AND ORDERS.—(1) The
39 Secretary may make a final decision that a motor vehicle or replacement
40 equipment contains a defect related to motor vehicle safety or does not comply
41 with an applicable motor vehicle safety standard prescribed under this chap-

1 *ter only after giving the manufacturer an opportunity to present information,*
 2 *views, and arguments showing that there is no defect or noncompliance or*
 3 *that the defect does not affect motor vehicle safety. Any interested person also*
 4 *shall be given an opportunity to present information, views, and arguments.*

5 *(2) If the Secretary decides under paragraph (1) of this subsection that the*
 6 *vehicle or equipment contains the defect or does not comply, the Secretary*
 7 *shall order the manufacturer to—*

8 *(A) give notification under section 30119 of this title to the owners,*
 9 *purchasers, and dealers of the vehicle or equipment of the defect or non-*
 10 *compliance; and*

11 *(B) remedy the defect or noncompliance under section 30120 of this*
 12 *title.*

13 *(c) NOTIFICATION BY MANUFACTURER.—A manufacturer of a motor vehicle*
 14 *or replacement equipment shall notify the Secretary by certified mail, and the*
 15 *owners, purchasers, and dealers of the vehicle or equipment as provided in*
 16 *section 30119(d) of this section, if the manufacturer—*

17 *(1) learns the vehicle or equipment contains a defect and decides in*
 18 *good faith that the defect is related to motor vehicle safety; or*

19 *(2) decides in good faith that the vehicle or equipment does not comply*
 20 *with an applicable motor vehicle safety standard prescribed under this*
 21 *chapter.*

22 *(d) EXEMPTIONS.—On application of a manufacturer, the Secretary shall*
 23 *exempt the manufacturer from this section if the Secretary decides a defect*
 24 *or noncompliance is inconsequential to motor vehicle safety. The Secretary*
 25 *may take action under this subsection only after notice in the Federal Reg-*
 26 *ister and an opportunity for any interested person to present information,*
 27 *views, and arguments.*

28 *(e) HEARINGS ABOUT MEETING NOTIFICATION REQUIREMENTS.—On the*
 29 *motion of the Secretary or on petition of any interested person, the Secretary*
 30 *may conduct a hearing to decide whether the manufacturer has reasonably*
 31 *met the notification requirements under this section. Any interested person*
 32 *may make written and oral presentations of information, views, and argu-*
 33 *ments on whether the manufacturer has reasonably met the notification re-*
 34 *quirements. If the Secretary decides that the manufacturer has not reasonably*
 35 *met the notification requirements, the Secretary shall order the manufacturer*
 36 *to take specified action to meet those requirements and may take any other*
 37 *action authorized under this chapter.*

38 **§ 30119. Notification procedures**

39 *(a) CONTENTS OF NOTIFICATION.—Notification by a manufacturer required*
 40 *under section 30118 of this title of a defect or noncompliance shall contain—*

41 *(1) a clear description of the defect or noncompliance;*

1 (2) an evaluation of the risk to motor vehicle safety reasonably related
2 to the defect or noncompliance;

3 (3) the measures to be taken to obtain a remedy of the defect or non-
4 compliance;

5 (4) a statement that the manufacturer giving notice will remedy the
6 defect or noncompliance without charge under section 30120 of this title;

7 (5) the earliest date on which the defect or noncompliance will be reme-
8 died without charge, and for tires, the period during which the defect
9 or noncompliance will be remedied without charge under section 30120
10 of this title;

11 (6) the procedure the recipient of a notice is to follow to inform the
12 Secretary of Transportation when a manufacturer, distributor, or dealer
13 does not remedy the defect or noncompliance without charge under sec-
14 tion 30120 of this title; and

15 (7) other information the Secretary prescribes by regulation.

16 (b) *EARLIEST REMEDY DATE.*—The date specified by a manufacturer in
17 a notification under subsection (a)(5) of this section or section 30121(c)(2)
18 of this title is the earliest date that parts and facilities reasonably can be ex-
19 pected to be available to remedy the defect or noncompliance. The Secretary
20 may disapprove the date.

21 (c) *TIME FOR NOTIFICATION.*—Notification required under section 30118 of
22 this title shall be given within a reasonable time—

23 (1) prescribed by the Secretary, after the manufacturer receives notice
24 of a final decision under section 30118(b) of this title; or

25 (2) after the manufacturer first decides that a safety-related defect or
26 noncompliance exists under section 30118(c) of this title.

27 (d) *MEANS OF PROVIDING NOTIFICATION.*—(1) Notification required under
28 section 30118 of this title about a motor vehicle shall be sent by first class
29 mail—

30 (A) to each person registered under State law as the owner and whose
31 name and address are reasonably ascertainable by the manufacturer
32 through State records or other available sources; or

33 (B) if a registered owner is not notified under clause (A) of this para-
34 graph, to the most recent purchaser known to the manufacturer.

35 (2) Notification required under section 30118 of this title about replace-
36 ment equipment (except a tire) shall be sent by first class mail to the most
37 recent purchaser known to the manufacturer. In addition, if the Secretary de-
38 cides that public notice is required for motor vehicle safety, public notice shall
39 be given in the way required by the Secretary after consulting with the manu-
40 facturer.

1 (3) Notification required under section 30118 of this title about a tire shall
 2 be sent by first class mail (or, if the manufacturer prefers, by certified mail)
 3 to the most recent purchaser known to the manufacturer. In addition, if the
 4 Secretary decides that public notice is required for motor vehicle safety, public
 5 notice shall be given in the way required by the Secretary after consulting
 6 with the manufacturer. In deciding whether public notice is required, the Sec-
 7 retary shall consider—

8 (A) the magnitude of the risk to motor vehicle safety caused by the
 9 defect or noncompliance; and

10 (B) the cost of public notice compared to the additional number of
 11 owners the notice may reach.

12 (4) A dealer to whom a motor vehicle or replacement equipment was deliv-
 13 ered shall be notified by certified mail or quicker means if available.

14 (e) *SECOND NOTIFICATION.*—If the Secretary decides that a notification
 15 sent by a manufacturer under this section has not resulted in an adequate
 16 number of motor vehicles or items of replacement equipment being returned
 17 for remedy, the Secretary may order the manufacturer to send a 2d notifica-
 18 tion in the way the Secretary prescribes by regulation.

19 (f) *NOTIFICATION BY LESSOR TO LESSEE.*—(1) In this subsection, “leased
 20 motor vehicle” means a motor vehicle that is leased to a person for at least
 21 4 months by a lessor that has leased at least 5 motor vehicles in the 12
 22 months before the date of the notification.

23 (2) A lessor that receives a notification required by section 30118 of this
 24 title about a leased motor vehicle shall provide a copy of the notification to
 25 the lessee in the way the Secretary prescribes by regulation.

26 **§ 30120. Remedies for defects and noncompliance**

27 (a) *WAYS TO REMEDY.*—(1) Subject to subsections (f) and (g) of this sec-
 28 tion, when notification of a defect or noncompliance is required under section
 29 30118(b) or (c) of this title, the manufacturer of the defective or noncomplying
 30 motor vehicle or replacement equipment shall remedy the defect or noncompli-
 31 ance without charge when the vehicle or equipment is presented for remedy.
 32 Subject to subsections (b) and (c) of this section, the manufacturer shall rem-
 33 edy the defect or noncompliance in any of the following ways the manufac-
 34 turer chooses:

35 (A) if a vehicle—

36 (i) by repairing the vehicle;

37 (ii) by replacing the vehicle with an identical or reasonably
 38 equivalent vehicle; or

39 (iii) by refunding the purchase price, less a reasonable allowance
 40 for depreciation.

1 (B) if replacement equipment, by repairing the equipment or replac-
2 ing the equipment with identical or reasonably equivalent equipment.

3 (2) The Secretary of Transportation may prescribe regulations to allow the
4 manufacturer to impose conditions on the replacement of a motor vehicle or
5 refund of its price.

6 (b) *TIRE REMEDIES.*—(1) A manufacturer of a tire, including an original
7 equipment tire, shall remedy a defective or noncomplying tire if the owner
8 or purchaser presents the tire for remedy not later than 60 days after the later
9 of—

10 (A) the day the owner or purchaser receives notification under section
11 30119 of this title; or

12 (B) if the manufacturer decides to replace the tire, the day the owner
13 or purchaser receives notification that a replacement is available.

14 (2) If the manufacturer decides to replace the tire and the replacement is
15 not available during the 60-day period, the owner or purchaser must present
16 the tire for remedy during a subsequent 60-day period that begins only after
17 the owner or purchaser receives notification that a replacement will be avail-
18 able during the subsequent period. If tires are available during the subsequent
19 period, only a tire presented for remedy during that period must be remedied.

20 (c) *ADEQUACY OF REPAIRS.*—(1) If a manufacturer decides to repair a de-
21 fective or noncomplying motor vehicle or replacement equipment and the re-
22 pair is not done adequately within a reasonable time, the manufacturer
23 shall—

24 (A) replace the vehicle or equipment without charge with an identical
25 or reasonably equivalent vehicle or equipment; or

26 (B) for a vehicle, refund the purchase price, less a reasonable allow-
27 ance for depreciation.

28 (2) Failure to repair a motor vehicle or replacement equipment adequately
29 not later than 60 days after its presentation is *prima facie* evidence of failure
30 to repair within a reasonable time. However, the Secretary may extend, by
31 order, the 60-day period if good cause for an extension is shown and the rea-
32 son is published in the *Federal Register* before the period ends. Presentation
33 of a vehicle or equipment for repair before the date specified by a manufac-
34 turer in a notice under section 30119(a)(5) or 30121(c)(2) of this title is not
35 a presentation under this subsection.

36 (d) *FILING MANUFACTURER'S REMEDY PROGRAM.*—A manufacturer shall
37 file with the Secretary a copy of the manufacturer's program under this sec-
38 tion for remedying a defect or noncompliance. The Secretary shall make the
39 program available to the public and publish a notice of availability in the
40 *Federal Register*.

1 (e) *HEARINGS ABOUT MEETING REMEDY REQUIREMENTS.*—On the motion
2 of the Secretary or on application by any interested person, the Secretary
3 may conduct a hearing to decide whether the manufacturer has reasonably
4 met the remedy requirements under this section. Any interested person may
5 make written and oral presentations of information, views, and arguments on
6 whether the manufacturer has reasonably met the remedy requirements. If the
7 Secretary decides a manufacturer has not reasonably met the remedy require-
8 ments, the Secretary shall order the manufacturer to take specified action to
9 meet those requirements and may take any other action authorized under this
10 chapter.

11 (f) *FAIR REIMBURSEMENT TO DEALERS.*—A manufacturer shall pay fair
12 reimbursement to a dealer providing a remedy without charge under this sec-
13 tion.

14 (g) *NONAPPLICATION.*—(1) The requirement that a remedy be provided
15 without charge does not apply if the motor vehicle or replacement equipment
16 was bought by the first purchaser more than 8 calendar years, or the tire,
17 including an original equipment tire, was bought by the first purchaser more
18 than 3 calendar years, before notice is given under section 30118(c) of this
19 title or an order is issued under section 30118(b) of this title, whichever is
20 earlier.

21 (2) This section does not apply during any period in which enforcement
22 of an order under section 30118(b) of this title is restrained or the order is
23 set aside in a civil action to which section 30121(d) of this title applies.

24 (h) *EXEMPTIONS.*—On application of a manufacturer, the Secretary shall
25 exempt the manufacturer from this section if the Secretary decides a defect
26 or noncompliance is inconsequential to motor vehicle safety. The Secretary
27 may take action under this subsection only after notice in the Federal Reg-
28 ister and an opportunity for any interested person to present information,
29 views, and arguments.

30 (i) *LIMITATION ON SALE OR LEASE.*—(1) If notification is required by an
31 order under section 30118(b) of this title or is required under section 30118(c)
32 of this title and the manufacturer has provided to a dealer notification about
33 a new motor vehicle or new item of replacement equipment in the dealer's
34 possession at the time of notification that contains a defect related to motor
35 vehicle safety or does not comply with an applicable motor vehicle safety
36 standard prescribed under this chapter, the dealer may sell or lease the motor
37 vehicle or item of replacement equipment only if—

38 (A) the defect or noncompliance is remedied as required by this section
39 before delivery under the sale or lease; or

40 (B) when the notification is required by an order under section
41 30118(b) of this title, enforcement of the order is restrained or the order

1 is set aside in a civil action to which section 30121(d) of this title ap-
2 plies.

3 (2) This subsection does not prohibit a dealer from offering for sale or lease
4 the vehicle or equipment.

5 **§ 30121. Provisional notification and civil actions to enforce**

6 (a) *PROVISIONAL NOTIFICATION.*—(1) The Secretary of Transportation
7 may order a manufacturer to issue a provisional notification if a civil action
8 about an order issued under section 30118(b) of this title has been brought
9 under section 30163 of this title. The provisional notification shall contain—

10 (A) a statement that the Secretary has decided that a defect related
11 to motor vehicle safety or noncompliance with a motor vehicle safety
12 standard prescribed under this chapter exists and that the manufacturer
13 is contesting the decision in a civil action in a United States district
14 court;

15 (B) a clear description of the Secretary's stated basis for the decision;

16 (C) the Secretary's evaluation of the risk to motor vehicle safety rea-
17 sonably related to the defect or noncompliance;

18 (D) measures the Secretary considers necessary to avoid an unreason-
19 able risk to motor vehicle safety resulting from the defect or noncompli-
20 ance;

21 (E) a statement that the manufacturer will remedy the defect or non-
22 compliance without charge under section 30120 of this title, but that the
23 requirement to remedy without charge is conditioned on the outcome of
24 the civil action; and

25 (F) other information the Secretary prescribes by regulation or in-
26 cludes in the order requiring the notice.

27 (2) A notification under this subsection does not relieve a manufacturer of
28 liability for not giving notification required by an order under section
29 30118(b) of this title.

30 (b) *CIVIL ACTIONS FOR NOT NOTIFYING.*—(1) A manufacturer that does
31 not notify owners and purchasers under section 30119(c) and (d) of this title
32 is liable to the United States Government for a civil penalty, unless the man-
33 ufacturer prevails in a civil action referred to in subsection (a) of this section
34 or the court in that action enjoins enforcement of the order. Enforcement may
35 be enjoined only if the court decides that the failure to notify is reasonable
36 and that the manufacturer has demonstrated the likelihood of prevailing on
37 the merits. If enforcement is enjoined, the manufacturer is not liable during
38 the time the order is stayed.

39 (2) A manufacturer that does not notify owners and purchasers as required
40 under subsection (a) of this section is liable for a civil penalty regardless of

1 *whether the manufacturer prevails in an action on the validity of the order*
2 *issued under section 30118(b) of this title.*

3 (c) *ORDERS TO MANUFACTURERS.—If the Secretary prevails in a civil ac-*
4 *tion referred to in subsection (a) of this section, the Secretary shall order the*
5 *manufacturer—*

6 (1) *to notify each owner, purchaser, and dealer described in section*
7 *30119(d) of this title of the outcome of the action and other information*
8 *the Secretary requires, and notification under this clause may be com-*
9 *combined with notification required under section 30118(b) of this title;*

10 (2) *to specify the earliest date under section 30119(b) of this title on*
11 *which the defect or noncompliance will be remedied without charge under*
12 *section 30120 of this title; and*

13 (3) *if notification was required under subsection (a) of this section,*
14 *to reimburse an owner or purchaser for reasonable and necessary ex-*
15 *penditures (in an amount that is not more than the amount specified in the*
16 *order of the Secretary under subsection (a)) incurred for repairing the*
17 *defect or noncompliance during the period beginning on the date that no-*
18 *tification was required to be issued and ending on the date the owner*
19 *or purchaser receives the notification under this subsection.*

20 (d) *VENUE.—Notwithstanding section 30163(c) of this title, a civil action*
21 *about an order issued under section 30118(b) of this title must be brought in*
22 *the United States district court for a judicial district in the State in which*
23 *the manufacturer is incorporated or the District of Columbia. On motion of*
24 *a party, the court may transfer the action to another district court if good*
25 *cause is shown. All actions related to the same order under section 30118(b)*
26 *shall be consolidated in an action in one judicial district under an order of*
27 *the court in which the first action was brought. If the first action is trans-*
28 *ferred to another court, that court shall issue the consolidation order.*

29 **§ 30122. Making safety devices and elements inoperative**

30 (a) *DEFINITION.—In this section, “motor vehicle repair business” means a*
31 *person holding itself out to the public to repair for compensation a motor ve-*
32 *hicle or motor vehicle equipment.*

33 (b) *PROHIBITION.—A manufacturer, distributor, dealer, or motor vehicle*
34 *repair business may not knowingly make inoperative any part of a device*
35 *or element of design installed on or in a motor vehicle or motor vehicle equip-*
36 *ment in compliance with an applicable motor vehicle safety standard pre-*
37 *scribed under this chapter unless the manufacturer, distributor, dealer, or re-*
38 *pair business reasonably believes the vehicle or equipment will not be used (ex-*
39 *cept for testing or a similar purpose during maintenance or repair) when the*
40 *device or element is inoperative.*

1 (c) *REGULATIONS.*—The Secretary of Transportation may prescribe regula-
2 tions—

3 (1) to exempt a person from this section if the Secretary decides the
4 exemption is consistent with motor vehicle safety and section 30101 of
5 this title; and

6 (2) to define “make inoperative”.

7 (d) *NONAPPLICATION.*—This section does not apply to a safety belt interlock
8 or buzzer designed to indicate a safety belt is not in use as described in sec-
9 tion 30124 of this title.

10 **§30123. Tires**

11 (a) *LABELING REQUIREMENT.*—The Secretary of Transportation shall re-
12 quire that a pneumatic tire subject to a motor vehicle safety standard pre-
13 scribed under this chapter be labeled permanently and conspicuously with
14 safety information the Secretary decides is necessary to carry out section
15 30101 of this title.

16 (b) *CONTENTS OF LABEL.*—Labeling required on a tire under subsection
17 (a) of this section shall include—

18 (1)(A) identification of the manufacturer;

19 (B) for a retreaded tire, identification of the retreader; or

20 (C) for a tire containing a brand name (other than the name of the
21 manufacturer), a code mark allowing a seller to identify the manufac-
22 turer to the purchaser;

23 (2) the composition of material used in the ply of the tire;

24 (3) the number of plies in the tire;

25 (4) the maximum allowable load for the tire; and

26 (5)(A) a statement that the tire complies with minimum safe perform-
27 ance standards prescribed under this chapter; or

28 (B) a mark or symbol the Secretary prescribes for use by a manufac-
29 turer or retreader complying with those standards.

30 (c) *ADDITIONAL INFORMATION.*—The Secretary may require that additional
31 safety information be disclosed to a purchaser when a tire is sold.

32 (d) *REGROOVED TIRE LIMITATIONS.*—(1) In this subsection, “regrooved
33 tire” means a tire with a new tread produced by cutting into the tread of
34 a worn tire.

35 (2) The Secretary may authorize the sale, offer for sale, introduction for
36 sale, or delivery for introduction in interstate commerce, of a regrooved tire
37 or a motor vehicle equipped with regrooved tires if the Secretary decides the
38 tires are designed and made in a way consistent with section 30101 of this
39 title. A person may not sell, offer for sale, introduce for sale, or deliver for
40 introduction in interstate commerce, a regrooved tire or a vehicle equipped
41 with regrooved tires unless authorized by the Secretary.

1 (e) *UNIFORM QUALITY GRADING SYSTEM, NOMENCLATURE, AND MARKET-*
 2 *ING PRACTICES.*—The Secretary shall prescribe through standards a uniform
 3 quality grading system for motor vehicle tires to help consumers make an in-
 4 formed choice when purchasing tires. The Secretary also shall cooperate with
 5 industry and the Federal Trade Commission to the greatest extent practicable
 6 to eliminate deceptive and confusing tire nomenclature and marketing prac-
 7 tices. A tire standard or regulation prescribed under this chapter supersedes
 8 an order or administrative interpretation of the Commission.

9 (f) *MAXIMUM LOAD STANDARDS.*—The Secretary shall require a motor ve-
 10 hicle to be equipped with tires that meet maximum load standards when the
 11 vehicle is loaded with a reasonable amount of luggage and the total number
 12 of passengers the vehicle is designed to carry. The vehicle shall be equipped
 13 with those tires by the manufacturer or by the first purchaser when the vehicle
 14 is first bought in good faith other than for resale.

15 **§ 30124. Buzzers indicating nonuse of safety belts**

16 A motor vehicle safety standard prescribed under this chapter may not re-
 17 quire or allow a manufacturer to comply with the standard by using a safety
 18 belt interlock designed to prevent starting or operating a motor vehicle if an
 19 occupant is not using a safety belt or a buzzer designed to indicate a safety
 20 belt is not in use, except a buzzer that operates only during the 8-second pe-
 21 riod after the ignition is turned to the “start” or “on” position.

22 **§ 30125. Schoolbuses and schoolbus equipment**

23 (a) *DEFINITIONS.*—In this section—

24 (1) “schoolbus” means a passenger motor vehicle designed to carry a
 25 driver and more than 10 passengers, that the Secretary of Transporta-
 26 tion decides is likely to be used significantly to transport preprimary,
 27 primary, and secondary school students to or from school or an event re-
 28 lated to school.

29 (2) “schoolbus equipment” means equipment designed primarily for a
 30 schoolbus or manufactured or sold to replace or improve a system, part,
 31 or component of a schoolbus or as an accessory or addition to a school-
 32 bus.

33 (b) *STANDARDS.*—The Secretary shall prescribe motor vehicle safety stand-
 34 ards for schoolbuses and schoolbus equipment manufactured in, or imported
 35 into, the United States. Standards shall include minimum performance re-
 36 quirements for—

37 (1) emergency exits;

38 (2) interior protection for occupants;

39 (3) floor strength;

40 (4) seating systems;

1 (5) crashworthiness of body and frame (including protection against
2 rollover hazards);

3 (6) vehicle operating systems;

4 (7) windows and windshields; and

5 (8) fuel systems.

6 (c) *TEST DRIVING BY MANUFACTURERS.*—The Secretary may require by
7 regulation a schoolbus to be test-driven by a manufacturer before introduction
8 in commerce.

9 **§ 30126. Used motor vehicles**

10 To ensure a continuing and effective national safety program, it is the pol-
11 icy of the United States Government to encourage and strengthen State in-
12 spection of used motor vehicles. Therefore, the Secretary of Transportation
13 shall prescribe uniform motor vehicle safety standards applicable to all used
14 motor vehicles. The standards shall be stated in terms of motor vehicle safety
15 performance.

16 **§ 30127. Automatic occupant crash protection and seat belt
17 use**

18 (a) *DEFINITIONS.*—In this section—

19 (1) “bus” means a motor vehicle with motive power (except a trailer)
20 designed to carry more than 10 individuals.

21 (2) “multipurpose passenger vehicle” means a motor vehicle with mo-
22 tive power (except a trailer), designed to carry not more than 10 individ-
23 uals, that is constructed either on a truck chassis or with special features
24 for occasional off-road operation.

25 (3) “passenger car” means a motor vehicle with motive power (except
26 a multipurpose passenger vehicle, motorcycle, or trailer) designed to
27 carry not more than 10 individuals.

28 (4) “truck” means a motor vehicle with motive power (except a trail-
29 er) designed primarily to transport property or special purpose equip-
30 ment.

31 (b) *INFLATABLE RESTRAINT REQUIREMENTS.*—(1) Not later than Septem-
32 ber 1, 1993, the Secretary of Transportation shall prescribe under this chapter
33 an amendment to Federal Motor Vehicle Safety Standard 208 issued under
34 the National Traffic and Motor Vehicle Safety Act of 1966. The amendment
35 shall require that the automatic occupant crash protection system for both of
36 the front outboard seating positions for each of the following vehicles be an
37 inflatable restraint (with lap and shoulder belts) complying with the occupant
38 protection requirements under section 4.1.2.1 of Standard 208:

39 (A) 95 percent of each manufacturer’s annual production of passenger
40 cars manufactured after August 31, 1996, and before September 1, 1997.

1 (B) 80 percent of each manufacturer's annual production of buses,
2 multipurpose passenger vehicles, and trucks (except walk-in van-type
3 trucks and vehicles designed to be sold only to the United States Postal
4 Service) with a gross vehicle weight rating of not more than 8,500
5 pounds and an unloaded vehicle weight of not more than 5,500 pounds
6 manufactured after August 31, 1997, and before September 1, 1998.

7 (C) 100 percent of each manufacturer's annual production of pas-
8 senger cars manufactured after August 31, 1997.

9 (D) 100 percent of each manufacturer's annual production of vehicles
10 described in clause (B) of this paragraph manufactured after August 31,
11 1998.

12 (2) Manufacturers may not use credits and incentives available before Sep-
13 tember 1, 1998, under the provisions of Standard 208 (as amended by this
14 section) to comply with the requirements of paragraph (1)(D) of this sub-
15 section after August 31, 1998.

16 (c) OWNER MANUAL REQUIREMENTS.—In amending Standard 208, the
17 Secretary of Transportation shall require, to be effective as soon as possible
18 after the amendment is prescribed, that owner manuals for passenger cars,
19 buses, multipurpose passenger vehicles, and trucks equipped with an inflatable
20 restraint include a statement in an easily understandable format stating
21 that—

22 (1) either or both of the front outboard seating positions of the vehicle
23 are equipped with an inflatable restraint referred to as an “airbag” and
24 a lap and shoulder belt;

25 (2) the “airbag” is a supplemental restraint and is not a substitute
26 for lap and shoulder belts;

27 (3) lap and shoulder belts also must be used correctly by an occupant
28 in a front outboard seating position to provide restraint or protection
29 from frontal crashes as well as other types of crashes or accidents; and

30 (4) occupants should always wear their lap and shoulder belts, if
31 available, or other safety belts, whether or not there is an inflatable re-
32 straint.

33 (d) SEAT BELT USE LAWS.—Congress finds that it is in the public interest
34 for each State to adopt and enforce mandatory seat belt use laws and for the
35 United States Government to adopt and enforce mandatory seat belt use regu-
36 lations.

37 (e) TEMPORARY EXEMPTIONS.—(1) On application of a manufacturer, the
38 Secretary of Transportation may exempt, on a temporary basis, motor vehi-
39 cles of that manufacturer from any requirement under subsections (b) and (c)
40 of this section on terms the Secretary considers appropriate. An exemption
41 may be renewed.

1 (2) *The Secretary of Transportation may grant an exemption under para-*
2 *graph (1) of this subsection if the Secretary finds that there has been a dis-*
3 *ruption in the supply of any component of an inflatable restraint or in the*
4 *use and installation of that component by the manufacturer because of an un-*
5 *avoidable event not under the control of the manufacturer that will prevent*
6 *the manufacturer from meeting its anticipated production volume of vehicles*
7 *with those restraints.*

8 (3) *Only an affected manufacturer may apply for an exemption. The Sec-*
9 *retary of Transportation shall prescribe in the amendment to Standard 208*
10 *required under this section the information an affected manufacturer must in-*
11 *clude in its application under this subsection. The manufacturer shall specify*
12 *in the application the models, lines, and types of vehicles affected. The Sec-*
13 *retary may consolidate similar applications from different manufacturers.*

14 (4) *An exemption or renewal of an exemption is conditioned on the com-*
15 *mitment of the manufacturer to recall the exempted vehicles for installation*
16 *of the omitted inflatable restraints within a reasonable time that the manu-*
17 *facturer proposes and the Secretary of Transportation approves after the com-*
18 *ponents become available in sufficient quantities to satisfy both anticipated*
19 *production and recall volume requirements.*

20 (5) *The Secretary of Transportation shall publish in the Federal Register*
21 *a notice of each application under this subsection and each decision to grant*
22 *or deny a temporary exemption and the reasons for the decision.*

23 (6) *The Secretary of Transportation shall require a label for each exempted*
24 *vehicle that can be removed only after recall and installation of the required*
25 *inflatable restraint. The Secretary shall require that written notice of the ex-*
26 *emption be provided to the dealer and the first purchaser of each exempted*
27 *vehicle other than for resale, with the notice being provided in a way, and*
28 *containing the information, the Secretary considers appropriate.*

29 (f) *APPLICATION.—(1) This section revises, but does not replace, Standard*
30 *208 as in effect on December 18, 1991, including the amendment of March*
31 *26, 1991 (56 Fed. Reg. 12472), to Standard 208, extending the requirements*
32 *for automatic crash protection, with incentives for more innovative automatic*
33 *crash protection, to trucks, buses, and multipurpose passenger vehicles. This*
34 *section may not be construed as—*

35 (A) *affecting another provision of law carried out by the Secretary of*
36 *Transportation applicable to passenger cars, buses, multipurpose pas-*
37 *senger vehicles, or trucks; or*

38 (B) *establishing a precedent related to developing or prescribing a*
39 *Government motor vehicle safety standard.*

40 (2) *This section and amendments to Standard 208 made under this section*
41 *may not be construed as indicating an intention by Congress to affect any*

1 *liability of a motor vehicle manufacturer under applicable law related to vehi-*
 2 *cles with or without inflatable restraints.*

3 *(g) REPORT.—(1) On October 1, 1992, and every 6 months after that date*
 4 *through October 1, 2000, the Secretary of Transportation shall submit reports*
 5 *on the effectiveness of occupant restraint systems expressed as a percentage*
 6 *reduction in fatalities or injuries of restrained occupants compared to unre-*
 7 *strained occupants for—*

8 *(A) a combination of inflated restraints and lap and shoulder belts;*

9 *(B) inflated restraints only; and*

10 *(C) lap and shoulder belts only.*

11 *(2) In consultation with the Secretaries of Labor and Defense, the Secretary*
 12 *of Transportation also shall provide information and analysis on lap and*
 13 *shoulder belt use, nationally and in each State by—*

14 *(A) military personnel;*

15 *(B) Government, State, and local law enforcement officers;*

16 *(C) other Government and State employees; and*

17 *(D) the public.*

18 *(h) AIRBAGS FOR GOVERNMENT CARS.—In cooperation with the Adminis-*
 19 *trator of General Services and the heads of appropriate departments, agencies,*
 20 *and instrumentalities of the Government, the Secretary of Transportation*
 21 *shall establish a program, consistent with applicable procurement laws of the*
 22 *Government and available appropriations, requiring that all passenger cars*
 23 *acquired—*

24 *(1) after September 30, 1994, for use by the Government be equipped,*
 25 *to the maximum extent practicable, with driver-side inflatable restraints;*
 26 *and*

27 *(2) after September 30, 1996, for use by the Government be equipped,*
 28 *to the maximum extent practicable, with inflatable restraints for both*
 29 *front outboard seating positions.*

30 *SUBCHAPTER III—IMPORTING NONCOMPLYING MOTOR VEHICLES*
 31 *AND EQUIPMENT*

32 ***§ 30141. Importing motor vehicles capable of complying with***
 33 ***standards***

34 *(a) GENERAL.—Section 30112(a) of this title does not apply to a motor*
 35 *vehicle if—*

36 *(1) on the initiative of the Secretary of Transportation or on petition*
 37 *of a manufacturer or importer registered under subsection (c) of this sec-*
 38 *tion, the Secretary decides—*

39 *(A) the vehicle is—*

40 *(i) substantially similar to a motor vehicle originally manu-*
 41 *factured for import into and sale in the United States;*

- 1 (ii) certified under section 30115 of this title;
- 2 (iii) the same model year (as defined under regulations of
- 3 the Secretary of Transportation) as the model of the motor ve-
- 4 hicle it is being compared to; and
- 5 (iv) capable of being readily altered to comply with applica-
- 6 ble motor vehicle safety standards prescribed under this chap-
- 7 ter; or

8 (B) if there is no substantially similar United States motor vehi-

9 cle, the safety features of the vehicle comply with or are capable of

10 being altered to comply with those standards based on destructive

11 test information or other evidence the Secretary of Transportation

12 decides is adequate;

13 (2) the vehicle is imported by a registered importer; and

14 (3) the registered importer pays the annual fee the Secretary of Trans-

15 portation establishes under subsection (e) of this section to pay for the

16 costs of carrying out the registration program for importers under sub-

17 section (c) of this section and any other fees the Secretary of Transpor-

18 tation establishes to pay for the costs of—

19 (A) processing bonds provided to the Secretary of the Treasury

20 under subsection (d) of this section; and

21 (B) making the decisions under this subchapter.

22 (b) PROCEDURES ON DECIDING ON MOTOR VEHICLE CAPABILITY.—(1) The

23 Secretary of Transportation shall establish by regulation procedures for mak-

24 ing a decision under subsection (a)(1) of this section and the information a

25 petitioner must provide to show clearly that the motor vehicle is capable of

26 being brought into compliance with applicable motor vehicle safety standards

27 prescribed under this chapter. In establishing the procedures, the Secretary

28 shall provide for a minimum period of public notice and written comment

29 consistent with ensuring expeditious, but complete, consideration and avoid-

30 ing delay by any person. In making a decision under those procedures, the

31 Secretary shall consider test information and other information available to

32 the Secretary, including any information provided by the manufacturer. If

33 the Secretary makes a negative decision, the Secretary may not make another

34 decision for the same model until at least 3 calendar months have elapsed

35 after the negative decision.

36 (2) The Secretary of Transportation shall publish each year in the Federal

37 Register a list of all decisions made under subsection (a)(1) of this section.

38 Each published decision applies to the model of the motor vehicle for which

39 the decision was made. A positive decision permits another importer reg-

40 istered under subsection (c) of this section to import a vehicle of the same

1 *model under this section if the importer complies with all the terms of the*
2 *decision.*

3 (c) *REGISTRATION.—(1) The Secretary of Transportation shall establish*
4 *procedures for registering a person who complies with requirements prescribed*
5 *by the Secretary by regulation under this subsection, including—*

6 (A) *recordkeeping requirements;*

7 (B) *inspection of records and facilities related to motor vehicles the*
8 *person has imported, altered, or both; and*

9 (C) *requirements that ensure that the importer (or a successor in in-*
10 *terest) will be able technically and financially to carry out responsibil-*
11 *ities under sections 30117(b), 30118–30121, and 30166(f) of this title.*

12 (2) *The Secretary of Transportation shall deny registration to a person*
13 *whose registration is revoked under paragraph (4) of this subsection.*

14 (3) *The Secretary of Transportation may deny registration to a person that*
15 *is or was owned or controlled by, or under common ownership or control with,*
16 *a person whose registration was revoked under paragraph (4) of this sub-*
17 *section.*

18 (4) *The Secretary of Transportation shall establish procedures for—*

19 (A) *revoking or suspending a registration issued under paragraph (1)*
20 *of this subsection for not complying with a requirement of this sub-*
21 *chapter or section 30112, 30115, 30117–30122, 30125(c), 30127, or*
22 *30166 of this title or regulations prescribed under this subchapter or*
23 *those sections;*

24 (B) *automatically suspending a registration for not paying a fee*
25 *under subsection (a)(3) of this section in a timely manner or for know-*
26 *ingly filing a false or misleading certification under section 30146 of this*
27 *title; and*

28 (C) *reinstating suspended registrations.*

29 (d) *BONDS.—(1) A person importing a motor vehicle under this section*
30 *shall provide a bond to the Secretary of the Treasury (acting for the Secretary*
31 *of Transportation) and comply with the terms the Secretary of Transpor-*
32 *tation decides are appropriate to ensure that the vehicle—*

33 (A) *will comply with applicable motor vehicle safety standards pre-*
34 *scribed under this chapter within a reasonable time (specified by the Sec-*
35 *retary of Transportation) after the vehicle is imported; or*

36 (B) *will be exported (at no cost to the United States Government) by*
37 *the Secretary of the Treasury or abandoned to the Government.*

38 (2) *The amount of the bond provided under this subsection shall be at least*
39 *equal to the dutiable value of the motor vehicle (as determined by the Sec-*
40 *retary of the Treasury) but not more than 150 percent of that value.*

1 (e) *FEE REVIEW, ADJUSTMENT, AND USE.*—The Secretary of Transportation shall review and make appropriate adjustments at least every 2 years
2 in the amounts of the fees required to be paid under subsection (a)(3) of this
3 section. The Secretary of Transportation shall establish the fees for each fiscal
4 year before the beginning of that year. All fees collected remain available until
5 expended without fiscal year limit to the extent provided in advance by ap-
6 propriation laws. The amounts are only for use by the Secretary of Transpor-
7 tation—

8
9 (1) in carrying out this section and sections 30146(a)–(c)(1), (d), and
10 (e) and 30147(b) of this title; and

11 (2) in advancing to the Secretary of the Treasury amounts for costs
12 incurred under this section and section 30146 of this title to reimburse
13 the Secretary of the Treasury for those costs.

14 **§ 30142. Importing motor vehicles for personal use**

15 (a) *GENERAL.*—Section 30112(a) of this title does not apply to an im-
16 ported motor vehicle if—

17 (1) the vehicle is imported for personal use, and not for resale, by an
18 individual (except an individual described in sections 30143 and 30144
19 of this title);

20 (2) the vehicle is imported after January 31, 1990; and

21 (3) the individual takes the actions required under subsection (b) of
22 this section to receive an exemption.

23 (b) *EXEMPTIONS.*—(1) To receive an exemption under subsection (a) of this
24 section, an individual must—

25 (A) provide the Secretary of the Treasury (acting for the Secretary of
26 Transportation) with—

27 (i) an appropriate bond in an amount determined under section
28 30141(d) of this title;

29 (ii) a copy of an agreement with an importer registered under
30 section 30141(c) of this title for bringing the motor vehicle into com-
31 pliance with applicable motor vehicle safety standards prescribed
32 under this chapter; and

33 (iii) a certification that the vehicle meets the requirement of sec-
34 tion 30141(a)(1)(A) or (B) of this title; and

35 (B) comply with appropriate terms the Secretary of Transportation
36 imposes to ensure that the vehicle—

37 (i) will be brought into compliance with those standards within
38 a reasonable time (specified by the Secretary of Transportation)
39 after the vehicle is imported; or

40 (ii) will be exported (at no cost to the United States Government)
41 by the Secretary of the Treasury or abandoned to the Government.

1 (2) For good cause shown, the Secretary of Transportation may allow an
2 individual additional time, but not more than 30 days after the day on which
3 the motor vehicle is offered for import, to comply with paragraph (1)(A)(ii)
4 of this subsection.

5 **§ 30143. Motor vehicles imported by individuals employed out-**
6 **side the United States**

7 (a) DEFINITION.—In this section, “assigned place of employment” means—

8 (1) the principal location at which an individual is permanently or
9 indefinitely assigned to work; and

10 (2) for a member of the uniformed services, the individual’s permanent
11 duty station.

12 (b) GENERAL.—Section 30112(a) of this title does not apply to a motor ve-
13 hicle imported for personal use, and not for resale, by an individual—

14 (1) whose assigned place of employment was outside the United States
15 as of October 31, 1988, and who has not had an assigned place of em-
16 ployment in the United States from that date through the date the vehicle
17 is imported into the United States;

18 (2) who previously had not imported a motor vehicle into the United
19 States under this section or section 108(g) of the National Traffic and
20 Motor Vehicle Safety Act of 1966 or, before October 31, 1988, under sec-
21 tion 108(b)(3) of that Act;

22 (3) who acquired, or made a binding contract to acquire, the vehicle
23 before October 31, 1988;

24 (4) who imported the vehicle into the United States not later than Oc-
25 tober 31, 1992; and

26 (5) who satisfies section 108(b)(3) of that Act as in effect on October
27 30, 1988.

28 (c) CERTIFICATION.—Subsection (b) of this section is carried out by certifi-
29 cation in the form the Secretary of Transportation or the Secretary of the
30 Treasury may prescribe.

31 **§ 30144. Importing motor vehicles on a temporary basis**

32 (a) GENERAL.—Section 30112(a) of this title does not apply to a motor
33 vehicle imported on a temporary basis for personal use by an individual who
34 is a member of—

35 (1)(A) the personnel of the government of a foreign country on assign-
36 ment in the United States or a member of the Secretariat of a public
37 international organization designated under the International Organiza-
38 tion Immunities Act (22 U.S.C. 288 et seq.); and

39 (B) the class of individuals for whom the Secretary of State has au-
40 thorized free importation of motor vehicles; or

1 (2) *the armed forces of a foreign country on assignment in the United*
2 *States.*

3 (b) *VERIFICATION.—The Secretary of Transportation or the Secretary of*
4 *the Treasury may require verification, that the Secretary of Transportation*
5 *considers appropriate, that an individual is a member described under sub-*
6 *section (a) of this section. The Secretary of Transportation shall ensure that*
7 *a motor vehicle imported under this section will be exported (at no cost to*
8 *the United States Government) or abandoned to the Government when the in-*
9 *dividual no longer—*

10 (1) *resides in the United States; and*

11 (2) *is a member described under subsection (a) of this section.*

12 (c) *SALE IN THE UNITED STATES.—A motor vehicle imported under this*
13 *section may not be sold when in the United States.*

14 **§ 30145. Importing motor vehicles or equipment requiring**
15 **further manufacturing**

16 *Section 30112(a) of this title does not apply to a motor vehicle or motor*
17 *vehicle equipment if the vehicle or equipment—*

18 (1) *requires further manufacturing to perform its intended function as*
19 *decided under regulations prescribed by the Secretary of Transportation;*
20 *and*

21 (2) *is accompanied at the time of importation by a written statement*
22 *issued by the manufacturer indicating the applicable motor vehicle safety*
23 *standard prescribed under this chapter with which it does not comply.*

24 **§ 30146. Release of motor vehicles and bonds**

25 (a) *COMPLIANCE CERTIFICATION AND BOND.—(1) Except as provided in*
26 *subsections (c) and (d) of this section, an importer registered under section*
27 *30141(c) of this title may license or register an imported motor vehicle for*
28 *use on public streets, roads, or highways, or release custody of a motor vehicle*
29 *imported by the registered importer or imported by an individual under sec-*
30 *tion 30142 of this title and altered by the registered importer to meet applica-*
31 *ble motor vehicle safety standards prescribed under this chapter to a person*
32 *for license or registration for use on public streets, roads, or highways, only*
33 *after 30 days after the registered importer certifies to the Secretary of Trans-*
34 *portation, in the way the Secretary prescribes, that the motor vehicle complies*
35 *with each standard prescribed in the year the vehicle was manufactured and*
36 *that applies in that year to that vehicle. A vehicle may not be released if the*
37 *Secretary gives written notice before the end of the 30-day period that the Sec-*
38 *retary will inspect the vehicle under subsection (c) of this section.*

39 (2) *The Secretaries of Transportation and the Treasury shall prescribe reg-*
40 *ulations—*

1 (A) ensuring the release of a motor vehicle and bond required under
2 section 30141(d) of this title at the end of the 30-day period, unless the
3 Secretary of Transportation issues a notice of an inspection under sub-
4 section (c) of this section; and

5 (B) providing that the Secretary of Transportation shall release the
6 vehicle and bond promptly after an inspection under subsection (c) of
7 this section showing compliance with the standards applicable to the ve-
8 hicle.

9 (3) Each registered importer shall include on each motor vehicle released
10 under this subsection a label prescribed by the Secretary of Transportation
11 identifying the importer and stating that the vehicle has been altered by the
12 importer to comply with the standards applicable to the vehicle.

13 (b) *RELIANCE ON MANUFACTURER'S CERTIFICATION.*—In making a certifi-
14 cation under subsection (a)(1) of this section, the registered importer may rely
15 on the manufacturer's certification for the model to which the motor vehicle
16 involved is substantially similar if the importer certifies that any alteration
17 made by the importer did not affect the compliance of the safety features of
18 the vehicle and the importer keeps records verifying the certification for the
19 period the Secretary of Transportation prescribes.

20 (c) *EVIDENCE OF COMPLIANCE.*—(1) The Secretary of Transportation may
21 require that the certification under subsection (a)(1) of this section be accom-
22 panied by evidence of compliance the Secretary considers appropriate or may
23 inspect the certified motor vehicle, or both. If the Secretary gives notice of an
24 inspection, an importer may release the vehicle only after—

25 (A) an inspection showing the motor vehicle complies with applicable
26 motor vehicle safety standards prescribed under this chapter for which
27 the inspection was made; and

28 (B) release of the vehicle by the Secretary.

29 (2) The Secretary of Transportation shall inspect periodically a representa-
30 tive number of motor vehicles for which certifications have been filed under
31 subsection (a)(1) of this section. In carrying out a motor vehicle testing pro-
32 gram under this chapter, the Secretary shall include a representative number
33 of motor vehicles for which certifications have been filed under subsection
34 (a)(1).

35 (d) *CHALLENGING THE CERTIFICATION.*—A motor vehicle or bond may not
36 be released under subsection (a) of this section if the Secretary of Transpor-
37 tation, not later than 30 days after receiving a certification under subsection
38 (a)(1) of this section, gives written notice that the Secretary believes or has
39 reason to believe that the certification is false or contains a misrepresentation.
40 The vehicle and bond may be released only after the Secretary is satisfied
41 with the certification and any modification of the certification.

1 (e) *BOND RELEASE*.—A release of a bond required under section 30141(d)
 2 of this title is deemed an acceptance of a certification or completion of an
 3 inspection under this section but is not a decision by the Secretary of Trans-
 4 portation under section 30118(a) or (b) of this title of compliance with appli-
 5 cable motor vehicle safety standards prescribed under this chapter.

6 **§ 30147. Responsibility for defects and noncompliance**

7 (a) *DEEMING DEFECT OR NONCOMPLIANCE TO CERTAIN VEHICLES AND IM-*
 8 *PORTER AS MANUFACTURER*.—(1) In carrying out sections 30117(b), 30118–
 9 30121, and 30166(f) of this title—

10 (A) for a defect or noncompliance with an applicable motor vehicle
 11 safety standard prescribed under this chapter for a motor vehicle origi-
 12 nally manufactured for import into the United States, an imported
 13 motor vehicle having a valid certification under section 30146(a)(1) of
 14 this title and decided to be substantially similar to that motor vehicle
 15 shall be deemed as having the same defect or as not complying with the
 16 same standard unless the manufacturer or importer registered under sec-
 17 tion 30141(c) of this title demonstrates otherwise to the Secretary of
 18 Transportation; and

19 (B) the registered importer shall be deemed to be the manufacturer of
 20 any motor vehicle that the importer imports or brings into compliance
 21 with the standards for an individual under section 30142 of this title.

22 (2) The Secretary shall publish in the Federal Register notice of any defect
 23 or noncompliance under paragraph (1)(A) of this subsection.

24 (b) *FINANCIAL RESPONSIBILITY REQUIREMENT*.—The Secretary shall re-
 25 quire by regulation each registered importer (including any successor in in-
 26 terest) to provide and maintain evidence, satisfactory to the Secretary, of suf-
 27 ficient financial responsibility to meet its obligations under sections 30117(b),
 28 30118–30121, and 30166(f) of this title.

29 *SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE*

30 **§ 30161. Judicial review of standards**

31 (a) *FILING AND VENUE*.—A person adversely affected by an order prescrib-
 32 ing a motor vehicle safety standard under this chapter may apply for review
 33 of the order by filing a petition for review in the court of appeals of the Unit-
 34 ed States for the circuit in which the person resides or has its principal place
 35 of business. The petition must be filed not later than 59 days after the order
 36 is issued.

37 (b) *NOTIFYING SECRETARY*.—The clerk of the court shall send immediately
 38 a copy of the petition to the Secretary of Transportation. The Secretary shall
 39 file with the court a record of the proceeding in which the order was pre-
 40 scribed.

1 (c) *ADDITIONAL PROCEEDINGS.*—(1) *On request of the petitioner, the court*
 2 *may order the Secretary to receive additional evidence and evidence in rebut-*
 3 *tal if the court is satisfied that the additional evidence is material and there*
 4 *were reasonable grounds for not presenting the evidence in the proceeding be-*
 5 *fore the Secretary.*

6 (2) *The Secretary may modify findings of fact or make new findings be-*
 7 *cause of the additional evidence presented. The Secretary shall file a modified*
 8 *or new finding, a recommendation to modify or set aside the order, and the*
 9 *additional evidence with the court.*

10 (d) *CERTIFIED COPIES OF RECORDS OF PROCEEDINGS.*—*The Secretary*
 11 *shall give any interested person a certified copy of the transcript of the record*
 12 *in a proceeding under this section on request and payment of costs. A cer-*
 13 *tified copy of the record of the proceeding is admissible in a proceeding aris-*
 14 *ing out of a matter under this chapter, regardless of whether the proceeding*
 15 *under this section has begun or becomes final.*

16 (e) *FINALITY OF JUDGMENT AND SUPREME COURT REVIEW.*—*A judgment*
 17 *of a court under this section is final and may be reviewed only by the Su-*
 18 *preme Court under section 1254 of title 28.*

19 **§ 30162. Petitions by interested persons for standards and en-**
 20 **forcement**

21 (a) *FILING.*—*Any interested person may file a petition with the Secretary*
 22 *of Transportation requesting the Secretary to begin a proceeding—*

23 (1) *to prescribe a motor vehicle safety standard under this chapter; or*

24 (2) *to decide whether to issue an order under section 30118(b) of this*
 25 *title.*

26 (b) *STATEMENT OF FACTS.*—*The petition must state facts that the person*
 27 *claims establish that a motor vehicle safety standard or order referred to in*
 28 *subsection (a) of this section is necessary and briefly describe the order the*
 29 *Secretary should issue.*

30 (c) *PROCEEDINGS.*—*The Secretary may hold a public hearing or conduct*
 31 *an investigation or proceeding to decide whether to grant the petition.*

32 (d) *ACTIONS OF SECRETARY.*—*The Secretary shall grant or deny a petition*
 33 *not later than 120 days after the petition is filed. If a petition is granted,*
 34 *the Secretary shall begin the proceeding promptly. If a petition is denied, the*
 35 *Secretary shall publish the reasons for the denial in the Federal Register.*

36 **§ 30163. Actions by the Attorney General**

37 (a) *CIVIL ACTIONS TO ENFORCE.*—*The Attorney General may bring a civil*
 38 *action in a United States district court to enjoin—*

39 (1) *a violation of this chapter or a regulation prescribed or order is-*
 40 *sued under this chapter; and*

1 (2) *the sale, offer for sale, or introduction or delivery for introduction,*
 2 *in interstate commerce, or the importation into the United States, of a*
 3 *motor vehicle or motor vehicle equipment for which it is decided, before*
 4 *the first purchase in good faith other than for resale, that the vehicle or*
 5 *equipment—*

6 (A) *contains a defect related to motor vehicle safety about which*
 7 *notice was given under section 30118(c) of this title or an order was*
 8 *issued under section 30118(b) of this title; or*

9 (B) *does not comply with an applicable motor vehicle safety*
 10 *standard prescribed under this chapter.*

11 (b) *PRIOR NOTICE.—When practicable, the Secretary of Transportation*
 12 *shall notify a person against whom a civil action under subsection (a) of this*
 13 *section is planned, give the person an opportunity to present that person's*
 14 *views, and, except for a knowing and willful violation of this chapter, give*
 15 *the person a reasonable opportunity to remedy the defect or comply with the*
 16 *applicable motor vehicle safety standard prescribed under this chapter. Fail-*
 17 *ure to give notice and an opportunity to remedy the defect or comply with*
 18 *the applicable motor vehicle safety standard prescribed under this chapter*
 19 *does not prevent a court from granting appropriate relief.*

20 (c) *VENUE.—Except as provided in section 30121(d) of this title, a civil*
 21 *action under this section or section 30165(a) of this title may be brought in*
 22 *the judicial district in which the violation occurred or the defendant is found,*
 23 *resides, or does business. Process in the action may be served in any other*
 24 *judicial district in which the defendant resides or is found.*

25 (d) *JURY TRIAL DEMAND.—In a trial for criminal contempt for violating*
 26 *an injunction or restraining order issued under subsection (a) of this section,*
 27 *the violation of which is also a violation of this chapter, the defendant may*
 28 *demand a jury trial. The defendant shall be tried as provided in rule 42(b)*
 29 *of the Federal Rules of Criminal Procedure (18 App. U.S.C.).*

30 (e) *SUBPENAS FOR WITNESSES.—In a civil action brought under this sec-*
 31 *tion, a subpoena for a witness may be served in any judicial district.*

32 **§ 30164. Service of process**

33 (a) *DESIGNATING AGENTS.—A manufacturer offering a motor vehicle or*
 34 *motor vehicle equipment for import shall designate an agent on whom service*
 35 *of notices and process in administrative and judicial proceedings may be*
 36 *made. The designation shall be in writing and filed with the Secretary of*
 37 *Transportation. The designation may be changed in the same way as origi-*
 38 *nally made.*

39 (b) *SERVICE.—An agent may be served at the agent's office or usual place*
 40 *of residence. Service on the agent is deemed to be service on the manufacturer.*

1 *If a manufacturer does not designate an agent, service may be made by post-*
 2 *ing the notice or process in the office of the Secretary.*

3 **§ 30165. Civil penalty**

4 (a) *PENALTY.*—A person that violates section 30112, 30115, 30117–30122,
 5 30123(d), 30125(c), 30127, 30141–30147, or 30166 of this title or a regulation
 6 prescribed under those sections is liable to the United States Government for
 7 a civil penalty of not more than \$1,000 for each violation. A separate viola-
 8 tion occurs for each motor vehicle or item of motor vehicle equipment and for
 9 each failure or refusal to allow or perform an act required by those sections.
 10 The maximum penalty under this subsection for a related series of violations
 11 is \$800,000.

12 (b) *COMPROMISE AND SETOFF.*—(1) *The Secretary of Transportation may*
 13 *compromise the amount of a civil penalty imposed under this section.*

14 (2) *The Government may deduct the amount of a civil penalty imposed or*
 15 *compromised under this section from amounts it owes the person liable for*
 16 *the penalty.*

17 (c) *CONSIDERATIONS.*—*In determining the amount of a civil penalty or*
 18 *compromise, the appropriateness of the penalty or compromise to the size of*
 19 *the business of the person charged and the gravity of the violation shall be*
 20 *considered.*

21 (d) *SUBPENAS FOR WITNESSES.*—*In a civil action brought under this sec-*
 22 *tion, a subpoena for a witness may be served in any judicial district.*

23 **§ 30166. Inspections, investigations, and records**

24 (a) *DEFINITION.*—*In this section, “motor vehicle accident” means an occur-*
 25 *rence associated with the maintenance or operation of a motor vehicle or*
 26 *motor vehicle equipment resulting in personal injury, death, or property dam-*
 27 *age.*

28 (b) *AUTHORITY TO INSPECT AND INVESTIGATE.*—(1) *The Secretary of*
 29 *Transportation may conduct an inspection or investigation—*

30 (A) *that may be necessary to enforce this chapter or a regulation pre-*
 31 *scribed or order issued under this chapter; or*

32 (B) *related to a motor vehicle accident and designed to carry out this*
 33 *chapter.*

34 (2) *The Secretary of Transportation shall cooperate with State and local*
 35 *officials to the greatest extent possible in an inspection or investigation under*
 36 *paragraph (1)(B) of this subsection.*

37 (c) *MATTERS THAT CAN BE INSPECTED AND IMPOUNDMENT.*—*In carrying*
 38 *out this chapter, an officer or employee designated by the Secretary of Trans-*
 39 *portation—*

40 (1) *at reasonable times, may inspect and copy any record related to*
 41 *this chapter;*

1 (2) on request, may inspect records of a manufacturer, distributor, or
2 dealer to decide whether the manufacturer, distributor, or dealer has
3 complied or is complying with this chapter or a regulation prescribed
4 or order issued under this chapter; and

5 (3) at reasonable times, in a reasonable way, and on display of proper
6 credentials and written notice to an owner, operator, or agent in charge,
7 may—

8 (A) enter and inspect with reasonable promptness premises in
9 which a motor vehicle or motor vehicle equipment is manufactured,
10 held for introduction in interstate commerce, or held for sale after
11 introduction in interstate commerce;

12 (B) enter and inspect with reasonable promptness premises at
13 which a vehicle or equipment involved in a motor vehicle accident
14 is located;

15 (C) inspect with reasonable promptness that vehicle or equipment;
16 and

17 (D) impound for not more than 72 hours a vehicle or equipment
18 involved in a motor vehicle accident.

19 (d) *REASONABLE COMPENSATION.*—When a motor vehicle (except a vehicle
20 subject to subchapter II of chapter 105 of this title) or motor vehicle equip-
21 ment is inspected or temporarily impounded under subsection (c)(3) of this
22 section, the Secretary of Transportation shall pay reasonable compensation to
23 the owner of the vehicle if the inspection or impoundment results in denial
24 of use, or reduction in value, of the vehicle.

25 (e) *RECORDS AND MAKING REPORTS.*—The Secretary of Transportation
26 reasonably may require a manufacturer of a motor vehicle or motor vehicle
27 equipment to keep records, and a manufacturer, distributor, or dealer to make
28 reports, to enable the Secretary to decide whether the manufacturer, distribu-
29 tor, or dealer has complied or is complying with this chapter or a regulation
30 prescribed or order issued under this chapter. This subsection does not impose
31 a recordkeeping requirement on a distributor or dealer in addition to those
32 imposed under subsection (f) of this section and section 30117(b) of this title
33 or a regulation prescribed or order issued under subsection (f) or section
34 30117(b).

35 (f) *PROVIDING COPIES OF COMMUNICATIONS ABOUT DEFECTS AND NON-*
36 *COMPLIANCE.*—A manufacturer shall give the Secretary of Transportation a
37 true or representative copy of each communication to the manufacturer's deal-
38 ers or to owners or purchasers of a motor vehicle or replacement equipment
39 produced by the manufacturer about a defect or noncompliance with a motor
40 vehicle safety standard prescribed under this chapter in a vehicle or equip-
41 ment 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 or
 5 answers to specific questions, including reports or answers under oath;
 6 and

7 (B) conduct hearings, administer oaths, take testimony, and require
 8 (by subpoena or otherwise) the appearance and testimony of witnesses and
 9 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 States.

12 (h) CIVIL ACTIONS TO ENFORCE AND VENUE.—A civil action to enforce a
 13 subpoena or order under subsection (g) of this section may be brought in the
 14 United States district court for the judicial district in which the proceeding
 15 is conducted. The court may punish a failure to obey an order of the court
 16 to comply with a subpoena or order as a contempt of court.

17 (i) GOVERNMENTAL COOPERATION.—The Secretary of Transportation may
 18 request a department, agency, or instrumentality of the United States Govern-
 19 ment to provide records the Secretary considers necessary to carry out this
 20 chapter. The head of the department, agency, or instrumentality shall provide
 21 the record on request, may detail personnel on a reimbursable basis, and oth-
 22 erwise shall cooperate with the Secretary. This subsection does not affect a
 23 law limiting the authority of a department, agency, or instrumentality to
 24 provide information to another department, agency, or instrumentality.

25 (j) COOPERATION OF SECRETARY.—The Secretary of Transportation may
 26 advise, assist, and cooperate with departments, agencies, and instrumentality-
 27 ties of the Government, States, and other public and private agencies in de-
 28 veloping a method for inspecting and testing to determine compliance with
 29 a motor vehicle safety standard.

30 (k) PROVIDING INFORMATION.—The Secretary of Transportation shall pro-
 31 vide the Attorney General and, when appropriate, the Secretary of the Treas-
 32 ury, information obtained that indicates a violation of this chapter or a regu-
 33 lation prescribed or order issued under this chapter.

34 **§ 30167. Disclosure of information by the Secretary of Trans-**
 35 **portation**

36 (a) CONFIDENTIALITY OF INFORMATION.—Information obtained under this
 37 chapter related to a confidential matter referred to in section 1905 of title
 38 18 may be disclosed only in the following ways:

39 (1) to other officers and employees carrying out this chapter.

40 (2) when relevant to a proceeding under this chapter.

41 (3) to the public if the confidentiality of the information is preserved.

1 (4) to the public when the Secretary of Transportation decides that
2 disclosure is necessary to carry out section 30101 of this title.

3 (b) *DEFECT AND NONCOMPLIANCE INFORMATION.*—Subject to subsection (a)
4 of this section, the Secretary shall disclose information obtained under this
5 chapter related to a defect or noncompliance that the Secretary decides will
6 assist in carrying out sections 30117(b) and 30118–30121 of this title or that
7 is required to be disclosed under section 30118(a) of this title. A requirement
8 to disclose information under this subsection is in addition to the require-
9 ments of section 552 of title 5.

10 (c) *INFORMATION ABOUT MANUFACTURER’S INCREASED COSTS.*—A manu-
11 facturer opposing an action of the Secretary under this chapter because of in-
12 creased cost shall submit to the Secretary information about the increased
13 cost, including the manufacturer’s cost and the cost to retail purchasers, that
14 allows the public and the Secretary to evaluate the manufacturer’s statement.
15 The Secretary shall evaluate the information promptly and, subject to sub-
16 section (a) of this section, shall make the information and evaluation avail-
17 able to the public. The Secretary shall publish a notice in the Federal Register
18 that the information is available.

19 (d) *WITHHOLDING INFORMATION FROM CONGRESS.*—This section does not
20 authorize information to be withheld from a committee of Congress authorized
21 to have the information.

22 **§ 30168. Research, testing, development, and training**

23 (a) *GENERAL AUTHORITY.*—(1) The Secretary of Transportation shall con-
24 duct research, testing, development, and training necessary to carry out this
25 chapter. The research, development, testing, and training shall include—

26 (A) collecting information to determine the relationship between motor
27 vehicle or motor vehicle equipment performance characteristics and—

28 (i) accidents involving motor vehicles; and

29 (ii) the occurrence of death or personal injury resulting from
30 those accidents;

31 (B) obtaining experimental and other motor vehicles and motor vehicle
32 equipment for research or testing; and

33 (C) selling or otherwise disposing of test motor vehicles and motor ve-
34 hicle equipment and crediting the proceeds to current appropriations
35 available to carry out this chapter.

36 (2) The Secretary may carry out this subsection through grants to States,
37 interstate authorities, and nonprofit institutions.

38 (b) *USE OF PUBLIC AGENCIES.*—In carrying out this chapter, the Sec-
39 retary shall use the services, research, and testing facilities of public agencies
40 to the maximum extent practicable to avoid duplication.

1 (c) *FACILITIES.*—The Secretary may plan, design, and build a new facility
2 or modify an existing facility to conduct research, development, and testing
3 in traffic safety, highway safety, and motor vehicle safety. An expenditure of
4 more than \$100,000 for planning, design, or construction may be made only
5 if the planning, design, or construction is approved by substantially similar
6 resolutions by the Committees on Energy and Commerce and Public Works
7 and Transportation of the House of Representatives and the Committees on
8 Commerce, Science, and Transportation and Environment and Public Works
9 of the Senate. To obtain that approval, the Secretary shall submit to Congress
10 a prospectus on the proposed facility. The prospectus shall include—

11 (1) a brief description of the facility being planned, designed, or built;

12 (2) the location of the facility;

13 (3) an estimate of the maximum cost of the facility;

14 (4) a statement identifying private and public agencies that will use
15 the facility and the contribution each agency will make to the cost of the
16 facility; and

17 (5) a justification of the need for the facility.

18 (d) *INCREASING COSTS OF APPROVED FACILITIES.*—The estimated maxi-
19 mum cost of a facility approved under subsection (c) of this section may be
20 increased by an amount equal to the percentage increase in construction costs
21 from the date the prospectus is submitted to Congress. However, the increase
22 in the cost of the facility may not be more than 10 percent of the estimated
23 maximum cost included in the prospectus. The Secretary shall decide what
24 increase in construction costs has occurred.

25 (e) *AVAILABILITY OF INFORMATION, PATENTS, AND DEVELOPMENTS.*—
26 When the United States Government makes more than a minimal contribu-
27 tion to a research or development activity under this chapter, the Secretary
28 shall include in the arrangement for the activity a provision to ensure that
29 all information, patents, and developments related to the activity are avail-
30 able to the public. However, the owner of a background patent may not be
31 deprived of a right under the patent.

32 **§ 30169. Annual reports**

33 (a) *GENERAL REPORT.*—The Secretary of Transportation shall submit to
34 the President to submit to Congress on July 1 of each year a report on the
35 administration of this chapter for the prior calendar year. The report shall
36 include—

37 (1) a thorough statistical compilation of accidents and injuries;

38 (2) motor vehicle safety standards in effect or prescribed under this
39 chapter;

40 (3) the degree of observance of the standards;

1 (4) a summary of current research grants and contracts and a de-
2 scription of the problems to be considered under those grants and con-
3 tracts;

4 (5) an analysis and evaluation of research activities completed and
5 technological progress achieved;

6 (6) enforcement actions;

7 (7) the extent to which technical information was given the scientific
8 community and consumer-oriented information was made available to
9 the public; and

10 (8) recommendations for legislation needed to promote cooperation
11 among the States in improving traffic safety and strengthening the na-
12 tional traffic safety program.

13 (b) *REPORT ON IMPORTING MOTOR VEHICLES.*—Not later than 18 months
14 after regulations are first prescribed under section 2(e)(1)(B) of the Imported
15 Vehicle Safety Compliance Act of 1988, the Secretary shall submit to Congress
16 a report of the actions taken to carry out subchapter III of this chapter and
17 the effectiveness of those actions, including any testing by the Secretary under
18 section 30146(c)(2) of this title. After the first report, the Secretary shall sub-
19 mit a report to Congress under this subsection not later than July 31 of each
20 year.

21 **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.

22 **§ 30301. Definitions**

23 In this chapter—

24 (1) “alcohol” has the same meaning given that term in regulations
25 prescribed by the Secretary of Transportation.

26 (2) “chief driver licensing official” means the official in a State who
27 is authorized to—

28 (A) maintain a record about a motor vehicle operator’s license is-
29 sued by the State; and

30 (B) issue, deny, revoke, suspend, or cancel a motor vehicle opera-
31 tor’s license issued by the State.

32 (3) “controlled substance” has the same meaning given that term in
33 section 102 of the Comprehensive Drug Abuse Prevention and Control
34 Act of 1970 (21 U.S.C. 802).

1 (4) “motor vehicle” means a vehicle, machine, tractor, trailer, or
2 semitrailer propelled or drawn by mechanical power and used on public
3 streets, roads, or highways, but does not include a vehicle operated only
4 on a rail line.

5 (5) “motor vehicle operator’s license” means a license issued by a
6 State authorizing an individual to operate a motor vehicle on public
7 streets, roads, or highways.

8 (6) “participating State” means a State that has notified the Sec-
9 retary under section 30303 of this title of its participation in the Na-
10 tional Driver Register.

11 (7) “State” means a State of the United States, the District of Colum-
12 bia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the North-
13 ern Mariana Islands, the Trust Territory of the Pacific Islands, and any
14 other territory or possession of the United States.

15 (8) “State of record” means a State that has given the Secretary a
16 report under section 30304 of this title about an individual who is the
17 subject of a request for information made under section 30305 of this
18 title.

19 **§ 30302. National Driver Register**

20 (a) *ESTABLISHMENT AND CONTENTS.*—The Secretary of Transportation
21 shall establish as soon as practicable and maintain a National Driver Reg-
22 ister to assist chief driver licensing officials of participating States in ex-
23 changing information about the motor vehicle driving records of individuals.
24 The Register shall contain an index of the information reported to the Sec-
25 retary under section 30304 of this title. The Register shall enable the Sec-
26 retary (electronically or, until all States can participate electronically, by
27 United States mail)—

28 (1) to receive information submitted under section 30304 of this title
29 by the chief driver licensing official of a State of record;

30 (2) to receive a request for information made by the chief driver licens-
31 ing official of a participating State under section 30305 of this title;

32 (3) to refer the request to the chief driver licensing official of a State
33 of record; and

34 (4) in response to the request, to relay information provided by a chief
35 driver licensing official of a State of record to the chief driver licensing
36 official of a participating State, without interception of the information.

37 (b) *ACCURACY OF INFORMATION.*—The Secretary is not responsible for the
38 accuracy of information relayed to the chief driver licensing official of a par-
39 ticipating State. However, the Secretary shall maintain the Register in a way
40 that ensures against inadvertent alteration of information during a relay.

1 (c) *TRANSITION FROM PRIOR REGISTER.*—(1) *The Secretary shall provide*
 2 *by regulation for the orderly transition from the register maintained under*
 3 *the Act of July 14, 1960 (Public Law 86-660, 74 Stat. 526), as restated by*
 4 *section 401 of the National Traffic and Motor Vehicle Safety Act of 1966*
 5 *(Public Law 89-563, 80 Stat. 730), to the Register maintained under this*
 6 *chapter.*

7 (2)(A) *The Secretary shall delete from the Register a report or information*
 8 *that was compiled under the Act of July 14, 1960 (Public Law 86-660, 74*
 9 *Stat. 526), as restated by section 401 of the National Traffic and Motor Vehi-*
 10 *cle Safety Act of 1966 (Public Law 89-563, 80 Stat. 730), and transferred*
 11 *to the Register, after the earlier of—*

12 (i) *the date the State of record removes it from the State's file;*

13 (ii) *7 years after the date the report or information is entered in the*
 14 *Register; or*

15 (iii) *the date a fully electronic Register system is established.*

16 (B) *The report or information shall be disposed of under chapter 33 of title*
 17 *44.*

18 (3) *If the chief driver licensing official of a participating State finds that*
 19 *information provided for inclusion in the Register is erroneous or is related*
 20 *to a conviction of a traffic offense that subsequently is reversed, the official*
 21 *immediately shall notify the Secretary. The Secretary shall provide for the*
 22 *immediate deletion of the information from the Register.*

23 (d) *ASSIGNMENT OF PERSONNEL.*—*In carrying out this chapter, the Sec-*
 24 *retary shall assign personnel necessary to ensure the effective operation of the*
 25 *Register.*

26 **§ 30303. State participation**

27 (a) *NOTIFICATION.*—*A State may become a participating State under this*
 28 *chapter by notifying the Secretary of Transportation of its intention to be*
 29 *bound by section 30304 of this title.*

30 (b) *WITHDRAWAL.*—*A participating State may end its status as a partici-*
 31 *parting State by notifying the Secretary of its withdrawal from participation*
 32 *in the National Driver Register.*

33 (c) *FORM AND WAY OF NOTIFICATION.*—*Notification by a State under this*
 34 *section shall be made in the form and way the Secretary prescribes by regula-*
 35 *tion.*

36 **§ 30304. Reports by chief driver licensing officials**

37 (a) *INDIVIDUALS COVERED.*—*As soon as practicable, the chief driver licens-*
 38 *ing official of each participating State shall submit to the Secretary of Trans-*
 39 *portation a report containing the information specified by subsection (b) of*
 40 *this section for each individual—*

1 (1) *who is denied a motor vehicle operator's license by that State for*
2 *cause;*

3 (2) *whose motor vehicle operator's license is revoked, suspended, or*
4 *canceled by that State for cause; or*

5 (3) *who is convicted under the laws of that State of any of the follow-*
6 *ing motor vehicle-related offenses or comparable offenses:*

7 (A) *operating a motor vehicle while under the influence of, or im-*
8 *paired by, alcohol or a controlled substance.*

9 (B) *a traffic violation arising in connection with a fatal traffic*
10 *accident, reckless driving, or racing on the highways.*

11 (C) *failing to give aid or provide identification when involved in*
12 *an accident resulting in death or personal injury.*

13 (D) *perjury or knowingly making a false affidavit or statement*
14 *to officials about activities governed by a law or regulation on the*
15 *operation of a motor vehicle.*

16 (b) *CONTENTS.—(1) Except as provided in paragraph (2) of this sub-*
17 *section, a report under subsection (a) of this section shall contain—*

18 (A) *the individual's legal name, date of birth, sex, and, at the Sec-*
19 *retary's discretion, height, weight, and eye and hair color;*

20 (B) *the name of the State providing the information; and*

21 (C) *the social security account number if used by the State for driver*
22 *record or motor vehicle license purposes, and the motor vehicle operator's*
23 *license number if different from the social security account number.*

24 (2) *A report under subsection (a) of this section about an event that occurs*
25 *during the 2-year period before the State becomes a participating State is suf-*
26 *ficient if the report contains all of the information that is available to the*
27 *chief driver licensing official when the State becomes a participating State.*

28 (c) *TIME FOR FILING.—If a report under subsection (a) of this section is*
29 *about an event that occurs—*

30 (1) *during the 2-year period before the State becomes a participating*
31 *State, the report shall be submitted not later than 6 months after the*
32 *State becomes a participating State; or*

33 (2) *after the State becomes a participating State, the report shall be*
34 *submitted not later than 31 days after the motor vehicle department of*
35 *the State receives any information specified in subsection (b)(1) of this*
36 *section that is the subject of the report.*

37 (d) *EVENTS OCCURRING BEFORE PARTICIPATION.—This section does not*
38 *require a State to report information about an event that occurs before the*
39 *2-year period before the State becomes a participating State.*

1 **§30305. Access to Register information**

2 (a) *REFERRALS OF INFORMATION REQUESTS.*—(1) *To carry out duties re-*
3 *lated to driver licensing, driver improvement, or transportation safety, the*
4 *chief driver licensing official of a participating State may request the Sec-*
5 *retary of Transportation to refer, electronically or by United States mail, a*
6 *request for information about the motor vehicle driving record of an individ-*
7 *ual to the chief driver licensing official of a State of record.*

8 (2) *The Secretary of Transportation shall relay, electronically or by United*
9 *States mail, information received from the chief driver licensing official of a*
10 *State of record in response to a request under paragraph (1) of this subsection*
11 *to the chief driver licensing official of the participating State requesting the*
12 *information. However, the Secretary may refuse to relay information to the*
13 *chief driver licensing official of a participating State that does not comply*
14 *with section 30304 of this title.*

15 (b) *REQUESTS TO OBTAIN INFORMATION.*—(1) *The Chairman of the Na-*
16 *tional Transportation Safety Board and the Administrator of the Federal*
17 *Highway Administration may request the chief driver licensing official of a*
18 *State to obtain information under subsection (a) of this section about an indi-*
19 *vidual who is the subject of an accident investigation conducted by the Board*
20 *or the Administrator. The Chairman and the Administrator may receive the*
21 *information.*

22 (2) *An individual who is employed, or is seeking employment, as a driver*
23 *of a motor vehicle may request the chief driver licensing official of the State*
24 *in which the individual is employed or seeks employment to provide informa-*
25 *tion about the individual under subsection (a) of this section to the individ-*
26 *ual's employer or prospective employer. An employer or prospective employer*
27 *may receive the information and shall make the information available to the*
28 *individual. Information may not be obtained from the National Driver Reg-*
29 *ister under this paragraph if the information was entered in the Register*
30 *more than 3 years before the request.*

31 (3) *An individual who has received, or is applying for, an airman's certifi-*
32 *cate may request the chief driver licensing official of a State to provide infor-*
33 *mation about the individual under subsection (a) of this section to the Ad-*
34 *ministrator of the Federal Aviation Administration. The Administrator may*
35 *receive the information and shall make the information available to the indi-*
36 *vidual for review and written comment. The Administrator may use the infor-*
37 *mation to verify information required to be reported to the Administrator by*
38 *an airman applying for an airman medical certificate and to evaluate wheth-*
39 *er the airman meets the minimum standards prescribed by the Administrator*
40 *to be issued an airman medical certificate. The Administrator may not other-*
41 *wise divulge or use the information. Information may not be obtained from*

1 *the Register under this paragraph if the information was entered in the Reg-*
2 *ister more than 3 years before the request, unless the information is about a*
3 *revocation or suspension still in effect on the date of the request.*

4 (4) *An individual who is employed, or is seeking employment, by a rail*
5 *carrier as an operator of a locomotive may request the chief driver licensing*
6 *official of a State to provide information about the individual under sub-*
7 *section (a) of this section to the individual's employer or prospective employer*
8 *or to the Secretary of Transportation. Information may not be obtained from*
9 *the Register under this paragraph if the information was entered in the Reg-*
10 *ister more than 3 years before the request, unless the information is about a*
11 *revocation or suspension still in effect on the date of the request.*

12 (5) *An individual who holds, or is applying for, a license or certificate of*
13 *registry under section 7101 of title 46, or a merchant mariner's document*
14 *under section 7302 of title 46, may request the chief driver licensing official*
15 *of a State to provide information about the individual under subsection (a)*
16 *of this section to the Secretary of the department in which the Coast Guard*
17 *is operating. The Secretary may receive the information and shall make the*
18 *information available to the individual for review and written comment be-*
19 *fore denying, suspending, or revoking the license, certificate, or document of*
20 *the individual based on the information and before using the information in*
21 *an action taken under chapter 77 of title 46. The Secretary may not otherwise*
22 *divulge or use the information, except for purposes of section 7101, 7302, or*
23 *7703 of title 46. Information may not be obtained from the Register under*
24 *this paragraph if the information was entered in the Register more than 3*
25 *years before the request, unless the information is about a revocation or sus-*
26 *pension still in effect on the date of the request.*

27 (6) *An individual may request the chief driver licensing official of a State*
28 *to obtain information about the individual under subsection (a) of this sec-*
29 *tion—*

30 (A) *to learn whether information about the individual is being pro-*
31 *vided;*

32 (B) *to verify the accuracy of the information; or*

33 (C) *to obtain a certified copy of the information.*

34 (7) *A request under this subsection shall be made in the form and way the*
35 *Secretary of Transportation prescribes by regulation.*

36 (c) *RELATIONSHIP TO OTHER LAWS.—A request for, or receipt of, informa-*
37 *tion from the Register is subject to sections 552 and 552a of title 5, and other*
38 *applicable laws of the United States or a State, except that—*

39 (1) *the Secretary of Transportation may not relay or otherwise pro-*
40 *vide information specified in section 30304(b)(1)(A) or (C) of this title*
41 *to a person not authorized by this section to receive the information;*

1 (2) a request for, or receipt of, information by a chief driver licensing
2 official, or by a person authorized by subsection (b) of this section to re-
3 quest and receive the information, is deemed to be a routine use under
4 section 552a(b) of title 5; and

5 (3) receipt of information by a person authorized by this section to
6 receive the information is deemed to be a disclosure under section 552a(c)
7 of title 5, except that the Secretary of Transportation is not required to
8 retain the accounting made under section 552a(c)(1) for more than 7
9 years after the disclosure.

10 (d) *AVAILABILITY OF INFORMATION PROVIDED UNDER PRIOR LAW.*—Infor-
11 mation provided by a State under the Act of July 14, 1960 (Public Law 86-
12 660, 74 Stat. 526), as restated by section 401 of the National Traffic and
13 Motor Vehicle Safety Act of 1966 (Public Law 89-563, 80 Stat. 730), and
14 under this chapter, shall be available under this section during the transition
15 from the register maintained under that Act to the Register maintained under
16 this chapter.

17 **§ 30306. National Driver Register Advisory Committee**

18 (a) *ORGANIZATION.*—There is a National Driver Register Advisory Com-
19 mittee.

20 (b) *DUTIES.*—The Committee shall advise the Secretary of Transportation
21 on—

22 (1) the efficiency of the maintenance and operation of the National
23 Driver Register; and

24 (2) the effectiveness of the Register in assisting States in exchanging
25 information about motor vehicle driving records.

26 (c) *COMPOSITION AND APPOINTMENT.*—The Committee is composed of 15
27 members appointed by the Secretary as follows:

28 (1) 3 members appointed from among individuals who are specially
29 qualified to serve on the Committee because of their education, training,
30 or experience, and who are not officers or employees of the United States
31 Government or a State.

32 (2) 3 members appointed from among groups outside the Government
33 that represent the interests of bus and trucking organizations, enforce-
34 ment officials, labor, or safety organizations.

35 (3) 9 members, geographically representative of the participating
36 States, appointed from among individuals who are chief driver licensing
37 officials of participating States.

38 (d) *TERMS.*—(1) Except as provided in paragraph (2) of this subsection,
39 the term of each member is 3 years.

40 (2) A vacancy on the Committee shall be filled in the same way as an
41 original appointment. A member appointed to fill a vacancy serves for the

1 remainder of the term of that member's predecessor. After a member's term
2 ends, the member may continue to serve until a successor takes office.

3 (e) *PAY AND EXPENSES.*—Members of the Committee serve without pay.
4 However, the Secretary may reimburse a member for reasonable travel ex-
5 penses incurred by the member in attending meetings of the Committee.

6 (f) *MEETINGS, CHAIRMAN, VICE CHAIRMAN, AND QUORUM.*—(1) The Com-
7 mittee shall meet at least once a year.

8 (2) The Committee shall elect a Chairman and a Vice Chairman from
9 among its members.

10 (3) Eight members are a quorum.

11 (4) The Committee shall meet at the call of the Chairman or a majority
12 of the members.

13 (g) *PERSONNEL AND SERVICES.*—The Secretary may provide the Commit-
14 tee with personnel, penalty mail privileges, and similar services the Secretary
15 considers necessary to assist the Committee in carrying out its duties and
16 powers under this section.

17 (h) *REPORTS.*—At least once a year, the Committee shall submit to the Sec-
18 retary a report on the matters specified in subsection (b) of this section. The
19 report shall include any recommendations of the Committee for changes in the
20 Register.

21 (i) *RELATIONSHIP TO OTHER LAWS.*—The Committee is exempt from sec-
22 tions 10(e) and (f) and 14 of the Federal Advisory Committee Act (5 App.
23 U.S.C.).

24 **§ 30307. Criminal penalties**

25 (a) *GENERAL PENALTY.*—A person (except an individual described in sec-
26 tion 30305(b)(6) of this title) shall be fined under title 18, imprisoned for not
27 more than one year, or both, if—

28 (1) the person receives under section 30305 of this title information
29 specified in section 30304(b)(1)(A) or (C) of this title;

30 (2) disclosure of the information is not authorized by section 30305
31 of this title; and

32 (3) the person willfully discloses the information knowing that disclo-
33 sure is not authorized.

34 (b) *INFORMATION PENALTY.*—A person knowingly and willfully requesting,
35 or under false pretenses obtaining, information specified in section
36 30304(b)(1)(A) or (C) of this title from a person receiving the information
37 under section 30305 of this title shall be fined under title 18, imprisoned for
38 not more than one year, or both.

39 **§ 30308. Authorization of appropriations**

40 (a) *GENERAL.*—The Secretary of Transportation shall make available from
41 amounts made available to carry out section 402 of title 23 \$4,000,000 for

1 each of the fiscal years ending September 30, 1993, and September 30, 1994,
2 to carry out this chapter.

3 (b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section
4 remain available until expended.

5 **CHAPTER 305—NATIONAL AUTOMOBILE TITLE**
6 **INFORMATION SYSTEM**

Sec.

30501. Definitions.

30502. National Automobile Title Information System.

30503. State participation.

30504. Reporting requirements.

30505. Penalties and enforcement.

7 **§ 30501. Definitions**

8 In this chapter—

9 (1) “automobile” has the same meaning given that term in section
10 32901(a) of this title.

11 (2) “certificate of title” means a document issued by a State showing
12 ownership of an automobile.

13 (3) “insurance carrier” means an individual or entity engaged in the
14 business of underwriting automobile insurance.

15 (4) “junk automobile” means an automobile that—

16 (A) is incapable of operating on public streets, roads, and high-
17 ways; and

18 (B) has no value except as a source of parts or scrap.

19 (5) “junk yard” means an individual or entity engaged in the busi-
20 ness of acquiring or owning junk automobiles for—

21 (A) resale in their entirety or as spare parts; or

22 (B) rebuilding, restoration, or crushing.

23 (6) “operator” means the individual or entity authorized or designated
24 as the operator of the National Automobile Title Information System
25 under section 30502(b) of this title, or the Secretary of Transportation,
26 if there is no authorized or designated individual or entity.

27 (7) “salvage automobile” means an automobile that is damaged by col-
28 lision, fire, flood, accident, trespass, or other event, to the extent that its
29 fair salvage value plus the cost of repairing the automobile for legal oper-
30 ation on public streets, roads, and highways would be more than the fair
31 market value of the automobile immediately before the event that caused
32 the damage.

33 (8) “salvage yard” means an individual or entity engaged in the busi-
34 ness of acquiring or owning salvage automobiles for—

35 (A) resale in their entirety or as spare parts; or

36 (B) rebuilding, restoration, or crushing.

1 (9) “State” means a State of the United States or the District of Co-
2 lumbia.

3 **§ 30502. National Automobile Title Information System**

4 (a) *ESTABLISHMENT OR DESIGNATION.*—(1) In cooperation with the States
5 and not later than January 31, 1996, the Secretary of Transportation shall
6 establish a National Automobile Title Information System that will provide
7 individuals and entities referred to in subsection (e) of this section with in-
8 stant and reliable access to information maintained by the States related to
9 automobile titling described in subsection (d) of this section. However, if the
10 Secretary decides that the existing information system meets the requirements
11 of subsections (d) and (e) of this section and will permit the Secretary to
12 carry out this chapter as early as possible, the Secretary, in consultation with
13 the Attorney General, may designate an existing information system as the
14 National Automobile Title Information System.

15 (2) In cooperation with the Attorney General and the States, the Secretary
16 shall ascertain the extent to which title and related information to be included
17 in the system established under paragraph (1) of this subsection will be ade-
18 quate, timely, reliable, uniform, and capable of assisting in efforts to prevent
19 the introduction or reintroduction of stolen vehicles and parts into interstate
20 commerce.

21 (b) *OPERATION.*—The Secretary may authorize the operation of the System
22 established or designated under subsection (a)(1) of this section by agreement
23 with one or more States, or by designating, after consulting with the States,
24 a third party that represents the interests of the States.

25 (c) *USER FEES.*—Operation of the System established or designated under
26 subsection (a)(1) of this section shall be paid for by user fees and should be
27 self-sufficient and not be dependent on amounts from the United States Gov-
28 ernment. The amount of fees the operator collects and keeps under this sub-
29 section subject to annual appropriation laws, excluding fees the operator col-
30 lects and pays to an entity providing information to the operator, may be
31 not more than the costs of operating the System.

32 (d) *INFORMATION REQUIREMENTS.*—The System established or designated
33 under subsection (a)(1) of this section shall permit a user of the System at
34 least to establish instantly and reliably—

35 (1) the validity and status of a document purporting to be a certificate
36 of title;

37 (2) whether an automobile bearing a known vehicle identification
38 number is titled in a particular State;

39 (3) whether an automobile known to be titled in a particular State
40 is or has been a junk automobile or a salvage automobile;

1 (4) for an automobile known to be titled in a particular State, the
2 odometer mileage disclosure required under section 32705 of this title for
3 that automobile on the date the certificate of title for that automobile was
4 issued and any later mileage information, if noted by the State; and

5 (5) whether an automobile bearing a known vehicle identification
6 number has been reported as a junk automobile or a salvage automobile
7 under section 30504 of this title.

8 (e) AVAILABILITY OF INFORMATION.—(1) The operator shall make avail-
9 able—

10 (A) to a participating State on request of that State, information in
11 the System about any automobile;

12 (B) to a Government, State, or local law enforcement official on re-
13 quest of that official, information in the System about a particular auto-
14 mobile, junk yard, or salvage yard;

15 (C) to a prospective purchaser of an automobile on request of that pur-
16 chaser, including an auction company or entity engaged in the business
17 of purchasing used automobiles, information in the System about that
18 automobile; and

19 (D) to a prospective or current insurer of an automobile on request
20 of that insurer, information in the System about that automobile.

21 (2) The operator may release only the information reasonably necessary to
22 satisfy the requirements of paragraph (1) of this subsection. The operator may
23 not collect an individual's social security account number or permit users of
24 the System to obtain an individual's address or social security account num-
25 ber.

26 **§ 30503. State participation**

27 (a) STATE INFORMATION.—Each State shall make titling information
28 maintained by that State available for use in operating the National Auto-
29 mobile Title Information System established or designated under section
30 30502 of this title.

31 (b) VERIFICATION CHECKS.—Each State shall establish a practice of per-
32 forming an instant title verification check before issuing a certificate of title
33 to an individual or entity claiming to have purchased an automobile from
34 an individual or entity in another State. The check shall consist of—

35 (1) communicating to the operator—

36 (A) the vehicle identification number of the automobile for which
37 the certificate of title is sought;

38 (B) the name of the State that issued the most recent certificate
39 of title for the automobile; and

40 (C) the name of the individual or entity to whom the certificate
41 of title was issued; and

1 (2) giving the operator an opportunity to communicate to the partici-
2 pating State the results of a search of the information.

3 (c) *GRANTS TO STATES.*—(1) In cooperation with the States and not later
4 than January 1, 1994, the Secretary of Transportation shall—

5 (A) conduct a review of systems used by the States to compile and
6 maintain information about the titling of automobiles; and

7 (B) determine for each State the cost of making titling information
8 maintained by that State available to the operator to meet the require-
9 ments of section 30502(d) of this title.

10 (2) The Secretary may make grants to participating States to be used in
11 making titling information maintained by those States available to the opera-
12 tor if—

13 (A) the grant to a State is not more than the lesser of—

14 (i) 25 percent of the cost of making titling information main-
15 tained by that State available to the operator as determined by the
16 Secretary under paragraph (1)(B) of this subsection; or

17 (ii) \$300,000; and

18 (B) the Secretary decides that the grants are reasonable and necessary
19 to establish the System.

20 (d) *REPORT TO CONGRESS.*—Not later than January 1, 1997, the Secretary
21 shall report to Congress on which States have met the requirements of this
22 section. If a State has not met the requirements, the Secretary shall describe
23 the impediments that have resulted in the State's failure to meet the require-
24 ments.

25 **§ 30504. Reporting requirements**

26 (a) *JUNK YARD AND SALVAGE YARD OPERATORS.*—(1) Beginning at a
27 time established by the Secretary of Transportation that is not sooner than
28 the 3d month before the establishment or designation of the National Auto-
29 mobile Title Information System under section 30502 of this title, an individ-
30 ual or entity engaged in the business of operating a junk yard or salvage yard
31 shall file a monthly report with the operator of the System. The report shall
32 contain an inventory of all junk automobiles or salvage automobiles obtained
33 by the junk yard or salvage yard during the prior month. The inventory shall
34 contain—

35 (A) the vehicle identification number of each automobile obtained;

36 (B) the date on which the automobile was obtained;

37 (C) the name of the individual or entity from whom the automobile
38 was obtained; and

39 (D) a statement of whether the automobile was crushed or disposed of
40 for sale or other purposes.

1 (2) Paragraph (1) of this subsection does not apply to an individual or
2 entity—

3 (A) required by State law to report the acquisition of junk automobiles
4 or salvage automobiles to State or local authorities if those authorities
5 make that information available to the operator; or

6 (B) issued a verification under section 33110 of this title stating that
7 the automobile or parts from the automobile are not reported as stolen.

8 (b) *INSURANCE CARRIERS.*—Beginning at a time established by the Sec-
9 retary that is not sooner than the 3d month before the establishment or des-
10 ignation of the System, an individual or entity engaged in business as an
11 insurance carrier shall file a monthly report with the operator. The report
12 may be filed directly or through a designated agent. The report shall contain
13 an inventory of all automobiles of the current model year or any of the 4
14 prior model years that the carrier, during the prior month, has obtained pos-
15 session of and has decided are junk automobiles or salvage automobiles. The
16 inventory shall contain—

17 (1) the vehicle identification number of each automobile obtained;

18 (2) the date on which the automobile was obtained;

19 (3) the name of the individual or entity from whom the automobile
20 was obtained; and

21 (4) the name of the owner of the automobile at the time of the filing
22 of the report.

23 (c) *PROCEDURES AND PRACTICES.*—The Secretary shall establish by regula-
24 tion procedures and practices to facilitate reporting in the least burdensome
25 and costly fashion.

26 **§ 30505. Penalties and enforcement**

27 (a) *PENALTY.*—An individual or entity violating this chapter is liable to
28 the United States Government for a civil penalty of not more than \$1,000
29 for each violation.

30 (b) *COLLECTION AND COMPROMISE.*—(1) The Secretary of Transportation
31 shall impose a civil penalty under this section. The Attorney General shall
32 bring a civil action to collect the penalty. The Secretary may compromise the
33 amount of the penalty. In determining the amount of the penalty or com-
34 promise, the Secretary shall consider the appropriateness of the penalty to the
35 size of the business of the individual or entity charged and the gravity of the
36 violation.

37 (2) The Government may deduct the amount of a civil penalty imposed or
38 compromised under this section from amounts it owes the individual or entity
39 liable for the penalty.

PART B—COMMERCIAL

CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

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SUBCHAPTER I—STATE GRANTS

§ 31101. Definitions

In this subchapter—

(1) “commercial motor vehicle” means (except in section 31106) a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle—

(A) has a gross vehicle weight rating of at least 10,000 pounds;

(B) is designed to transport more than 10 passengers including the driver; or

(C) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title.

(2) “employee” means a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial

1 motor vehicle), a mechanic, a freight handler, or an individual not an
2 employer, who—

3 (A) directly affects commercial motor vehicle safety in the course
4 of employment by a commercial motor carrier; and

5 (B) is not an employee of the United States Government, a State,
6 or a political subdivision of a State acting in the course of employ-
7 ment.

8 (3) “employer”—

9 (A) means a person engaged in a business affecting commerce
10 that owns or leases a commercial motor vehicle in connection with
11 that business, or assigns an employee to operate the vehicle in com-
12 merce; but

13 (B) does not include the Government, a State, or a political sub-
14 division of a State.

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

18 **§31102. Grants to States**

19 (a) *GENERAL AUTHORITY.*—Subject to this section and the availability of
20 amounts, the Secretary of Transportation may make grants to States for the
21 development or implementation of programs for the enforcement of regula-
22 tions, standards, and orders of the United States Government on commercial
23 motor vehicle safety and compatible State regulations, standards, and orders.

24 (b) *STATE PLAN PROCEDURES AND CONTENTS.*—(1) The Secretary shall
25 prescribe procedures for a State to submit a plan under which the State
26 agrees to adopt and assume responsibility for enforcing regulations, stand-
27 ards, and orders of the Government on commercial motor vehicle safety or
28 compatible State regulations, standards, and orders. The Secretary shall ap-
29 prove the plan if the Secretary decides the plan is adequate to promote the
30 objectives of this section and the plan—

31 (A) designates the State motor vehicle safety agency responsible for ad-
32 ministering the plan throughout the State;

33 (B) contains satisfactory assurances the agency has or will have the
34 legal authority, resources, and qualified personnel necessary to enforce
35 the regulations, standards, and orders;

36 (C) contains satisfactory assurances the State will devote adequate
37 amounts to the administration of the plan and enforcement of the regula-
38 tions, standards, and orders;

39 (D) provides that the total expenditure of amounts of the State and
40 its political subdivisions (not including amounts of the Government) for
41 commercial motor vehicle safety programs for enforcement of commercial

1 *motor vehicle size and weight limitations, drug interdiction, and State*
2 *traffic safety laws and regulations under subsection (c) of this section*
3 *will be maintained at a level at least equal to the average level of that*
4 *expenditure for its last 3 full fiscal years before December 18, 1991;*

5 *(E) provides a right of entry and inspection to carry out the plan;*

6 *(F) provides that all reports required under this section be submitted*
7 *to the agency and that the agency will make the reports available to the*
8 *Secretary on request;*

9 *(G) provides that the agency will adopt the reporting requirements*
10 *and use the forms for recordkeeping, inspections, and investigations the*
11 *Secretary prescribes;*

12 *(H) requires registrants of commercial motor vehicles to make a dec-*
13 *laration of knowledge of applicable safety regulations, standards, and or-*
14 *ders of the Government and the State;*

15 *(I) provides that the State will grant maximum reciprocity for inspec-*
16 *tions conducted under the North American Inspection Standard through*
17 *the use of a nationally accepted system that allows ready identification*
18 *of previously inspected commercial motor vehicles;*

19 *(J) ensures that activities described in subsection (c) of this section,*
20 *if financed with grants under subsection (a) of this section, will not di-*
21 *minish the effectiveness of the development and implementation of com-*
22 *mercial motor vehicle safety programs described in subsection (a);*

23 *(K) ensures that fines imposed and collected by the State for violations*
24 *of commercial motor vehicle safety regulations will be reasonable and ap-*
25 *propriate and that, to the maximum extent practicable, the State will*
26 *attempt to implement the recommended fine schedule published by the*
27 *Commercial Vehicle Safety Alliance;*

28 *(L) ensures that the State agency will coordinate the plan prepared*
29 *under this section with the State highway safety plan under section 402*
30 *of title 23;*

31 *(M) ensures participation by the 48 contiguous States in*
32 *SAFETYNET not later than January 1, 1994;*

33 *(N) provides satisfactory assurances that the State will undertake ef-*
34 *forts that will emphasize and improve enforcement of State and local*
35 *traffic safety laws and regulations related to commercial motor vehicle*
36 *safety;*

37 *(O) provides satisfactory assurances that the State will promote activi-*
38 *ties—*

39 *(i) to remove impaired commercial motor vehicle drivers from the*
40 *highways of the United States through adequate enforcement of reg-*
41 *ulations on the use of alcohol and controlled substances and by en-*

1 *sureing ready roadside access to alcohol detection and measuring*
2 *equipment;*

3 *(ii) to provide an appropriate level of training to State motor*
4 *carrier safety assistance program officers and employees on rec-*
5 *ognizing drivers impaired by alcohol or controlled substances;*

6 *(iii) to promote enforcement of the requirements related to the li-*
7 *censing of commercial motor vehicle drivers, including checking the*
8 *status of commercial drivers' licenses; and*

9 *(iv) to improve enforcement of hazardous material transportation*
10 *regulations by encouraging more inspections of shipper facilities af-*
11 *fecting highway transportation and more comprehensive inspection*
12 *of the loads of commercial motor vehicles transporting hazardous*
13 *material; and*

14 *(P) provides satisfactory assurances that the State will promote effec-*
15 *tive—*

16 *(i) interdiction activities affecting the transportation of controlled*
17 *substances by commercial motor vehicle drivers and training on ap-*
18 *propriate strategies for carrying out those interdiction activities;*
19 *and*

20 *(ii) use of trained and qualified officers and employees of politi-*
21 *cal subdivisions and local governments, under the supervision and*
22 *direction of the State motor vehicle safety agency, in the enforce-*
23 *ment of regulations affecting commercial motor vehicle safety and*
24 *hazardous material transportation safety.*

25 *(2) If the Secretary disapproves a plan under this subsection, the Secretary*
26 *shall give the State a written explanation and allow the State to modify and*
27 *resubmit the plan for approval.*

28 *(3) In estimating the average level of State expenditure under paragraph*
29 *(1)(D) of this subsection, the Secretary—*

30 *(A) may allow the State to exclude State expenditures for Government-*
31 *sponsored demonstration or pilot programs; and*

32 *(B) shall require the State to exclude Government amounts and State*
33 *matching amounts used to receive Government financing under sub-*
34 *section (a) of this section.*

35 *(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use*
36 *amounts received under a grant under subsection (a) of this section for the*
37 *following activities if the activities are carried out in conjunction with an*
38 *appropriate inspection of the commercial motor vehicle to enforce Government*
39 *or State commercial motor vehicle safety regulations:*

40 *(1) enforcement of commercial motor vehicle size and weight limita-*
41 *tions at locations other than fixed weight facilities, at specific locations*

1 such as steep grades or mountainous terrains where the weight of a com-
2 mercial motor vehicle can significantly affect the safe operation of the
3 vehicle, or at ports where intermodal shipping containers enter and leave
4 the United States.

5 (2) detection of the unlawful presence of a controlled substance (as de-
6 fined under section 102 of the Comprehensive Drug Abuse Prevention
7 and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle
8 or on the person of any occupant (including the operator) of the vehicle.

9 (3) enforcement of State traffic laws and regulations designed to pro-
10 mote the safe operation of commercial motor vehicles.

11 (d) *CONTINUOUS EVALUATION OF PLANS.*—On the basis of reports submit-
12 ted by a State motor vehicle safety agency of a State with a plan approved
13 under this section and the Secretary's own investigations, the Secretary shall
14 make a continuing evaluation of the way the State is carrying out the plan.
15 If the Secretary finds, after notice and opportunity for comment, the State
16 plan previously approved is not being followed or has become inadequate to
17 ensure enforcement of the regulations, standards, or orders, the Secretary shall
18 withdraw approval of the plan and notify the State. The plan stops being
19 effective when the notice is received. A State adversely affected by the with-
20 drawal may seek judicial review under chapter 7 of title 5. Notwithstanding
21 the withdrawal, the State may retain jurisdiction in administrative or judi-
22 cial proceedings begun before the withdrawal if the issues involved are not re-
23 lated directly to the reasons for the withdrawal.

24 **§ 31103. United States Government's share of costs**

25 The Secretary of Transportation shall reimburse a State, from a grant
26 made under this subchapter, an amount that is not more than 80 percent of
27 the costs incurred by the State in a fiscal year in developing and implement-
28 ing programs to enforce commercial motor vehicle regulations, standards, or
29 orders adopted under this subchapter or subchapter II of this chapter. In de-
30 termining those costs, the Secretary shall include in-kind contributions by the
31 State. Amounts of the State and its political subdivisions required to be ex-
32 pended under section 31102(b)(1)(D) of this title may not be included as part
33 of the share not provided by the United States Government. The Secretary
34 may allocate among the States whose applications for grants have been ap-
35 proved those amounts appropriated for grants to support those programs,
36 under criteria that may be established.

37 **§ 31104. Availability of amounts**

38 (a) *GENERAL.*—Subject to section 9503(c)(1) of the Internal Revenue Code
39 of 1986 (26 U.S.C. 9503(c)(1)), the following amounts are available from the
40 Highway Trust Fund (except the Mass Transit Account) for the Secretary of
41 Transportation to incur obligations to carry out section 31102 of this title:

1 (1) not more than \$76,000,000 for the fiscal year ending September
2 30, 1993.

3 (2) not more than \$80,000,000 for the fiscal year ending September
4 30, 1994.

5 (3) not more than \$83,000,000 for the fiscal year ending September
6 30, 1995.

7 (4) not more than \$85,000,000 for the fiscal year ending September
8 30, 1996.

9 (5) not more than \$90,000,000 for the fiscal year ending September
10 30, 1997.

11 (b) *AVAILABILITY AND REALLOCATION OF AMOUNTS.*—(1) Amounts made
12 available under subsection (a) of this section remain available until expended.
13 Allocations to a State remain available for expenditure in the State for the
14 fiscal year in which they are allocated and for the next fiscal year. Amounts
15 not expended by a State during those 2 fiscal years are released to the Sec-
16 retary for reallocation.

17 (2) Amounts made available under section 404(a)(2) of the Surface Trans-
18 portation Assistance Act of 1982 before October 1, 1991, that are not obligated
19 on October 1, 1992, are available for reallocation and obligation under para-
20 graph (1) of this subsection.

21 (c) *REIMBURSEMENT FOR GOVERNMENT'S SHARE OF COSTS.*—Amounts
22 made available under subsection (a) of this section shall be used to reimburse
23 States proportionately for the United States Government's share of costs in-
24 curred.

25 (d) *GRANTS AS CONTRACTUAL OBLIGATIONS.*—Approval by the Secretary
26 of a grant to a State under section 31102 of this title is a contractual obliga-
27 tion of the Government for payment of the Government's share of costs in-
28 curred by the State in developing, implementing, or developing and imple-
29 menting programs to enforce commercial motor vehicle regulations, standards,
30 and orders.

31 (e) *DEDUCTION FOR ADMINISTRATIVE EXPENSES.*—On October 1 of each
32 fiscal year or as soon after that date as practicable, the Secretary may deduct,
33 from amounts made available under subsection (a) of this section for that fis-
34 cal year, not more than 1.25 percent of those amounts for administrative ex-
35 penses incurred in carrying out section 31102 of this title in that fiscal year.
36 The Secretary shall use at least 75 percent of those deducted amounts to train
37 non-Government employees and to develop related training materials in car-
38 rying out section 31102.

39 (f) *ALLOCATION CRITERIA.*—On October 1 of each fiscal year or as soon
40 after that date as practicable, the Secretary, after making the deduction de-
41 scribed in subsection (e) of this section, shall allocate under criteria the Sec-

1 *retary establishes the amounts available for that fiscal year among the States*
2 *with plans approved under section 31102 of this title. However, the Secretary*
3 *may designate specific eligible States among which to allocate those amounts*
4 *in allocating amounts available—*

5 *(1) for research, development, and demonstration under subsection*
6 *(g)(1)(F) of this section; and*

7 *(2) for public education under subsection (g)(1)(G) of this section.*

8 *(g) SPECIFIC ALLOCATIONS.—(1) Of amounts made available under sub-*
9 *section (a) of this section—*

10 *(A) for each fiscal year beginning after September 30, 1992, the Sec-*
11 *retary shall obligate at least \$1,500,000 to make grants to States for*
12 *training inspectors to enforce regulations prescribed by the Secretary re-*
13 *lated to the transportation of hazardous material by commercial motor*
14 *vehicles;*

15 *(B) for each of the fiscal years ending September 30, 1993–1997, the*
16 *Secretary may obligate not more than \$2,000,000 to carry out section*
17 *31106 of this title;*

18 *(C) for each of the fiscal years ending September 30, 1993–1997, the*
19 *Secretary may obligate not more than \$2,000,000 to carry out section*
20 *31107 of this title;*

21 *(D) for each of the fiscal years ending September 30, 1993–1995, the*
22 *Secretary shall obligate at least \$4,250,000, and for each of the fiscal*
23 *years ending September 30, 1996, and 1997, the Secretary shall obligate*
24 *at least \$5,000,000, for traffic enforcement activities related to commer-*
25 *cial motor vehicle drivers that are carried out in conjunction with an*
26 *appropriate inspection of a commercial motor vehicle for compliance*
27 *with Government or State commercial motor vehicle safety regulations;*

28 *(E) for each of the fiscal years ending September 30, 1993–1995, the*
29 *Secretary shall obligate at least \$1,000,000 to increase enforcement of the*
30 *licensing requirements of chapter 313 of this title by motor carrier safety*
31 *assistance program officers and employees, including the cost of purchas-*
32 *ing equipment for, and conducting, inspections to check the current sta-*
33 *tus of licenses issued under chapter 313;*

34 *(F) for each fiscal year, the Secretary shall obligate at least \$500,000*
35 *for research, development, and demonstration of technologies, methodolo-*
36 *gies, analyses, or information systems designed to carry out section*
37 *31102 of this title and that are beneficial to all jurisdictions; and*

38 *(G) for each fiscal year, the Secretary shall obligate at least \$350,000*
39 *to educate the motoring public on how to share the road safely with com-*
40 *mmercial motor vehicles.*

1 (2) *The Secretary shall announce publicly amounts obligated under para-*
2 *graph (1)(F) of this subsection and award those amounts competitively, when*
3 *practicable, to any eligible State for up to 100 percent of the State costs or*
4 *to other persons as the Secretary decides.*

5 (3) *In carrying out educational activities referred to in paragraph (1)(G)*
6 *of this subsection, the Secretary shall consult with appropriate industry rep-*
7 *resentatives.*

8 (h) *PAYMENT TO STATES FOR COSTS.—Each State shall submit vouchers*
9 *for costs the State incurs under this section and section 31102 of this title.*
10 *The Secretary shall pay the State an amount not more than the Government*
11 *share of costs incurred as of the date of the vouchers.*

12 (i) *IMPROVED ALLOCATION FORMULA.—The Secretary shall prescribe regu-*
13 *lations to develop an improved formula and process for allocating amounts*
14 *made available for grants under section 31102(a) of this title among States*
15 *eligible for those amounts. In prescribing those regulations, the Secretary*
16 *shall—*

17 (1) *consider ways to provide incentives to States that demonstrate in-*
18 *novative, successful, cost-efficient, or cost-effective programs to promote*
19 *commercial motor vehicle safety and hazardous material transportation*
20 *safety;*

21 (2) *place special emphasis on incentives to States that conduct traffic*
22 *safety enforcement activities that are coupled with motor carrier safety*
23 *inspections; and*

24 (3) *consider ways to provide incentives to States that increase compat-*
25 *ibility of State commercial motor vehicle safety and hazardous material*
26 *transportation regulations with Government safety regulations and pro-*
27 *mote other factors intended to promote effectiveness and efficiency the*
28 *Secretary decides are appropriate.*

29 (j) *INTRASTATE COMPATIBILITY.—The Secretary shall prescribe regulations*
30 *specifying tolerance guidelines and standards for ensuring compatibility of*
31 *intrastate commercial motor vehicle safety laws and regulations with Govern-*
32 *ment motor carrier safety regulations to be enforced under section 31102(a)*
33 *of this title. To the extent practicable, the guidelines and standards shall*
34 *allow for maximum flexibility while ensuring the degree of uniformity that*
35 *will not diminish transportation safety. In reviewing State plans and allocat-*
36 *ing amounts or making grants under section 153 of title 23, the Secretary*
37 *shall ensure that the guidelines and standards are applied uniformly.*

38 **§ 31105. Employee protections**

39 (a) *PROHIBITIONS.—(1) A person may not discharge an employee, or dis-*
40 *cipline or discriminate against an employee regarding pay, terms, or privi-*
41 *leges of employment, because—*

1 (A) the employee, or another person at the employee's request, has filed
2 a complaint or begun a proceeding related to a violation of a commercial
3 motor vehicle safety regulation, standard, or order, or has testified or
4 will testify in such a proceeding; or

5 (B) the employee refuses to operate a vehicle because—

6 (i) the operation violates a regulation, standard, or order of the
7 United States related to commercial motor vehicle safety or health;
8 or

9 (ii) the employee has a reasonable apprehension of serious injury
10 to the employee or the public because of the vehicle's unsafe condi-
11 tion.

12 (2) Under paragraph (1)(B)(ii) of this subsection, an employee's apprehen-
13 sion of serious injury is reasonable only if a reasonable individual in the cir-
14 cumstances then confronting the employee would conclude that the unsafe con-
15 dition establishes a real danger of accident, injury, or serious impairment to
16 health. To qualify for protection, the employee must have sought from the em-
17 ployer, and been unable to obtain, correction of the unsafe condition.

18 (b) *FILING COMPLAINTS AND PROCEDURES.*—(1) An employee alleging dis-
19 charge, discipline, or discrimination in violation of subsection (a) of this sec-
20 tion, or another person at the employee's request, may file a complaint with
21 the Secretary of Labor not later than 180 days after the alleged violation oc-
22 curred. On receiving the complaint, the Secretary shall notify the person al-
23 leged to have committed the violation of the filing of the complaint.

24 (2)(A) Not later than 60 days after receiving a complaint, the Secretary
25 shall conduct an investigation, decide whether it is reasonable to believe the
26 complaint has merit, and notify the complainant and the person alleged to
27 have committed the violation of the findings. If the Secretary decides it is rea-
28 sonable to believe a violation occurred, the Secretary shall include with the
29 decision findings and a preliminary order for the relief provided under para-
30 graph (3) of this subsection.

31 (B) Not later than 30 days after the notice under subparagraph (A) of this
32 paragraph, the complainant and the person alleged to have committed the vio-
33 lation may file objections to the findings or preliminary order, or both, and
34 request a hearing on the record. The filing of objections does not stay a rein-
35 statement ordered in the preliminary order. If a hearing is not requested
36 within the 30 days, the preliminary order is final and not subject to judicial
37 review.

38 (C) A hearing shall be conducted expeditiously. Not later than 120 days
39 after the end of the hearing, the Secretary shall issue a final order. Before
40 the final order is issued, the proceeding may be ended by a settlement agree-

1 *ment made by the Secretary, the complainant, and the person alleged to have*
2 *committed the violation.*

3 *(3)(A) If the Secretary decides, on the basis of a complaint, a person vio-*
4 *lated subsection (a) of this section, the Secretary shall order the person to—*

5 *(i) take affirmative action to abate the violation;*

6 *(ii) reinstate the complainant to the former position with the same*
7 *pay and terms and privileges of employment; and*

8 *(iii) pay compensatory damages, including back pay.*

9 *(B) If the Secretary issues an order under subparagraph (A) of this para-*
10 *graph and the complainant requests, the Secretary may assess against the*
11 *person against whom the order is issued the costs (including attorney's fees)*
12 *reasonably incurred by the complainant in bringing the complaint. The Sec-*
13 *retary shall determine the costs that reasonably were incurred.*

14 *(c) JUDICIAL REVIEW AND VENUE.—A person adversely affected by an*
15 *order issued after a hearing under subsection (b) of this section may file a*
16 *petition for review, not later than 60 days after the order is issued, in the*
17 *court of appeals of the United States for the circuit in which the violation*
18 *occurred or the person resided on the date of the violation. The review shall*
19 *be heard and decided expeditiously. An order of the Secretary subject to re-*
20 *view under this subsection is not subject to judicial review in a criminal or*
21 *other civil proceeding.*

22 *(d) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an*
23 *order issued under subsection (b) of this section, the Secretary shall bring a*
24 *civil action to enforce the order in the district court of the United States for*
25 *the judicial district in which the violation occurred.*

26 **§31106. Commercial motor vehicle information system pro-**
27 **gram**

28 *(a) DEFINITION.—In this section, “commercial motor vehicle” means a self-*
29 *propelled or towed vehicle used on highways in intrastate or interstate com-*
30 *merce to transport passengers or property, if the vehicle—*

31 *(1) has a gross vehicle weight rating of at least 10,001 pounds;*

32 *(2) is designed to transport more than 15 passengers, including the*
33 *driver; or*

34 *(3) is used in transporting material found by the Secretary of Trans-*
35 *portation to be hazardous under section 5103 of this title and that mate-*
36 *rial is transported in a quantity requiring placarding under regulations*
37 *the Secretary prescribes under section 5103.*

38 *(b) INFORMATION SYSTEM.—(1) In cooperation with the States, the Sec-*
39 *retary may establish as part of the motor carrier safety information network*
40 *system of the Department of Transportation and similar State systems, an*
41 *information system to serve as a clearinghouse and depository of information*

1 related to State registration and licensing of commercial motor vehicles and
2 the safety fitness of the commercial motor vehicle registrants. The Secretary
3 shall include in the system information on the safety fitness of each of the
4 registrants and other information the Secretary considers appropriate, includ-
5 ing information on vehicle inspections and out-of-service orders.

6 (2) The operation of the information system established under paragraph
7 (1) of this subsection shall be paid for by a schedule of user fees. The Sec-
8 retary may authorize the operation of the information system by contract,
9 through an agreement with one or more States, or by designating, after con-
10 sulting with the States, a third party that represents the interests of the
11 States.

12 (3) The Secretary shall prescribe standards to ensure—

13 (A) uniform information collection and reporting by the States nec-
14 essary to carry out this section; and

15 (B) the availability and reliability of the information to the States
16 and the Secretary from the information system.

17 (c) DEMONSTRATION PROJECT.—The Secretary shall make grants to States
18 to carry out a project to demonstrate ways of establishing an information sys-
19 tem that will link the motor carrier safety information network system of the
20 Department and similar State systems with the motor vehicle registration
21 and licensing systems of the States. The project shall be designed—

22 (1) to allow a State when issuing license plates for a commercial
23 motor vehicle to establish through use of the information system the safe-
24 ty fitness of the person seeking to register the vehicle; and

25 (2) to decide on types of sanctions that may be imposed on the reg-
26 istrant, or the types of conditions or limitations that may be imposed
27 on the operations of the registrant, to ensure the safety fitness of the reg-
28 istrant.

29 (d) REVIEW OF STATE SYSTEMS.—Not later than December 18, 1992, the
30 Secretary, in cooperation with the States, shall review State motor vehicle
31 registration systems related to license tags for commercial motor vehicles to
32 decide whether those systems can be used in carrying out this section.

33 (e) REGULATIONS.—The Secretary shall prescribe regulations to carry out
34 this section.

35 (f) REPORT TO CONGRESS.—Not later than January 1, 1995, the Secretary
36 shall submit a report to Congress on the cost, benefits, and feasibility of the
37 information system established under subsection (b) of this section. If the Sec-
38 retary decides that the system would be beneficial on a nationwide basis, the
39 Secretary shall include in the report recommendations on legislation to imple-
40 ment a nationwide system.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to carry out
 2 this section may be made available to the Secretary under section
 3 31104(g)(1)(B) of this title.

4 **§31107. Truck and bus accident grant program**

5 (a) STATE GRANTS.—The Secretary of Transportation shall make grants
 6 to States that agree to adopt or have adopted the recommendations of the Na-
 7 tional Governors' Association related to police accident reports for truck and
 8 bus accidents. The Secretary may make a grant under this section only to
 9 assist a State in carrying out those recommendations, including—

10 (1) assisting the State in designing appropriate forms;

11 (2) drafting instruction manuals;

12 (3) training appropriate State and local officers on matters, including
 13 training on accident investigation techniques to decide on the probable
 14 cause of truck and bus accidents;

15 (4) analyzing and evaluating safety information to develop rec-
 16 ommended changes to existing safety programs necessary to address more
 17 effectively the causes of truck and bus accidents; and

18 (5) other activities the Secretary decides are appropriate to carry out
 19 this section.

20 (b) COORDINATION WITH OTHER PROGRAMS.—The Secretary shall coordi-
 21 nate grants made under this section with highway safety programs under sec-
 22 tion 402 of title 23. The Secretary may require that the information from
 23 police reports for truck and bus accidents be included in reports made to the
 24 Secretary under the uniform information collection and reporting program
 25 under section 402.

26 (c) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to carry out
 27 this section may be made available to the Secretary under section
 28 31104(g)(1)(C) of this title.

29 **§31108. Authorization of appropriations**

30 Not more than \$----- may be appropriated to the Secretary of Trans-
 31 portation for the fiscal year ending September 30, 19--, to carry out the safe-
 32 ty duties and powers of the Federal Highway Administration.

33 SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS

34 **§31111. Length limitations**

35 (a) DEFINITIONS.—In this section—

36 (1) “maxi-cube vehicle” means a truck tractor combined with a
 37 semitrailer and a separable property-carrying unit designed to be loaded
 38 and unloaded through the semitrailer, with the length of the separable
 39 property-carrying unit being not more than 34 feet and the length of the
 40 vehicle combination being not more than 65 feet.

41 (2) “truck tractor” means—

1 (A) a non-property-carrying power unit that operates in com-
2 bination with a semitrailer or trailer; or

3 (B) a power unit that carries as property only motor vehicles
4 when operating in combination with a semitrailer in transporting
5 motor vehicles.

6 (b) *GENERAL LIMITATIONS.*—(1) Except as provided in this section, a
7 State may not prescribe or enforce a regulation of commerce that—

8 (A) imposes a vehicle length limitation of less than 45 feet on a bus,
9 of less than 48 feet on a semitrailer operating in a truck tractor-
10 semitrailer combination, or of less than 28 feet on a semitrailer or trailer
11 operating in a truck tractor-semitrailer-trailer combination, on any seg-
12 ment of the Dwight D. Eisenhower System of Interstate and Defense
13 Highways (except a segment exempted under subsection (f) of this sec-
14 tion) and those classes of qualifying Federal-aid Primary System high-
15 ways designated by the Secretary of Transportation under subsection (e)
16 of this section;

17 (B) imposes an overall length limitation on a commercial motor vehi-
18 cle operating in a truck tractor-semitrailer or truck tractor-semitrailer-
19 trailer combination;

20 (C) has the effect of prohibiting the use of a semitrailer or trailer of
21 the same dimensions as those that were in actual and lawful use in that
22 State on December 1, 1982; or

23 (D) has the effect of prohibiting the use of an existing semitrailer or
24 trailer, of not more than 28.5 feet in length, in a truck tractor-
25 semitrailer-trailer combination if the semitrailer or trailer was operating
26 lawfully on December 1, 1982, within a 65-foot overall length limit in
27 any State.

28 (2) A length limitation prescribed or enforced by a State under paragraph
29 (1)(A) of this subsection applies only to a semitrailer or trailer and not to
30 a truck tractor.

31 (c) *MAXI-CUBE AND VEHICLE COMBINATION LIMITATIONS.*—A State may
32 not prohibit a maxi-cube vehicle or a commercial motor vehicle combination
33 consisting of a truck tractor and 2 trailing units on any segment of the
34 Dwight D. Eisenhower System of Interstate and Defense Highways (except a
35 segment exempted under subsection (f) of this section) and those classes of
36 qualifying Federal-aid Primary System highways designated by the Secretary
37 under subsection (e) of this section.

38 (d) *EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.*—Length
39 calculated under this section does not include a safety or energy conservation
40 device the Secretary decides is necessary for safe and efficient operation of a

1 commercial motor vehicle. However, such a device may not have by its design
2 or use the ability to carry cargo.

3 (e) *QUALIFYING HIGHWAYS.*—The Secretary by regulation shall designate
4 as qualifying Federal-aid Primary System highways those highways of the
5 Federal-aid Primary System in existence on June 1, 1991, that can accommo-
6 date safely the applicable vehicle lengths provided in this section.

7 (f) *EXEMPTIONS.*—(1) If the chief executive officer of a State, after consult-
8 ing under paragraph (2) of this subsection, decides a segment of the Dwight
9 D. Eisenhower System of Interstate and Defense Highways is not capable of
10 safely accommodating a commercial motor vehicle having a length described
11 in subsection (b)(1)(A) of this section or the motor vehicle combination de-
12 scribed in subsection (c) of this section, the chief executive officer may notify
13 the Secretary of that decision and request the Secretary to exempt that seg-
14 ment from either or both provisions.

15 (2) Before making a decision under paragraph (1) of this subsection, the
16 chief executive officer shall consult with units of local government in the State
17 in which the segment of the Dwight D. Eisenhower System of Interstate and
18 Defense Highways is located and with the chief executive officer of any adja-
19 cent State that may be directly affected by the exemption. As part of the con-
20 sultations, consideration shall be given to any potential alternative route that
21 serves the area in which the segment is located and can safely accommodate
22 a commercial motor vehicle having a length described in subsection (b)(1)(A)
23 of this section or the motor vehicle combination described in subsection (c)
24 of this section.

25 (3) A chief executive officer's notification under this subsection must in-
26 clude specific evidence of safety problems supporting the officer's decision and
27 the results of consultations about alternative routes.

28 (4)(A) If the Secretary decides, on request of a chief executive officer or on
29 the Secretary's own initiative, a segment of the Dwight D. Eisenhower System
30 of Interstate and Defense Highways is not capable of safely accommodating
31 a commercial motor vehicle having a length described in subsection (b)(1)(A)
32 of this section or the motor vehicle combination described in subsection (c)
33 of this section, the Secretary shall exempt the segment from either or both of
34 those provisions. Before making a decision under this paragraph, the Sec-
35 retary shall consider any possible alternative route that serves the area in
36 which the segment is located.

37 (B) The Secretary shall make a decision about a specific segment not later
38 than 120 days after the date of receipt of notification from a chief executive
39 officer under paragraph (1) of this subsection or the date on which the Sec-
40 retary initiates action under subparagraph (A) of this paragraph, whichever
41 is applicable. If the Secretary finds the decision will not be made in time,

1 the Secretary immediately shall notify Congress, giving the reasons for the
2 delay, information about the resources assigned, and the projected date for the
3 decision.

4 (C) Before making a decision, the Secretary shall give an interested person
5 notice and an opportunity for comment. If the Secretary exempts a segment
6 under this subsection before the final regulations under subsection (e) of this
7 section are prescribed, the Secretary shall include the exemption as part of
8 the final regulations. If the Secretary exempts the segment after the final reg-
9 ulations are prescribed, the Secretary shall publish the exemption as an
10 amendment to the final regulations.

11 (g) ACCOMMODATING SPECIALIZED EQUIPMENT.—In prescribing regula-
12 tions to carry out this section, the Secretary may make decisions necessary
13 to accommodate specialized equipment, including automobile and vessel trans-
14 porters and maxi-cube vehicles.

15 **§ 31112. Property-carrying unit limitation**

16 (a) DEFINITIONS.—In this section—

17 (1) “property-carrying unit” means any part of a commercial motor
18 vehicle combination (except the truck tractor) used to carry property, in-
19 cluding a trailer, a semitrailer, or the property-carrying section of a sin-
20 gle unit truck.

21 (2) the length of the property-carrying units of a commercial motor
22 vehicle combination is the length measured from the front of the first
23 property-carrying unit to the rear of the last property-carrying unit.

24 (b) GENERAL LIMITATIONS.—A State may not allow by any means the op-
25 eration, on any segment of the Dwight D. Eisenhower System of Interstate
26 and Defense Highways and those classes of qualifying Federal-aid Primary
27 System highways designated by the Secretary of Transportation under section
28 31111(e) of this title, of any commercial motor vehicle combination (except
29 a vehicle or load that cannot be dismantled easily or divided easily and that
30 has been issued a special permit under applicable State law) with more than
31 one property-carrying unit (not including the truck tractor) whose property-
32 carrying units are more than—

33 (1) the maximum combination trailer, semitrailer, or other type of
34 length limitation allowed by law or regulation of that State before June
35 2, 1991; or

36 (2) the length of the property-carrying units of those commercial motor
37 vehicle combinations, by specific configuration, in actual, lawful oper-
38 ation on a regular or periodic basis (including continuing seasonal oper-
39 ation) in that State before June 2, 1991.

40 (c) SPECIAL RULES FOR WYOMING, OHIO, AND ALASKA.—In addition to
41 the vehicles allowed under subsection (b) of this section—

1 (1) Wyoming may allow the operation of additional vehicle configura-
2 tions not in actual operation on June 1, 1991, but authorized by State
3 law not later than November 3, 1992, if the vehicle configurations com-
4 ply with the single axle, tandem axle, and bridge formula limits in sec-
5 tion 127(a) of title 23 and are not more than 117,000 pounds gross vehi-
6 cle weight;

7 (2) Ohio may allow the operation of commercial motor vehicle com-
8 binations with 3 property-carrying units of 28.5 feet each (not including
9 the truck tractor) not in actual operation on June 1, 1991, to be operated
10 in Ohio on the 1-mile segment of Ohio State Route 7 that begins at and
11 is south of exit 16 of the Ohio Turnpike; and

12 (3) Alaska may allow the operation of commercial motor vehicle com-
13 binations that were not in actual operation on June 1, 1991, but were
14 in actual operation before July 6, 1991.

15 (d) *ADDITIONAL LIMITATIONS.*—(1) A commercial motor vehicle combina-
16 tion whose operation in a State is not prohibited under subsections (b) and
17 (c) of this section may continue to operate in the State on highways described
18 in subsection (b) only if at least in compliance with all State laws, regula-
19 tions, limitations, and conditions, including routing-specific and configura-
20 tion-specific designations and all other restrictions in force in the State on
21 June 1, 1991. However, subject to regulations prescribed by the Secretary
22 under subsection (g)(2) of this section, the State may make minor adjustments
23 of a temporary and emergency nature to route designations and vehicle oper-
24 ating restrictions in effect on June 1, 1991, for specific safety purposes and
25 road construction.

26 (2) This section does not prevent a State from further restricting in any
27 way or prohibiting the operation of any commercial motor vehicle combina-
28 tion subject to this section, except that a restriction or prohibition shall be
29 consistent with this section and sections 31113(a) and (b) and 31114 of this
30 title.

31 (3) A State making a minor adjustment of a temporary and emergency na-
32 ture as authorized by paragraph (1) of this subsection or further restricting
33 or prohibiting the operation of a commercial motor vehicle combination as
34 authorized by paragraph (2) of this subsection shall advise the Secretary not
35 later than 30 days after the action. The Secretary shall publish a notice of
36 the action in the Federal Register.

37 (e) *LIST OF STATE LENGTH LIMITATIONS.*—(1) Not later than February
38 16, 1992, each State shall submit to the Secretary for publication a complete
39 list of State length limitations applicable to commercial motor vehicle com-
40 binations operating in the State on the highways described in subsection (b)
41 of this section. The list shall indicate the applicable State laws and regula-

1 tions associated with the length limitations. If a State does not submit the
2 information as required, the Secretary shall complete and file the information
3 for the State.

4 (2) Not later than March 17, 1992, the Secretary shall publish an interim
5 list in the Federal Register consisting of all information submitted under
6 paragraph (1) of this subsection. The Secretary shall review for accuracy all
7 information submitted by a State under paragraph (1) and shall solicit and
8 consider public comment on the accuracy of the information.

9 (3) A law or regulation may not be included on the list submitted by a
10 State or published by the Secretary merely because it authorized, or could
11 have authorized, by permit or otherwise, the operation of commercial motor
12 vehicle combinations not in actual operation on a regular or periodic basis
13 before June 2, 1991.

14 (4) Except as revised under this paragraph or paragraph (5) of this sub-
15 section, the list shall be published as final in the Federal Register not later
16 than June 15, 1992. In publishing the final list, the Secretary shall make any
17 revisions necessary to correct inaccuracies identified under paragraph (2) of
18 this subsection. After publication of the final list, commercial motor vehicle
19 combinations prohibited under subsection (b) of this section may not operate
20 on the Dwight D. Eisenhower System of Interstate and Defense Highways and
21 other Federal-aid Primary System highways designated by the Secretary ex-
22 cept as published on the list. The list may be combined by the Secretary with
23 the list required under section 127(d) of title 23.

24 (5) On the Secretary's own motion or on request by any person (including
25 a State), the Secretary shall review the list published under paragraph (4)
26 of this subsection. If the Secretary decides there is reason to believe a mistake
27 was made in the accuracy of the list, the Secretary shall begin a proceeding
28 to decide whether a mistake was made. If the Secretary decides there was a
29 mistake, the Secretary shall publish the correction.

30 (f) LIMITATIONS ON STATUTORY CONSTRUCTION.—This section may not be
31 construed—

32 (1) to allow the operation on any segment of the Dwight D. Eisen-
33 hower System of Interstate and Defense Highways of a longer combina-
34 tion vehicle prohibited under section 127(d) of title 23;

35 (2) to affect in any way the operation of a commercial motor vehicle
36 having only one property-carrying unit; or

37 (3) to affect in any way the operation in a State of a commercial
38 motor vehicle with more than one property-carrying unit if the vehicle
39 was in actual operation on a regular or periodic basis (including sea-
40 sonal operation) in that State before June 2, 1991, that was authorized
41 under State law or regulation or lawful State permit.

1 (g) REGULATIONS.—(1) In carrying out this section only, the Secretary
2 shall define by regulation loads that cannot be dismantled easily or divided
3 easily.

4 (2) Not later than June 15, 1992, the Secretary shall prescribe regulations
5 establishing criteria for a State to follow in making minor adjustments under
6 subsection (d) of this section.

7 **§31113. Width limitations**

8 (a) GENERAL LIMITATIONS.—(1) Except as provided in subsection (e) of
9 this section, a State (except Hawaii) may not prescribe or enforce a regula-
10 tion of commerce that imposes a vehicle width limitation of more or less than
11 102 inches on a commercial motor vehicle operating on—

12 (A) a segment of the Dwight D. Eisenhower System of Interstate and
13 Defense Highways (except a segment exempted under subsection (e) of
14 this section);

15 (B) a qualifying Federal-aid highway designated by the Secretary of
16 Transportation, with traffic lanes designed to be at least 12 feet wide;
17 or

18 (C) a qualifying Federal-aid Primary System highway designated by
19 the Secretary if the Secretary decides the designation is consistent with
20 highway safety.

21 (2) Notwithstanding paragraph (1) of this subsection, a State may continue
22 to enforce a regulation of commerce in effect on April 6, 1983, that applies
23 to a commercial motor vehicle of more than 102 inches in width, until the
24 date on which the State prescribes a regulation of commerce that complies
25 with this subsection.

26 (3) A Federal-aid highway (except an interstate highway) not designated
27 under this subsection on June 5, 1984, may be designated under this sub-
28 section only with the agreement of the chief executive officer of the State in
29 which the highway is located.

30 (b) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—Width
31 calculated under this section does not include a safety or energy conservation
32 device the Secretary decides is necessary for safe and efficient operation of a
33 commercial motor vehicle.

34 (c) SPECIAL USE PERMITS.—A State may grant a special use permit to
35 a commercial motor vehicle that is more than 102 inches in width.

36 (d) STATE ENFORCEMENT.—Consistent with this section, a State may en-
37 force a commercial motor vehicle width limitation of 102 inches on a segment
38 of the Dwight D. Eisenhower System of Interstate and Defense Highways (ex-
39 cept a segment exempted under subsection (e) of this section) or other qualify-
40 ing Federal-aid highway designated by the Secretary.

1 (e) *EXEMPTIONS.*—(1) *If the chief executive officer of a State, after consult-*
2 *ing under paragraph (2) of this subsection, decides a segment of the Dwight*
3 *D. Eisenhower System of Interstate and Defense Highways is not capable of*
4 *safely accommodating a commercial motor vehicle having the width provided*
5 *in subsection (a) of this section, the chief executive officer may notify the Sec-*
6 *retary of that decision and request the Secretary to exempt that segment from*
7 *subsection (a) to allow the State to impose a width limitation of less than*
8 *102 inches for a vehicle (except a bus) on that segment.*

9 (2) *Before making a decision under paragraph (1) of this subsection, the*
10 *chief executive officer shall consult with units of local government in the State*
11 *in which the segment of the Dwight D. Eisenhower System of Interstate and*
12 *Defense Highways is located and with the chief executive officer of any adja-*
13 *cent State that may be directly affected by the exemption. As part of the con-*
14 *sultations, consideration shall be given to any potential alternative route that*
15 *serves the area in which the segment is located and can safely accommodate*
16 *a commercial motor vehicle having the width provided for in subsection (a)*
17 *of this section.*

18 (3) *A chief executive officer's notification under this subsection must in-*
19 *clude specific evidence of safety problems supporting the officer's decision and*
20 *the results of consultations about alternative routes.*

21 (4)(A) *If the Secretary decides, on request of a chief executive officer or on*
22 *the Secretary's own initiative, a segment of the Dwight D. Eisenhower System*
23 *of Interstate and Defense Highways is not capable of safely accommodating*
24 *a commercial motor vehicle having a width provided in subsection (a) of this*
25 *section, the Secretary shall exempt the segment from subsection (a) to allow*
26 *the State to impose a width limitation of less than 102 inches for a vehicle*
27 *(except a bus) on that segment. Before making a decision under this para-*
28 *graph, the Secretary shall consider any possible alternative route that serves*
29 *the area in which the segment is located.*

30 (B) *The Secretary shall make a decision about a specific segment not later*
31 *than 120 days after the date of receipt of notification from a chief executive*
32 *officer under paragraph (1) of this subsection or the date on which the Sec-*
33 *retary initiates action under subparagraph (A) of this paragraph, whichever*
34 *is applicable. If the Secretary finds the decision will not be made in time,*
35 *the Secretary immediately shall notify Congress, giving the reasons for the*
36 *delay, information about the resources assigned, and the projected date for the*
37 *decision.*

38 (C) *Before making a decision, the Secretary shall give an interested person*
39 *notice and an opportunity for comment. If the Secretary exempts a segment*
40 *under this subsection before the final regulations under subsection (a) of this*
41 *section are prescribed, the Secretary shall include the exemption as part of*

1 *the final regulations. If the Secretary exempts the segment after the final reg-*
 2 *ulations are prescribed, the Secretary shall publish the exemption as an*
 3 *amendment to the final regulations.*

4 **§31114. Access to the Interstate System**

5 (a) *PROHIBITION ON DENYING ACCESS.*—A State may not enact or enforce
 6 a law denying to a commercial motor vehicle subject to this subchapter or
 7 subchapter I of this chapter reasonable access between—

8 (1) *the Dwight D. Eisenhower System of Interstate and Defense High-*
 9 *ways (except a segment exempted under section 31111(f) or 31113(e) of*
 10 *this title) and other qualifying Federal-aid Primary System highways*
 11 *designated by the Secretary of Transportation; and*

12 (2) *terminals, facilities for food, fuel, repairs, and rest, and points of*
 13 *loading and unloading for household goods carriers, motor carriers of*
 14 *passengers, or any truck tractor-semitrailer combination in which the*
 15 *semitrailer has a length of not more than 28.5 feet and that generally*
 16 *operates as part of a vehicle combination described in section 31111(c)*
 17 *of this title.*

18 (b) *EXCEPTION.*—This section does not prevent a State or local government
 19 from imposing reasonable restrictions, based on safety considerations, on a
 20 truck tractor-semitrailer combination in which the semitrailer has a length
 21 of not more than 28.5 feet and that generally operates as part of a vehicle
 22 combination described in section 31111(c) of this title.

23 **§31115. Enforcement**

24 *On the request of the Secretary of Transportation, the Attorney General*
 25 *shall bring a civil action for appropriate injunctive relief to ensure compli-*
 26 *ance with this subchapter or subchapter I of this chapter. The action may*
 27 *be brought in a district court of the United States in any State in which the*
 28 *relief is required. On a proper showing, the court shall issue a temporary re-*
 29 *straining order or preliminary or permanent injunction. An injunction under*
 30 *this section may order a State or person to comply with this subchapter, sub-*
 31 *chapter I, or a regulation prescribed under this subchapter or subchapter I.*

32 *SUBCHAPTER III—SAFETY REGULATION*

33 **§31131. Purposes and findings**

34 (a) *PURPOSES.*—The purposes of this subchapter are—

35 (1) *to promote the safe operation of commercial motor vehicles;*

36 (2) *to minimize dangers to the health of operators of commercial motor*
 37 *vehicles and other employees whose employment directly affects motor*
 38 *carrier safety; and*

39 (3) *to ensure increased compliance with traffic laws and with the com-*
 40 *mmercial motor vehicle safety and health regulations and standards pre-*
 41 *scribed and orders issued under this chapter.*

1 (b) *FINDINGS.—Congress finds—*

2 (1) *it is in the public interest to enhance commercial motor vehicle*
3 *safety and thereby reduce highway fatalities, injuries, and property dam-*
4 *age;*

5 (2) *improved, more uniform commercial motor vehicle safety measures*
6 *and strengthened enforcement would reduce the number of fatalities and*
7 *injuries and the level of property damage related to commercial motor*
8 *vehicle operations;*

9 (3) *enhanced protection of the health of commercial motor vehicle oper-*
10 *ators is in the public interest; and*

11 (4) *interested State governments can provide valuable assistance to the*
12 *United States Government in ensuring that commercial motor vehicle op-*
13 *erations are conducted safely and healthfully.*

14 **§ 31132. Definitions**

15 *In this subchapter—*

16 (1) *“commercial motor vehicle” means a self-propelled or towed vehicle*
17 *used on the highways in interstate commerce to transport passengers or*
18 *property, if the vehicle—*

19 (A) *has a gross vehicle weight rating of at least 10,001 pounds;*

20 (B) *is designed to transport more than 15 passengers including*
21 *the driver; or*

22 (C) *is used in transporting material found by the Secretary of*
23 *Transportation to be hazardous under section 5103 of this title and*
24 *transported in a quantity requiring placarding under regulations*
25 *prescribed by the Secretary under section 5103.*

26 (2) *“employee” means an operator of a commercial motor vehicle (in-*
27 *cluding an independent contractor when operating a commercial motor*
28 *vehicle), a mechanic, a freight handler, or an individual not an em-*
29 *ployer, who—*

30 (A) *directly affects commercial motor vehicle safety in the course*
31 *of employment; and*

32 (B) *is not an employee of the United States Government, a State,*
33 *or a political subdivision of a State acting in the course of the em-*
34 *ployment by the Government, a State, or a political subdivision of*
35 *a State.*

36 (3) *“employer”—*

37 (A) *means a person engaged in a business affecting interstate*
38 *commerce that owns or leases a commercial motor vehicle in connec-*
39 *tion with that business, or assigns an employee to operate it; but*

40 (B) *does not include the Government, a State, or a political sub-*
41 *division of a State.*

1 (4) “interstate commerce” means trade, traffic, or transportation in
2 the United States between a place in a State and—

3 (A) a place outside that State (including a place outside the
4 United States); or

5 (B) another place in the same State through another State or
6 through a place outside the United States.

7 (5) “intrastate commerce” means trade, traffic, or transportation in
8 a State that is not interstate commerce.

9 (6) “regulation” includes a standard or order.

10 (7) “State” means a State of the United States, the District of Colum-
11 bia, and, in sections 31136 and 31140–31142 of this title, a political
12 subdivision of a State.

13 (8) “State law” includes a law enacted by a political subdivision of
14 a State.

15 (9) “State regulation” includes a regulation prescribed by a political
16 subdivision of a State.

17 (10) “United States” means the States of the United States and the
18 District of Columbia.

19 **§31133. General powers of the Secretary of Transportation**

20 (a) *GENERAL.*—In carrying out this subchapter and regulations prescribed
21 under section 31102 of this title, the Secretary of Transportation may—

22 (1) conduct inspections and investigations;

23 (2) compile statistics;

24 (3) make reports;

25 (4) issue subpoenas;

26 (5) require production of records and property;

27 (6) take depositions;

28 (7) hold hearings;

29 (8) prescribe recordkeeping and reporting requirements;

30 (9) conduct or make contracts for studies, development, testing, evalua-
31 tion, and training; and

32 (10) perform other acts the Secretary considers appropriate.

33 (b) *CONSULTATION.*—In conducting inspections and investigations under
34 subsection (a) of this section, the Secretary shall consult, as appropriate, with
35 employers and employees and their authorized representatives and offer them
36 a right of accompaniment.

37 (c) *DELEGATION.*—The Secretary may delegate to a State receiving a grant
38 under section 31102 of this title those duties and powers related to enforce-
39 ment (including conducting investigations) of this subchapter and regulations
40 prescribed under this subchapter that the Secretary considers appropriate.

1 **§31134. Commercial Motor Vehicle Safety Regulatory Review**
2 **Panel**

3 (a) *ESTABLISHMENT AND GENERAL DUTY.*—The Secretary of Transpor-
4 tation shall establish the Commercial Motor Vehicle Safety Regulatory Review
5 Panel. The Panel shall analyze and review State laws and regulations under
6 sections 31140 and 31141 of this title.

7 (b) *SPECIFIC DUTIES.*—The Panel shall—

8 (1) carry out those duties and powers designated to be carried out by
9 the Panel under sections 31140 and 31141 of this title;

10 (2) conduct a study to—

11 (A) evaluate the need, if any, for additional assistance from the
12 United States Government to the States to enable them to enforce
13 the regulations prescribed by the Secretary under section 31136 of
14 this title; and

15 (B) decide on other methods of furthering the purposes of this sub-
16 chapter; and

17 (3) make recommendations to the Secretary based on the results of the
18 study conducted under clause (2) of this subsection.

19 (c) *COMPOSITION, APPOINTMENT, AND TERMS.*—(1) The Panel shall be
20 composed of 15 members as follows:

21 (A) the Secretary or the Secretary's delegate.

22 (B) 7 individuals appointed by the Secretary from among individuals
23 who represent the interests of States and political subdivisions of States
24 and whose names have been submitted to the Secretary by the Committee
25 on Commerce, Science, and Transportation of the Senate or the Commit-
26 tee on Public Works and Transportation of the House of Representatives.

27 (C) 7 individuals appointed by the Secretary from among individuals
28 who represent the interests of business, consumer, labor, and safety
29 groups and whose names have been submitted to the Secretary by the
30 Committee on Commerce, Science, and Transportation of the Senate or
31 the Committee on Public Works and Transportation of the House of Rep-
32 resentatives.

33 (2) The Secretary shall select the individuals to be appointed under this
34 subsection on the basis of their knowledge, expertise, or experience related to
35 commercial motor vehicle safety. Half of the appointments shall be made from
36 names submitted by the Committee on Commerce, Science, and Transpor-
37 tation of the Senate, and the other half from names submitted by the Commit-
38 tee on Public Works and Transportation of the House of Representatives.
39 Each of these committees shall submit to the Secretary the names of 20 indi-
40 viduals qualified to serve on the Panel.

1 (3) *The term of each member of the Panel appointed under paragraph*
2 *(1)(B) and (C) of this subsection is 7 years.*

3 (4) *A vacancy on the Panel shall be filled in the way the original appoint-*
4 *ment was made. The vacancy does not affect the Panel's powers.*

5 (d) *CHAIRMAN, QUORUM, MEETINGS, AND PAY.—(1) The Secretary is the*
6 *Chairman of the Panel.*

7 (2) *Eight members of the Panel are a quorum, but the Panel may establish*
8 *a lesser number as a quorum to hold hearings, take testimony, and receive*
9 *evidence.*

10 (3) *The Panel shall meet at the call of the Chairman or a majority of its*
11 *members.*

12 (4) *Members of the Panel shall serve without pay, except that they shall*
13 *receive expenses under section 5703 of title 5.*

14 (e) *PERSONNEL, OFFICE SPACE, AND SUPPORT SERVICES.—On request of*
15 *the Panel, the Secretary shall—*

16 (1) *detail personnel of the Department of Transportation to the Panel*
17 *as necessary to assist the Panel in carrying out its duties and powers;*
18 *and*

19 (2) *provide office space, supplies, equipment, and other support serv-*
20 *ices to the Panel as necessary for the Panel to carry out its duties and*
21 *powers.*

22 (f) *HEARINGS AND OTHER ACTIONS.—To carry out the duties and powers*
23 *of the Panel under this subchapter, the Panel or any member authorized by*
24 *the Panel may hold hearings, sit and act at times and places, take testimony,*
25 *and take other actions the Panel or the member considers advisable. A member*
26 *of the Panel may administer oaths to witnesses appearing before the Panel*
27 *or the member.*

28 (g) *TEMPORARY AND INTERMITTENT SERVICES.—Subject to regulations the*
29 *Panel may prescribe, the Chairman may procure the temporary or intermit-*
30 *tent services of experts or consultants under section 3109 of title 5.*

31 **§31135. Duties of employers and employees**

32 *Each employer and employee shall comply with regulations on commercial*
33 *motor vehicle safety prescribed by the Secretary of Transportation under this*
34 *subchapter that apply to the employer's or employee's conduct.*

35 **§31136. United States Government regulations**

36 (a) *MINIMUM SAFETY STANDARDS.—Subject to section 30103(a) of this*
37 *title, the Secretary of Transportation shall prescribe regulations on commer-*
38 *cial motor vehicle safety. The regulations shall prescribe minimum safety*
39 *standards for commercial motor vehicles. At a minimum, the regulations shall*
40 *ensure that—*

1 (1) commercial motor vehicles are maintained, equipped, loaded, and
2 operated safely;

3 (2) the responsibilities imposed on operators of commercial motor vehi-
4 cles do not impair their ability to operate the vehicles safely;

5 (3) the physical condition of operators of commercial motor vehicles
6 is adequate to enable them to operate the vehicles safely; and

7 (4) the operation of commercial motor vehicles does not have a dele-
8 terious effect on the physical condition of the operators.

9 (b) *ELIMINATING AND AMENDING EXISTING REGULATIONS.*—The Secretary
10 may not eliminate or amend an existing motor carrier safety regulation relat-
11 ed only to the maintenance, equipment, loading, or operation (including rout-
12 ing) of vehicles carrying material found to be hazardous under section 5103
13 of this title until an equivalent or more stringent regulation has been pre-
14 scribed under section 5103.

15 (c) *PROCEDURES AND CONSIDERATIONS.*—(1) A regulation under this sec-
16 tion shall be prescribed under section 553 of title 5 (without regard to sections
17 556 and 557 of title 5).

18 (2) Before prescribing regulations under this section, the Secretary shall
19 consider, to the extent practicable and consistent with the purposes of this
20 chapter—

21 (A) costs and benefits; and

22 (B) State laws and regulations on commercial motor vehicle safety, to
23 minimize their unnecessary preemption.

24 (d) *EFFECT OF EXISTING REGULATIONS.*—If the Secretary does not pre-
25 scribe regulations on commercial motor vehicle safety under this section, regu-
26 lations on commercial motor vehicle safety prescribed by the Secretary before
27 October 30, 1984, and in effect on October 30, 1984, shall be deemed in this
28 subchapter to be regulations prescribed by the Secretary under this section.

29 (e) *WAIVERS.*—After notice and an opportunity for comment, the Secretary
30 may waive any part of a regulation prescribed under this section as it applies
31 to a person or class of persons, if the Secretary decides that the waiver is
32 consistent with the public interest and the safe operation of commercial motor
33 vehicles. Under this subsection, the Secretary shall waive the regulations pre-
34 scribed under this section as they apply to schoolbuses (as defined in section
35 30125(a) of this title) unless the Secretary decides that making the regulations
36 applicable to schoolbuses is necessary for public safety, considering all laws
37 of the United States and States applicable to schoolbuses. A waiver under this
38 subsection shall be published in the Federal Register, with the reasons for the
39 waiver.

40 (f) *LIMITATIONS ON MUNICIPALITY AND COMMERCIAL ZONE EXEMPTIONS*
41 *AND WAIVERS.*—(1) The Secretary may not—

1 (A) exempt a person or commercial motor vehicle from a regulation
 2 related to commercial motor vehicle safety only because the operations of
 3 the person or vehicle are entirely in a municipality or commercial zone
 4 of a municipality; or

5 (B) waive application to a person or commercial motor vehicle of a
 6 regulation related to commercial motor vehicle safety only because the op-
 7 erations of the person or vehicle are entirely in a municipality or com-
 8 mercial zone of a municipality.

9 (2) If a person was authorized to operate a commercial motor vehicle in
 10 a municipality or commercial zone of a municipality in the United States
 11 for the entire period from November 19, 1987, through November 18, 1988,
 12 and if the person is otherwise qualified to operate a commercial motor vehicle,
 13 the person may operate a commercial motor vehicle entirely in a municipal-
 14 ity or commercial zone of a municipality notwithstanding—

15 (A) paragraph (1) of this subsection;

16 (B) a minimum age requirement of the United States Government for
 17 operation of the vehicle; and

18 (C) a medical or physical condition that—

19 (i) would prevent an operator from operating a commercial
 20 motor vehicle under the commercial motor vehicle safety regulations
 21 in title 49, Code of Federal Regulations;

22 (ii) existed on July 1, 1988;

23 (iii) has not substantially worsened; and

24 (iv) does not involve alcohol or drug abuse.

25 (3) This subsection does not affect a State commercial motor vehicle safety
 26 law applicable to intrastate commerce.

27 **§31137. Monitoring device and brake maintenance regula-**
 28 **tions**

29 (a) *USE OF MONITORING DEVICES.*—If the Secretary of Transportation
 30 prescribes a regulation about the use of monitoring devices on commercial
 31 motor vehicles to increase compliance by operators of the vehicles with hours
 32 of service regulations of the Secretary, the regulation shall ensure that the de-
 33 vices are not used to harass vehicle operators. However, the devices may be
 34 used to monitor productivity of the operators.

35 (b) *BRAKES AND BRAKE SYSTEMS MAINTENANCE REGULATIONS.*—Not
 36 later than December 31, 1990, the Secretary shall prescribe regulations on im-
 37 proved standards or methods to ensure that brakes and brake systems of com-
 38 mercial motor vehicles are maintained properly and inspected by appropriate
 39 employees. At a minimum, the regulations shall establish minimum training
 40 requirements and qualifications for employees responsible for maintaining
 41 and inspecting the brakes and brake systems.

1 **§31138. Minimum financial responsibility for transporting**
2 **passengers**

3 (a) *GENERAL REQUIREMENT.*—The Secretary of Transportation shall pre-
4 scribe regulations to require minimum levels of financial responsibility suffi-
5 cient to satisfy liability amounts established by the Secretary covering public
6 liability and property damage for the transportation of passengers for com-
7 pensation by motor vehicle in the United States between a place in a State
8 and—

9 (1) a place in another State;

10 (2) another place in the same State through a place outside of that
11 State; or

12 (3) a place outside the United States.

13 (b) *MINIMUM AMOUNTS.*—The level of financial responsibility established
14 under subsection (a) of this section for a motor vehicle with a seating capacity
15 of—

16 (1) at least 16 passengers shall be at least \$5,000,000; and

17 (2) not more than 15 passengers shall be at least \$1,500,000.

18 (c) *EVIDENCE OF FINANCIAL RESPONSIBILITY.*—(1) Subject to paragraph
19 (2) of this subsection, financial responsibility may be established by evidence
20 of one or a combination of the following if acceptable to the Secretary of
21 Transportation:

22 (A) insurance, including high self-retention.

23 (B) a guarantee.

24 (C) a surety bond issued by a bonding company authorized to do busi-
25 ness in the United States.

26 (2) A person domiciled in a country contiguous to the United States and
27 providing transportation to which a minimum level of financial responsibil-
28 ity under this section applies shall have evidence of financial responsibility
29 in the motor vehicle when the person is providing the transportation. If evi-
30 dence of financial responsibility is not in the vehicle, the Secretary of Trans-
31 portation and the Secretary of the Treasury shall deny entry of the vehicle
32 into the United States.

33 (d) *CIVIL PENALTY.*—(1) If, after notice and an opportunity for a hearing,
34 the Secretary of Transportation finds that a person (except an employee act-
35 ing without knowledge) has knowingly violated this section or a regulation
36 prescribed under this section, the person is liable to the United States Govern-
37 ment for a civil penalty of not more than \$10,000 for each violation. A sepa-
38 rate violation occurs for each day the violation continues.

39 (2) The Secretary of Transportation shall impose the penalty by written
40 notice. In determining the amount of the penalty, the Secretary shall con-
41 sider—

- 1 (A) the nature, circumstances, extent, and gravity of the violation;
 2 (B) with respect to the violator, the degree of culpability, any history
 3 of prior violations, the ability to pay, and any effect on the ability to
 4 continue doing business; and
 5 (C) other matters that justice requires.

6 (3) The Secretary of Transportation may compromise the penalty before re-
 7 ferring the matter to the Attorney General for collection.

8 (4) The Attorney General shall bring a civil action in an appropriate dis-
 9 trict court of the United States to collect a penalty referred to the Attorney
 10 General for collection under this subsection.

11 (5) The amount of the penalty may be deducted from amounts the Govern-
 12 ment owes the person. An amount collected under this section shall be depos-
 13 ited in the Treasury as miscellaneous receipts.

14 (e) *NONAPPLICATION.*—This section does not apply to a motor vehicle—

- 15 (1) transporting only school children and teachers to or from school;
 16 (2) providing taxicab service, having a seating capacity of not more
 17 than 6 passengers, and not being operated on a regular route or between
 18 specified places; or
 19 (3) carrying not more than 15 individuals in a single, daily round
 20 trip to and from work.

21 **§31139. Minimum financial responsibility for transporting**
 22 **property**

23 (a) *DEFINITIONS.*—In this section—

- 24 (1) “farm vehicle” means a vehicle—
 25 (A) designed or adapted and used only for agriculture;
 26 (B) operated by a motor private carrier (as defined in section
 27 10102 of this title); and
 28 (C) operated only incidentally on highways.
 29 (2) “interstate commerce” includes transportation between a place in
 30 a State and a place outside the United States, to the extent the transpor-
 31 tation is in the United States.
 32 (3) “State” means a State of the United States, the District of Colum-
 33 bia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the
 34 Northern Mariana Islands.

35 (b) *GENERAL REQUIREMENT AND MINIMUM AMOUNT.*—(1) The Secretary
 36 of Transportation shall prescribe regulations to require minimum levels of fi-
 37 nancial responsibility sufficient to satisfy liability amounts established by the
 38 Secretary covering public liability, property damage, and environmental res-
 39 toration for the transportation of property for compensation by motor vehicle
 40 in the United States between a place in a State and—

- 41 (A) a place in another State;

1 (B) another place in the same State through a place outside of that
2 State; or

3 (C) a place outside the United States.

4 (2) The level of financial responsibility established under paragraph (1) of
5 this subsection shall be at least \$750,000.

6 (c) *REQUIREMENTS FOR HAZARDOUS MATTER AND OIL.*—(1) The Sec-
7 retary of Transportation shall prescribe regulations to require minimum lev-
8 els of financial responsibility sufficient to satisfy liability amounts established
9 by the Secretary covering public liability, property damage, and environ-
10 mental restoration for the transportation by motor vehicle in interstate or
11 intrastate commerce of—

12 (A) hazardous material (as defined by the Secretary);

13 (B) oil or hazardous substances (as defined by the Administrator of
14 the Environmental Protection Agency); or

15 (C) hazardous wastes (as defined by the Administrator).

16 (2)(A) Except as provided in subparagraph (B) of this paragraph, the level
17 of financial responsibility established under paragraph (1) of this subsection
18 shall be at least \$5,000,000 for the transportation—

19 (i) of hazardous substances (as defined by the Administrator) in cargo
20 tanks, portable tanks, or hopper-type vehicles, with capacities of more
21 than 3,500 water gallons;

22 (ii) in bulk of class A explosives, poison gas, liquefied gas, or com-
23 pressed gas; or

24 (iii) of large quantities of radioactive material.

25 (B) The Secretary of Transportation by regulation may reduce the mini-
26 mum level in subparagraph (A) of this paragraph (to an amount not less
27 than \$1,000,000) for transportation described in subparagraph (A) in any of
28 the territories of Puerto Rico, the Virgin Islands, American Samoa, Guam,
29 and the Northern Mariana Islands if—

30 (i) the chief executive officer of the territory requests the reduction;

31 (ii) the reduction will prevent a serious disruption in transportation
32 service and will not adversely affect public safety; and

33 (iii) insurance of \$5,000,000 is not readily available.

34 (3) The level of financial responsibility established under paragraph (1) of
35 this subsection for the transportation of a material, oil, substance, or waste
36 not subject to paragraph (2) of this subsection shall be at least \$1,000,000.
37 However, if the Secretary of Transportation finds it will not adversely affect
38 public safety, the Secretary by regulation may reduce the amount for—

39 (A) a class of vehicles transporting such a material, oil, substance, or
40 waste in intrastate commerce (except in bulk); and

1 (B) a farm vehicle transporting such a material or substance in inter-
2 state commerce (except in bulk).

3 (d) *FOREIGN MOTOR CARRIERS AND PRIVATE CARRIERS.*—Regulations
4 prescribed under this section may allow foreign motor carriers and foreign
5 motor private carriers (as those terms are defined in section 10530 of this
6 title) providing transportation of property under a certificate of registration
7 issued under section 10530 to meet the minimum levels of financial respon-
8 sibility under this section only when those carriers are providing transpor-
9 tation for property in the United States.

10 (e) *EVIDENCE OF FINANCIAL RESPONSIBILITY.*—(1) Subject to paragraph
11 (2) of this subsection, financial responsibility may be established by evidence
12 of one or a combination of the following if acceptable to the Secretary of
13 Transportation:

14 (A) insurance.

15 (B) a guarantee.

16 (C) a surety bond issued by a bonding company authorized to do busi-
17 ness in the United States.

18 (D) qualification as a self-insurer.

19 (2) A person domiciled in a country contiguous to the United States and
20 providing transportation to which a minimum level of financial responsibil-
21 ity under this section applies shall have evidence of financial responsibility
22 in the motor vehicle when the person is providing the transportation. If evi-
23 dence of financial responsibility is not in the vehicle, the Secretary of Trans-
24 portation and the Secretary of the Treasury shall deny entry of the vehicle
25 into the United States.

26 (f) *CIVIL PENALTY.*—(1) If, after notice and an opportunity for a hearing,
27 the Secretary of Transportation finds that a person (except an employee act-
28 ing without knowledge) has knowingly violated this section or a regulation
29 prescribed under this section, the person is liable to the United States Govern-
30 ment for a civil penalty of not more than \$10,000 for each violation. A sepa-
31 rate violation occurs for each day the violation continues.

32 (2) The Secretary of Transportation shall impose the penalty by written
33 notice. In determining the amount of the penalty, the Secretary shall con-
34 sider—

35 (A) the nature, circumstances, extent, and gravity of the violation;

36 (B) with respect to the violator, the degree of culpability, any history
37 of prior violations, the ability to pay, and any effect on the ability to
38 continue doing business; and

39 (C) other matters that justice requires.

40 (3) The Secretary of Transportation may compromise the penalty before re-
41 ferring the matter to the Attorney General for collection.

1 (4) *The Attorney General shall bring a civil action in an appropriate dis-*
 2 *trict court of the United States to collect a penalty referred to the Attorney*
 3 *General for collection under this subsection.*

4 (5) *The amount of the penalty may be deducted from amounts the Govern-*
 5 *ment owes the person. An amount collected under this section shall be depos-*
 6 *ited in the Treasury as miscellaneous receipts.*

7 (g) *NONAPPLICATION.—This section does not apply to a motor vehicle hav-*
 8 *ing a gross vehicle weight rating of less than 10,000 pounds if the vehicle is*
 9 *not used to transport in interstate or foreign commerce—*

10 (1) *class A or B explosives;*

11 (2) *poison gas; or*

12 (3) *a large quantity of radioactive material.*

13 **§31140. Submission of State laws and regulations for review**

14 (a) *GENERAL.—A State that enacts a State law or issues a regulation on*
 15 *commercial motor vehicle safety shall submit a copy of the law or regulation*
 16 *to the Secretary of Transportation and the Commercial Motor Vehicle Safety*
 17 *Regulatory Review Panel immediately after the enactment or issuance.*

18 (b) *ADDITIONAL INFORMATION.—As soon as practicable but not later than*
 19 *a date the Panel may establish, a State that submits a State law or regula-*
 20 *tion under this section to the Panel shall—*

21 (1) *indicate in writing to the Panel whether the law or regulation—*

22 (A) *has the same effect as a regulation prescribed by the Sec-*
 23 *retary under section 31136 of this title;*

24 (B) *is less stringent than that regulation; or*

25 (C) *is additional to or more stringent than that regulation; and*

26 (2) *submit to the Panel other information the Panel or the Secretary*
 27 *may require to carry out this subchapter.*

28 **§31141. Review and preemption of State laws and regula-**
 29 **tions**

30 (a) *PREEMPTION AFTER DECISION.—A State may not enforce a State law*
 31 *or regulation on commercial motor vehicle safety that the Secretary of Trans-*
 32 *portation decides under this section may not be enforced.*

33 (b) *ANALYSIS AND DECISIONS BY THE PANEL.—(1) The Commercial Motor*
 34 *Vehicle Safety Regulatory Review Panel annually shall analyze State laws*
 35 *and regulations and decide which of those laws and regulations are related*
 36 *to commercial motor vehicle safety.*

37 (2) *Not later than one year after the date the Secretary prescribes a regula-*
 38 *tion under section 31136 of this title or one year after the date the Panel de-*
 39 *cidest under paragraph (1) of this subsection that a State law or regulation*
 40 *is related to commercial motor vehicle safety, whichever is later, the Panel*
 41 *shall—*

- 1 (A) decide whether the State law or regulation—
- 2 (i) has the same effect as the regulation prescribed by the Sec-
- 3 retary;
- 4 (ii) is less stringent than that regulation; or
- 5 (iii) is additional to or more stringent than that regulation;
- 6 (B) decide, for each State law or regulation that the Panel decides is
- 7 additional to or more stringent than the regulation prescribed by the
- 8 Secretary, whether—
- 9 (i) the State law or regulation has no safety benefit;
- 10 (ii) the State law or regulation is incompatible with the regula-
- 11 tion prescribed by the Secretary; or
- 12 (iii) enforcement of the State law or regulation would cause an
- 13 unreasonable burden on interstate commerce; and
- 14 (C) notify the Secretary of the Panel's decisions under this subsection.
- 15 (c) *REVIEW AND DECISIONS BY SECRETARY.*—(1) The Secretary shall re-
- 16 view each State law and regulation on commercial motor vehicle safety. Not
- 17 later than 18 months after the date the Panel notifies the Secretary of a deci-
- 18 sion under subsection (b) of this section, the Secretary shall—
- 19 (A) conduct a regulatory proceeding to decide under this subsection
- 20 whether the State law or regulation may be enforced; and
- 21 (B) prescribe a final regulation.
- 22 (2) If the Secretary decides a State law or regulation has the same effect
- 23 as a regulation prescribed by the Secretary under section 31136 of this title,
- 24 the State law or regulation may be enforced.
- 25 (3) If the Secretary decides a State law or regulation is less stringent than
- 26 a regulation prescribed by the Secretary under section 31136 of this title, the
- 27 State law or regulation may not be enforced.
- 28 (4) If the Secretary decides a State law or regulation is additional to or
- 29 more stringent than a regulation prescribed by the Secretary under section
- 30 31136 of this title, the State law or regulation may be enforced unless the
- 31 Secretary also decides that—
- 32 (A) the State law or regulation has no safety benefit;
- 33 (B) the State law or regulation is incompatible with the regulation
- 34 prescribed by the Secretary; or
- 35 (C) enforcement of the State law or regulation would cause an unrea-
- 36 sonable burden on interstate commerce.
- 37 (5)(A) In deciding about a State law or regulation under this subsection,
- 38 the Secretary shall give great weight to the corresponding decision made by
- 39 the Panel about that law or regulation under subsection (b) of this section.
- 40 (B) In deciding under paragraph (4) of this subsection whether a State law
- 41 or regulation will cause an unreasonable burden on interstate commerce, the

1 Secretary may consider the effect on interstate commerce of implementation
2 of that law or regulation with the implementation of all similar laws and
3 regulations of other States.

4 (d) *WAIVERS.*—(1) A person (including a State) may petition the Sec-
5 retary for a waiver of a decision of the Secretary that a State law or regula-
6 tion may not be enforced under this section. The Secretary shall grant the
7 waiver, as expeditiously as possible, if the person demonstrates to the satisfac-
8 tion of the Secretary that the waiver is consistent with the public interest and
9 the safe operation of commercial motor vehicles.

10 (2) Before deciding whether to grant or deny a petition for a waiver under
11 this subsection, the Secretary shall give the petitioner an opportunity for a
12 hearing on the record.

13 (e) *CONSOLIDATING PROCEEDINGS.*—The Secretary may consolidate regu-
14 latory proceedings under this section if the Secretary decides that the consoli-
15 dation will not adversely affect a party to a proceeding.

16 (f) *WRITTEN NOTICE OF DECISIONS.*—Not later than 10 days after making
17 a decision under subsection (c) of this section that a State law or regulation
18 may not be enforced, the Secretary shall give written notice to the State of
19 that decision.

20 (g) *JUDICIAL REVIEW AND VENUE.*—(1) Not later than 60 days after the
21 Secretary makes a decision under subsection (c) of this section, or grants or
22 denies a petition for a waiver under subsection (d) of this section, a person
23 (including a State) adversely affected by the decision, grant, or denial may
24 file a petition for judicial review. The petition may be filed in the court of
25 appeals of the United States for the District of Columbia Circuit or in the
26 court of appeals of the United States for the circuit in which the person re-
27 sides or has its principal place of business.

28 (2) The court has jurisdiction to review the decision, grant, or denial and
29 to grant appropriate relief, including interim relief, as provided in chapter
30 7 of title 5.

31 (3) A judgment of a court under this subsection may be reviewed only by
32 the Supreme Court under section 1254 of title 28.

33 (4) The remedies provided for in this subsection are in addition to other
34 remedies provided by law.

35 (h) *INITIATING REVIEW PROCEEDINGS.*—To review a State law or regula-
36 tion on commercial motor vehicle safety under this section, the Secretary may
37 initiate a regulatory proceeding on the Secretary's own initiative or on peti-
38 tion of an interested person (including a State).

39 **§31142. Inspection of vehicles**

40 (a) *INSPECTION OF SAFETY EQUIPMENT.*—On the instruction of an author-
41 ized enforcement official of a State or of the United States Government, a

1 commercial motor vehicle is required to pass an inspection of all safety equip-
2 ment required under part 393 of title 49, Code of Federal Regulations.

3 (b) *INSPECTION OF VEHICLES AND RECORD RETENTION.*—The Secretary of
4 Transportation shall prescribe regulations on Government standards for in-
5 spection of commercial motor vehicles and retention by employers of records
6 of an inspection. The standards shall provide for annual or more frequent in-
7 spections of a commercial motor vehicle unless the Secretary finds that an-
8 other inspection system is as effective as an annual or more frequent inspec-
9 tion system. Regulations prescribed under this subsection are deemed to be
10 regulations prescribed under section 31136 of this title.

11 (c) *PREEMPTION.*—(1) Except as provided in paragraph (2) of this sub-
12 section, this subchapter and section 31102 of this title do not—

13 (A) prevent a State or voluntary group of States from imposing more
14 stringent standards for use in their own periodic roadside inspection
15 programs of commercial motor vehicles;

16 (B) prevent a State from enforcing a program for inspection of com-
17 mercial motor vehicles that the Secretary decides is as effective as the
18 Government standards prescribed under subsection (b) of this section;

19 (C) prevent a State from enforcing a program for inspection of com-
20 mercial motor vehicles that meets the requirements for membership in the
21 Commercial Vehicle Safety Alliance, as those requirements were in effect
22 on October 30, 1984; or

23 (D) require a State that is enforcing a program described in clause
24 (B) or (C) of this paragraph to enforce a Government standard pre-
25 scribed under subsection (b) of this section or to adopt a provision on
26 inspection of commercial motor vehicles in addition to that program to
27 comply with the Government standards.

28 (2) The Government standards prescribed under subsection (b) of this sec-
29 tion shall preempt a program of a State described in paragraph (1)(C) of this
30 subsection as the program applies to the inspection of commercial motor vehi-
31 cles in that State. The State may not enforce the program if the Secretary—

32 (A) decides, after notice and an opportunity for a hearing, that the
33 State is not enforcing the program in a way that achieves the objectives
34 of this section; and

35 (B) after making a decision under clause (A) of this paragraph, pro-
36 vides the State with a 6-month period to improve the enforcement of the
37 program to achieve the objectives of this section.

38 (d) *INSPECTION TO BE ACCEPTED AS ADEQUATE IN ALL STATES.*—A peri-
39 odic inspection of a commercial motor vehicle under the Government stand-
40 ards prescribed under subsection (b) of this section or a program described
41 in subsection (c)(1)(B) or (C) of this section that is being enforced shall be

1 recognized as adequate in every State for the period of the inspection. This
 2 subsection does not prohibit a State from making random inspections of com-
 3 mercial motor vehicles.

4 (e) *EFFECT OF GOVERNMENT STANDARDS.*—The Government standards
 5 prescribed under subsection (b) of this section may not be enforced as the
 6 standards apply to the inspection of commercial motor vehicles in a State en-
 7 forcing a program described in subsection (c)(1)(B) or (C) of this section if
 8 the Secretary decides that it is in the public interest and consistent with pub-
 9 lic safety for the Government standards not to be enforced as they apply to
 10 that inspection.

11 (f) *APPLICATION OF STATE REGULATIONS TO GOVERNMENT-LEASED VEHI-*
 12 *CLES AND OPERATORS.*—A State receiving financial assistance under section
 13 31102 of this title in a fiscal year may enforce in that fiscal year a regulation
 14 on commercial motor vehicle safety adopted by the State as the regulation ap-
 15 plies to commercial motor vehicles and operators leased to the Government.

16 **§31143. Investigating complaints and protecting complain-**
 17 **ants**

18 (a) *INVESTIGATING COMPLAINTS.*—The Secretary of Transportation shall
 19 conduct a timely investigation of a nonfrivolous written complaint alleging
 20 that a substantial violation of a regulation prescribed under this subchapter
 21 is occurring or has occurred within the prior 60 days. The Secretary shall
 22 give the complainant timely notice of the findings of the investigation. The
 23 Secretary is not required to conduct separate investigations of duplicative
 24 complaints.

25 (b) *PROTECTING COMPLAINANTS.*—Notwithstanding section 552 of title 5,
 26 the Secretary may disclose the identity of a complainant only if disclosure
 27 is necessary to prosecute a violation. If disclosure becomes necessary, the Sec-
 28 retary shall take every practical means within the Secretary's authority to
 29 ensure that the complainant is not subject to harassment, intimidation, dis-
 30 ciplinary action, discrimination, or financial loss because of the disclosure.

31 **§31144. Safety fitness of owners and operators**

32 (a) *PROCEDURE.*—(1) In cooperation with the Interstate Commerce Com-
 33 mission, the Secretary of Transportation shall prescribe regulations establish-
 34 ing a procedure to decide on the safety fitness of owners and operators of com-
 35 mercial motor vehicles, including persons seeking new or additional operating
 36 authority as motor carriers under sections 10922 and 10923 of this title. The
 37 procedure shall include—

38 (A) specific initial and continuing requirements to be met by the own-
 39 ers, operators, and persons to prove safety fitness;

1 (B) a means of deciding whether the owners, operators, and persons
2 meet the safety fitness requirements under clause (A) of this paragraph;
3 and

4 (C) specific time deadlines for action by the Secretary and the Com-
5 mission in making fitness decisions.

6 (2) Regulations prescribed under this subsection supersede all regulations
7 of the United States Government on safety fitness and safety rating of motor
8 carriers in effect on October 30, 1984.

9 (b) FINDINGS AND ACTION ON APPLICATIONS.—The Commission shall—

10 (1) find an applicant for authority to operate as a motor carrier unfit
11 if the applicant does not meet the safety fitness requirements established
12 under subsection (a) of this section; and

13 (2) deny the application.

14 **§ 31145. Coordination of Governmental activities and paper-**
15 **work**

16 The Secretary of Transportation shall coordinate the activities of depart-
17 ments, agencies, and instrumentalities of the United States Government to en-
18 sure adequate protection of the safety and health of operators of commercial
19 motor vehicles. The Secretary shall attempt to minimize paperwork burdens
20 to ensure maximum coordination and to avoid overlap and the imposition
21 of unreasonable burdens on persons subject to regulations under this sub-
22 chapter.

23 **§ 31146. Relationship to other laws**

24 Except as provided in section 31136(b) of this title, this subchapter and
25 the regulations prescribed under this subchapter do not affect chapter 51 of
26 this title or a regulation prescribed under chapter 51.

27 **§ 31147. Limitations on authority**

28 (a) TRAFFIC REGULATIONS.—This subchapter does not authorize the Sec-
29 retary of Transportation to prescribe traffic safety regulations or preempt
30 State traffic regulations. However, the Secretary may prescribe traffic regula-
31 tions to the extent their subject matter was regulated under parts 390–399
32 of title 49, Code of Federal Regulations, on October 30, 1984.

33 (b) REGULATING THE MANUFACTURING OF VEHICLES.—This subchapter
34 does not authorize the Secretary to regulate the manufacture of commercial
35 motor vehicles for any purpose, including fuel economy, safety, or emission
36 control.

37 SUBCHAPTER IV—MISCELLANEOUS

38 **§ 31161. Procedures to ensure timely correction of safety vio-**
39 **lations**

40 (a) DEFINITION.—Section 31132(1) of this title applies to this section.

1 (b) *GENERAL.*—Not later than August 3, 1991, the Secretary of Transportation shall prescribe regulations establishing procedures to ensure the proper
2 and timely correction of commercial motor vehicle safety violations noted during
3 an inspection carried out with money authorized under section 31104 of
4 this title.
5

6 (c) *VERIFICATION PROGRAM.*—The regulations shall establish a verification
7 program for United States Government inspectors and States participating
8 under section 31102 of this title to ensure that commercial motor vehicles and
9 their operators found in violation of safety requirements have been brought
10 into compliance with those requirements. The regulations shall include—

11 (1) a nationwide system for random reinspection of the commercial
12 motor vehicles and their operators that have been declared out-of-service
13 because of those safety violations, with the main purpose of the system
14 being to verify that the violations have been corrected on a timely basis;

15 (2) a program of accountability for correcting all safety violations that
16 shall provide that—

17 (A) the operator of a commercial motor vehicle for which a safety
18 violation has been noted shall be issued a form prescribed by the
19 Secretary;

20 (B) the person making the repairs necessary to correct the viola-
21 tion shall certify on the form the making of repairs and the date,
22 location, and time of the repairs;

23 (C) the motor carrier responsible for the commercial motor vehicle
24 or operator shall certify on the form that, based on the carrier's
25 knowledge, the repairs necessary to correct the violation have been
26 made; and

27 (D) appropriate State penalties shall be imposed for a false state-
28 ment on the form or a failure to return the form to the appropriate
29 State entity; and

30 (3) a system for ensuring that appropriate State penalties are imposed
31 for failure to correct any of those safety violations.

32 **§ 31162. Compliance review priority**

33 If the Secretary of Transportation identifies a pattern of violations of State
34 or local traffic safety laws or regulations or commercial motor vehicle safety
35 regulations, standards, or orders among drivers of commercial motor vehicles
36 employed by a particular motor carrier, the Secretary or a State representa-
37 tive shall ensure that the motor carrier receives a high priority for review of
38 that carrier's compliance with applicable United States Government and
39 State commercial motor vehicle safety regulations.

**CHAPTER 313—COMMERCIAL MOTOR VEHICLE
OPERATORS**

Sec.

31301. Definitions.
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§31301. Definitions

In this chapter—

(1) "alcohol" has the same meaning given the term "alcoholic beverage" in section 158(c) of title 23.

(2) "commerce" means trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(3) "commercial driver's license" means a license issued by a State to an individual authorizing the individual to operate a class of commercial motor vehicles.

(4) "commercial motor vehicle" means a motor vehicle used in commerce to transport passengers or property that—

(A) has a gross vehicle weight rating of at least 26,001 pounds 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;

(B) is designed to transport at least 16 passengers including the driver; or

(C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title, except that a vehicle shall not be included as a commercial motor vehicle under this subclause if—

1 (i) the vehicle does not satisfy the weight requirements of
2 subclause (A) of this clause;

3 (ii) the vehicle transporting material listed as hazardous
4 under section 306(a) of the Comprehensive Environmental Re-
5 sponse, Compensation, and Liability Act of 1980 (42 U.S.C.
6 9656(a)) and not otherwise regulated by the Secretary or trans-
7 porting a consumer commodity or limited quantity of hazard-
8 ous material as defined in section 171.8 of title 49, Code of
9 Federal Regulations; and

10 (iii) the Secretary does not deny the application of this ex-
11 ception to the vehicle (individually or as part of a class of
12 motor vehicles) in the interest of safety.

13 (5) except in section 31306, “controlled substance” has the same mean-
14 ing given that term in section 102 of the Comprehensive Drug Abuse Pre-
15 vention and Control Act of 1970 (21 U.S.C. 802).

16 (6) “driver’s license” means a license issued by a State to an individ-
17 ual authorizing the individual to operate a motor vehicle on highways.

18 (7) “employee” means an operator of a commercial motor vehicle (in-
19 cluding an independent contractor when operating a commercial motor
20 vehicle) who is employed by an employer.

21 (8) “employer” means a person (including the United States Govern-
22 ment, a State, or a political subdivision of a State) that owns or leases
23 a commercial motor vehicle or assigns employees to operate a commercial
24 motor vehicle.

25 (9) “felony” means an offense under a law of the United States or a
26 State that is punishable by death or imprisonment for more than one
27 year.

28 (10) “hazardous material” has the same meaning given that term in
29 section 5102 of this title.

30 (11) “motor vehicle” means a vehicle, machine, tractor, trailer, or
31 semitrailer propelled or drawn by mechanical power and used on public
32 streets, roads, or highways, but does not include a vehicle, machine, trac-
33 tor, trailer, or semitrailer operated only on a rail line or custom harvest-
34 ing farm machinery.

35 (12) “serious traffic violation” means—

36 (A) excessive speeding, as defined by the Secretary by regulation;

37 (B) reckless driving, as defined under State or local law;

38 (C) a violation of a State or local law on motor vehicle traffic
39 control (except a parking violation) and involving a fatality; and

1 (D) any other similar violation of a State or local law on motor
2 vehicle traffic control (except a parking violation) that the Secretary
3 designates by regulation as serious.

4 (13) “State” means a State of the United States and the District of
5 Columbia.

6 (14) “United States” means the States of the United States and the
7 District of Columbia.

8 **§ 31302. Limitation on the number of driver’s licenses**

9 An individual operating a commercial motor vehicle may have only one
10 driver’s license at any time, except during the 10-day period beginning on
11 the date the individual is issued a driver’s license.

12 **§ 31303. Notification requirements**

13 (a) VIOLATIONS.—An individual operating a commercial motor vehicle,
14 having a driver’s license issued by a State, and violating a State or local law
15 on motor vehicle traffic control (except a parking violation) shall notify the
16 individual’s employer of the violation. If the violation occurred in a State
17 other than the issuing State, the individual also shall notify a State official
18 designated by the issuing State. The notifications required by this subsection
19 shall be made not later than 30 days after the date the individual is found
20 to have committed the violation.

21 (b) REVOCATIONS, SUSPENSIONS, AND CANCELLATIONS.—An employee who
22 has a driver’s license revoked, suspended, or canceled by a State, who loses
23 the right to operate a commercial motor vehicle in a State for any period,
24 or who is disqualified from operating a commercial motor vehicle for any pe-
25 riod, shall notify the employee’s employer of the action not later than 30 days
26 after the date of the action.

27 (c) PREVIOUS EMPLOYMENT.—(1) Subject to paragraph (2) of this sub-
28 section, an individual applying for employment as an operator of a commer-
29 cial motor vehicle shall notify the prospective employer, at the time of the ap-
30 plication, of any previous employment as an operator of a commercial motor
31 vehicle.

32 (2) The Secretary of Transportation shall prescribe by regulation the period
33 for which notice of previous employment must be given under paragraph (1)
34 of this subsection. However, the period may not be less than the 10-year pe-
35 riod ending on the date of the application.

36 **§ 31304. Employer responsibilities**

37 An employer may not knowingly allow an employee to operate a commer-
38 cial motor vehicle in the United States during a period in which the em-
39 ployee—

1 (1) has a driver's license revoked, suspended, or canceled by a State,
2 has lost the right to operate a commercial motor vehicle in a State, or
3 has been disqualified from operating a commercial motor vehicle; or

4 (2) has more than one driver's license (except as allowed under section
5 31302 of this title).

6 **§31305. General driver fitness and testing**

7 (a) *MINIMUM STANDARDS FOR TESTING AND FITNESS.*—The Secretary of
8 Transportation shall prescribe regulations on minimum standards for testing
9 and ensuring the fitness of an individual operating a commercial motor vehi-
10 cle. The regulations—

11 (1) shall prescribe minimum standards for written and driving tests
12 of an individual operating a commercial motor vehicle;

13 (2) shall require an individual who operates or will operate a commer-
14 cial motor vehicle to take a driving test in a vehicle representative of
15 the type of vehicle the individual operates or will operate;

16 (3) shall prescribe minimum testing standards for the operation of a
17 commercial motor vehicle and may prescribe different minimum testing
18 standards for different classes of commercial motor vehicles;

19 (4) shall ensure that an individual taking the tests has a working
20 knowledge of—

21 (A) regulations on the safe operation of a commercial motor vehi-
22 cle prescribed by the Secretary and contained in title 49, Code of
23 Federal Regulations; and

24 (B) safety systems of the vehicle;

25 (5) shall ensure that an individual who operates or will operate a
26 commercial motor vehicle carrying a hazardous material—

27 (A) is qualified to operate the vehicle under regulations on motor
28 vehicle transportation of hazardous material prescribed under chap-
29 ter 51 of this title; and

30 (B) has a working knowledge of—

31 (i) those regulations;

32 (ii) the handling of hazardous material;

33 (iii) the operation of emergency equipment used in response
34 to emergencies arising out of the transportation of hazardous
35 material; and

36 (iv) appropriate response procedures to follow in those emer-
37 gencies;

38 (6) shall establish minimum scores for passing the tests;

39 (7) shall ensure that an individual taking the tests is qualified to op-
40 erate a commercial motor vehicle under regulations prescribed by the

1 Secretary and contained in title 49, Code of Federal Regulations, to the
2 extent the regulations apply to the individual; and

3 (8) may require—

4 (A) issuance of a certification of fitness to operate a commercial
5 motor vehicle to an individual passing the tests; and

6 (B) the individual to have a copy of the certification in the indi-
7 vidual's possession when the individual is operating a commercial
8 motor vehicle.

9 (b) REQUIREMENTS FOR OPERATING VEHICLES.—(1) Except as provided
10 in paragraph (2) of this subsection, an individual may operate a commercial
11 motor vehicle only if the individual has passed written and driving tests to
12 operate the vehicle that meet the minimum standards prescribed by the Sec-
13 retary under subsection (a) of this section.

14 (2) The Secretary may prescribe regulations providing that an individual
15 may operate a commercial motor vehicle for not more than 90 days if the
16 individual—

17 (A) passes a driving test for operating a commercial motor vehicle that
18 meets the minimum standards prescribed under subsection (a) of this sec-
19 tion; and

20 (B) has a driver's license that is not suspended, revoked, or canceled.

21 **§ 31306. 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 Transpor-
25 tation.

26 (b) TESTING PROGRAM FOR OPERATORS OF COMMERCIAL MOTOR VEHI-
27 CLES.—(1)(A) In the interest of commercial motor vehicle safety, the Sec-
28 retary of Transportation shall prescribe regulations not later than October 28,
29 1992, that establish a program requiring motor carriers to conduct
30 preemployment, reasonable suspicion, random, and post-accident testing of
31 operators of commercial motor vehicles for the use of alcohol or a controlled
32 substance in violation of law or a United States Government regulation.

33 (B) When the Secretary of Transportation considers it appropriate in the
34 interest of safety, the Secretary may prescribe regulations for conducting peri-
35 odic recurring testing of operators of commercial motor vehicles for the use
36 of alcohol or a controlled substance in violation of law or a Government regu-
37 lation.

38 (2) In prescribing regulations under this subsection, the Secretary of Trans-
39 portation—

1 (A) shall require that post-accident testing of an operator of a com-
2 mercial motor vehicle be conducted when loss of human life occurs in an
3 accident involving a commercial motor vehicle; and

4 (B) may require that post-accident testing of such an operator be con-
5 ducted when bodily injury or significant property damage occurs in any
6 other serious accident involving a commercial motor vehicle.

7 (c) *TESTING AND LABORATORY REQUIREMENTS.*—In carrying out sub-
8 section (b) of this section, the Secretary of Transportation shall develop re-
9 quirements that 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 in
18 carrying out this section, including standards requiring the use of
19 the best available technology to ensure the complete reliability and
20 accuracy of controlled substances tests and strict procedures govern-
21 ing the chain of custody of specimens collected for controlled sub-
22 stances 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 testing under this section
30 have the capability and facility, at the laboratory, of performing screen-
31 ing and confirmation tests;

32 (4) provide that any test 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 in
37 the presence of the tested individual and that a part of the specimen be
38 retained in a secure manner to prevent the possibility of tampering, so
39 that if the individual's confirmation test results are positive the individ-
40 ual 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 informa-
8 tion (except information about alcohol or a controlled substance) of em-
9 ployees, except that this clause does not prevent the use of test results for
10 the orderly imposition of appropriate sanctions under this section; and

11 (8) ensure that employees are selected for tests by nondiscriminatory
12 and impartial methods, so that no employee is harassed by being treated
13 differently from other employees in similar circumstances.

14 (d) TESTING AS PART OF MEDICAL EXAMINATION.—The Secretary of
15 Transportation may provide that testing under subsection (a) of this section
16 for operators subject to subpart E of part 391 of title 49, Code of Federal
17 Regulations, be conducted as part of the medical examination required under
18 that subpart.

19 (e) REHABILITATION.—The Secretary of Transportation shall prescribe reg-
20 ulations establishing requirements for rehabilitation programs that provide
21 for the identification and opportunity for treatment of operators of commer-
22 cial motor vehicles who are found to have used alcohol or a controlled sub-
23 stance in violation of law or a Government regulation. The Secretary shall
24 decide on the circumstances under which those operators shall be required to
25 participate in a program. This section does not prevent a motor carrier from
26 establishing a program under this section in cooperation with another motor
27 carrier.

28 (f) SANCTIONS.—The Secretary of Transportation shall decide on appro-
29 priate sanctions for a commercial motor vehicle operator who is found, based
30 on tests conducted and confirmed under this section, to have used alcohol or
31 a controlled substance in violation of law or a Government regulation but who
32 is not under the influence of alcohol or a controlled substance as provided in
33 this chapter.

34 (g) EFFECT ON STATE AND LOCAL GOVERNMENT REGULATIONS.—A State
35 or local government may not prescribe or continue in effect a law, regulation,
36 standard, or order that is inconsistent with regulations prescribed under this
37 section. However, a regulation prescribed under this section may not be con-
38 strued to preempt a State criminal law that imposes sanctions for reckless
39 conduct leading to loss of life, injury, or damage to property.

40 (h) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—In prescribing
41 regulations under this section, the Secretary of Transportation—

1 (1) shall establish only requirements that are consistent with inter-
2 national obligations of the United States; and

3 (2) shall consider applicable laws and regulations of foreign countries.

4 (i) *OTHER REGULATIONS ALLOWED.*—This section does not prevent the
5 Secretary of Transportation from continuing in effect, amending, or further
6 supplementing a regulation prescribed before October 28, 1991, governing the
7 use of alcohol or a controlled substance by commercial motor vehicle employ-
8 ees.

9 (j) *APPLICATION OF PENALTIES.*—This section does not supersede a penalty
10 applicable to an operator of a commercial motor vehicle under this chapter
11 or another law.

12 **§ 31307. Minimum training requirements for operators of**
13 **longer combination vehicles**

14 (a) *DEFINITION.*—In this section, “longer combination vehicle” means a ve-
15 hicle consisting of a truck tractor and more than one trailer or semitrailer
16 that operates on the Dwight D. Eisenhower System of Interstate and Defense
17 Highways with a gross vehicle weight of more than 80,000 pounds.

18 (b) *REQUIREMENTS.*—Not later than December 18, 1994, the Secretary of
19 Transportation shall prescribe regulations establishing minimum training re-
20 quirements for operators of longer combination vehicles. The training shall in-
21 clude certification of an operator’s proficiency by an instructor who has met
22 the requirements established by the Secretary.

23 **§ 31308. Commercial driver’s license**

24 After consultation with the States, the Secretary of Transportation shall
25 prescribe regulations on minimum uniform standards for the issuance of com-
26 mercial drivers’ licenses by the States and for information to be contained
27 on each of the licenses. The standards shall require at a minimum that—

28 (1) an individual issued a commercial driver’s license pass written
29 and driving tests for the operation of a commercial motor vehicle that
30 comply with the minimum standards prescribed by the Secretary under
31 section 31305(a) of this title;

32 (2) the license be tamperproof to the maximum extent practicable; and

33 (3) the license contain—

34 (A) the name and address of the individual issued the license and
35 a physical description of the individual;

36 (B) the social security account number or other number or infor-
37 mation the Secretary decides is appropriate to identify the individ-
38 ual;

39 (C) the class or type of commercial motor vehicle the individual
40 is authorized to operate under the license;

41 (D) the name of the State that issued the license; and

(E) the dates between which the license is valid.

§ 31309. Commercial driver's license information system

(a) *GENERAL REQUIREMENT.*—The Secretary of Transportation shall make an agreement under subsection (b) of this section for the operation of, or establish under subsection (c) of this section, an information system that will serve as a clearinghouse and depository of information about the licensing, identification, and disqualification of operators of commercial motor vehicles. The Secretary shall consult with the States in carrying out this section.

(b) *STATE AGREEMENTS.*—If the Secretary decides that an information system used by a State or States about the driving status of operators of motor vehicles or another State-operated information system could be used to carry out this section, and the State or States agree to the use of the system for carrying out this section, the Secretary may make an agreement with the State or States to use the system as provided in this section and section 31311(c) of this title. An agreement made under this subsection shall contain terms the Secretary considers necessary to carry out this chapter.

(c) *ESTABLISHMENT BY SECRETARY.*—If the Secretary does not make an agreement under subsection (b) of this section, the Secretary shall establish an information system about the driving status and licensing of operators of commercial motor vehicles as provided in this section.

(d) *CONTENTS.*—(1) At a minimum, the information system under this section shall include for each operator of a commercial motor vehicle—

(A) information the Secretary considers appropriate to ensure identification of the operator;

(B) the name, address, and physical description of the operator;

(C) the social security account number of the operator or other number or information the Secretary considers appropriate to identify the operator;

(D) the name of the State that issued the license to the operator;

(E) the dates between which the license is valid; and

(F) whether the operator had a commercial motor vehicle driver's license revoked, suspended, or canceled by a State, lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(2) Not later than December 31, 1990, the Secretary shall prescribe regulations on minimum uniform standards for a biometric identification system to ensure the identification of operators of commercial motor vehicles.

(e) *AVAILABILITY OF INFORMATION.*—(1) On request of a State, the Secretary or the operator of the information system, as the case may be, may make available to the State information in the information system under this section.

1 (2) On request of an employee, the Secretary or the operator of the informa-
2 tion system, as the case may be, may make available to the employee informa-
3 tion in the information system about the employee.

4 (3) On request of an employer or prospective employer of an employee and
5 after notification to the employee, the Secretary or the operator of the infor-
6 mation system, as the case may be, may make available to the employer or
7 prospective employer information in the information system about the em-
8 ployee.

9 (4) On the request of the Secretary, the operator of the information system
10 shall make available to the Secretary information about the driving status
11 and licensing of operators of commercial motor vehicles (including informa-
12 tion required by subsection (d)(1) of this section).

13 (f) *FEE SYSTEM.*—If the Secretary establishes an information system under
14 this section, the Secretary shall establish a fee system for using the informa-
15 tion system. Fees collected under this subsection in a fiscal year shall equal
16 as nearly as possible the costs of operating the information system in that
17 fiscal year. The Secretary shall deposit fees collected under this subsection in
18 the Highway Trust Fund (except the Mass Transit Account).

19 **§31310. Disqualifications**

20 (a) *BLOOD ALCOHOL CONCENTRATION LEVEL.*—In this section, the blood
21 alcohol concentration level at or above which an individual when operating
22 a commercial motor vehicle is deemed to be driving under the influence of al-
23 cohol is .04 percent.

24 (b) *FIRST VIOLATION OR COMMITTING FELONY.*—(1) Except as provided in
25 paragraph (2) of this subsection and subsection (c) of this section, the Sec-
26 retary of Transportation shall disqualify from operating a commercial motor
27 vehicle for at least one year an individual—

28 (A) committing a first violation of driving a commercial motor vehicle
29 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) of
39 this subsection, the Secretary shall disqualify from operating a commercial
40 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 ac-
4 cident involving a commercial motor vehicle operated by the individual;

5 (C) using a commercial motor vehicle in committing more than one
6 felony arising out of different criminal episodes; or

7 (D) committing any combination of single violations or use described
8 in clauses (A)–(C) of this paragraph.

9 (2) The Secretary may prescribe regulations establishing guidelines (includ-
10 ing conditions) under which a disqualification for life under paragraph (1)
11 of this subsection may be reduced to a period of not less than 10 years.

12 (d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary shall disqualify
13 from operating a commercial motor vehicle for life an individual who uses
14 a commercial motor vehicle in committing a felony involving manufacturing,
15 distributing, or dispensing a controlled substance, or possession with intent
16 to manufacture, distribute, or dispense a controlled substance.

17 (e) SERIOUS TRAFFIC VIOLATIONS.—(1) The Secretary shall disqualify
18 from operating a commercial motor vehicle for at least 60 days an individual
19 who, in a 3-year period, commits 2 serious traffic violations involving a com-
20 mercial motor vehicle operated by the individual.

21 (2) The Secretary shall disqualify from operating a commercial motor vehi-
22 cle for at least 120 days an individual who, in a 3-year period, commits 3
23 serious traffic violations involving a commercial motor vehicle operated by the
24 individual.

25 (f) STATE DISQUALIFICATION.—Notwithstanding subsections (b)–(e) of this
26 section, the Secretary does not have to disqualify an individual from operat-
27 ing a commercial motor vehicle if the State that issued the individual a li-
28 cense authorizing the operation has disqualified the individual from operating
29 a commercial motor vehicle under subsections (b)–(e). Revocation, suspension,
30 or cancellation of the license is deemed to be disqualification under this sub-
31 section.

32 (g) OUT-OF-SERVICE ORDERS.—(1)(A) To enforce section 392.5 of title 49,
33 Code of Federal Regulations, the Secretary shall prescribe regulations estab-
34 lishing and enforcing an out-of-service period of 24 hours for an individual
35 who violates section 392.5. An individual may not violate an out-of-service
36 order issued under those regulations.

37 (B) The Secretary shall prescribe regulations establishing and enforcing re-
38 quirements for reporting out-of-service orders issued under regulations pre-
39 scribed under subparagraph (A) of this paragraph. Regulations prescribed
40 under this subparagraph shall require at least that an operator of a commer-
41 cial motor vehicle who is issued an out-of-service order to report the issuance

1 to the individual's employer and to the State that issued the operator a driv-
2 er's license.

3 (2) Not later than December 18, 1992, the Secretary shall prescribe regula-
4 tions establishing sanctions and penalties related to violations of out-of-service
5 orders by individuals operating commercial motor vehicles. The regulations
6 shall require at least that—

7 (A) an operator of a commercial motor vehicle found to have commit-
8 ted a first violation of an out-of-service order shall be disqualified from
9 operating such a vehicle for at least 90 days and liable for a civil pen-
10 alty of at least \$1,000;

11 (B) an operator of a commercial motor vehicle found to have commit-
12 ted a 2d violation of an out-of-service order shall be disqualified from
13 operating such a vehicle for at least one year and not more than 5 years
14 and liable for a civil penalty of at least \$1,000; and

15 (C) an employer that knowingly allows or requires an employee to op-
16 erate a commercial motor vehicle in violation of an out-of-service order
17 shall be liable for a civil penalty of not more than \$10,000.

18 **§31311. Requirements for State participation**

19 (a) GENERAL.—To avoid having amounts withheld from apportionment
20 under section 31314 of this title, a State shall comply with the following re-
21 quirements:

22 (1) The State shall adopt and carry out a program for testing and
23 ensuring the fitness of individuals to operate commercial motor vehicles
24 consistent with the minimum standards prescribed by the Secretary of
25 Transportation under section 31305(a) of this title.

26 (2) The State may issue a commercial driver's license to an individual
27 only if the individual passes written and driving tests for the operation
28 of a commercial motor vehicle that comply with the minimum standards.

29 (3) The State shall have in effect and enforce a law providing that
30 an individual with a blood alcohol concentration level at or above the
31 level established by section 31310(a) of this title when operating a com-
32 mercial motor vehicle is deemed to be driving under the influence of alco-
33 hol.

34 (4) The State shall authorize an individual to operate a commercial
35 motor vehicle only by issuing a commercial driver's license containing
36 the information described in section 31308(3) of this title.

37 (5) At least 60 days before issuing a commercial driver's license (or
38 a shorter period the Secretary prescribes by regulation), the State shall
39 notify the Secretary or the operator of the information system under sec-
40 tion 31309 of this title, as the case may be, of the proposed issuance of

1 the license and other information the Secretary may require to ensure
2 identification of the individual applying for the license.

3 (6) Before issuing a commercial driver's license to an individual, the
4 State shall request from any other State that has issued a commercial
5 driver's license to the individual all information about the driving record
6 of the individual.

7 (7) Not later than 30 days after issuing a commercial driver's license,
8 the State shall notify the Secretary or the operator of the information
9 system under section 31309 of this title, as the case may be, of the issu-
10 ance.

11 (8) Not later than 10 days after disqualifying the holder of a commer-
12 cial driver's license from operating a commercial motor vehicle (or after
13 revoking, suspending, or canceling the license) for at least 60 days, the
14 State shall notify the Secretary or the operator of the information system
15 under section 31309 of this title, as the case may be, and the State that
16 issued the license, of the disqualification, revocation, suspension, or can-
17 cellation.

18 (9) If an individual operating a commercial motor vehicle violates a
19 State or local law on motor vehicle traffic control (except a parking vio-
20 lation) and the individual has a driver's license issued by another State,
21 the State in which the violation occurred shall notify a State official des-
22 ignated by the issuing State of the violation not later than 10 days after
23 the date the individual is found to have committed the violation.

24 (10) The State may not issue a commercial driver's license to an indi-
25 vidual during a period in which the individual is disqualified from oper-
26 ating a commercial motor vehicle or the individual's driver's license is
27 revoked, suspended, or canceled.

28 (11) The State may issue a commercial driver's license to an individ-
29 ual who has a commercial driver's license issued by another State only
30 if the individual first returns the driver's license issued by the other
31 State.

32 (12) The State may issue a commercial driver's license only to an in-
33 dividual who operates or will operate a commercial motor vehicle and
34 is domiciled in the State, except that, under regulations the Secretary
35 shall prescribe, the State may issue a commercial driver's license to an
36 individual who operates or will operate a commercial motor vehicle and
37 is not domiciled in a State that issues commercial drivers' licenses.

38 (13) The State shall impose penalties the State considers appropriate
39 and the Secretary approves for an individual operating a commercial
40 motor vehicle when the individual—

41 (A) does not have a commercial driver's license;

- 1 (B) has a driver's license revoked, suspended, or canceled; or
2 (C) is disqualified from operating a commercial motor vehicle.

3 (14) The State shall allow an individual to operate a commercial
4 motor vehicle in the State if—

5 (A) the individual has a commercial driver's license issued by an-
6 other State under the minimum standards prescribed by the Sec-
7 retary under section 31305(a) of this title;

8 (B) the license is not revoked, suspended, or canceled; and

9 (C) the individual is not disqualified from operating a commer-
10 cial motor vehicle.

11 (15) The State shall disqualify an individual from operating a com-
12 mercial motor vehicle for the same reasons and time periods for which
13 the Secretary shall disqualify the individual under section 31310(b)–(e)
14 of this title.

15 (16)(A) Before issuing a commercial driver's license to an individual,
16 the State shall request the Secretary for information from the National
17 Driver Register maintained under chapter 303 of this title (after the Sec-
18 retary decides the Register is operational) on whether the individual—

19 (i) has been disqualified from operating a motor vehicle (except
20 a commercial motor vehicle);

21 (ii) has had a license (except a license authorizing the individual
22 to operate a commercial motor vehicle) revoked, suspended, or can-
23 celed for cause in the 3-year period ending on the date of applica-
24 tion for the commercial driver's license; or

25 (iii) has been convicted of an offense specified in section
26 30304(a)(3) of this title.

27 (B) The State shall give full weight and consideration to that informa-
28 tion in deciding whether to issue the individual a commercial driver's
29 license.

30 (17) The State shall adopt and enforce regulations prescribed by the
31 Secretary under section 31310(g)(1)(A) and (2) of this title.

32 (b) STATE SATISFACTION OF REQUIREMENTS.—A State may satisfy the re-
33 quirements of subsection (a) of this section that the State disqualify an indi-
34 vidual from operating a commercial motor vehicle by revoking, suspending,
35 or canceling the driver's license issued to the individual.

36 (c) NOTIFICATION.—Not later than 30 days after being notified by a State
37 of the proposed issuance of a commercial driver's license to an individual, the
38 Secretary or the operator of the information system under section 31309 of
39 this title, as the case may be, shall notify the State whether the individual
40 has a commercial driver's license issued by another State or has been dis-

1 qualified from operating a commercial motor vehicle by another State or the
2 Secretary.

3 **§31312. Grants for testing and ensuring the fitness of opera-**
4 **tors of commercial motor vehicles**

5 (a) BASIC GRANTS.—(1) The Secretary of Transportation may make a
6 grant to a State under this subsection if the State—

7 (A) makes an agreement with the Secretary—

8 (i) to adopt and carry out in the fiscal year in which the grant
9 is made a program for testing and ensuring the fitness of individ-
10 uals who operate commercial motor vehicles under the minimum
11 standards prescribed by the Secretary under section 31305(a) of this
12 title; and

13 (ii) to require that operators of commercial motor vehicles have
14 passed written and driving tests that meet the minimum standards;
15 and

16 (B) has in effect and enforces in that fiscal year a law providing that
17 an individual with a blood alcohol concentration of at least .10 percent
18 when operating a commercial motor vehicle is deemed to be driving
19 under the influence of alcohol.

20 (2) A State may—

21 (A) administer driving tests referred to in paragraph (1) of this sub-
22 section and section 31311(a) of this title; or

23 (B) make an agreement, approved by the Secretary, for the tests to be
24 administered by a person (including a department, agency, or instru-
25 mentality of a local government) that meets minimum standards the Sec-
26 retary prescribes by regulation if—

27 (i) the agreement allows the Secretary and the State each to con-
28 duct random examinations, inspections, and audits of the testing
29 without prior notification; and

30 (ii) the State annually conducts at least one onsite inspection of
31 the testing.

32 (3) The Secretary shall decide on the amount of a grant in a fiscal year
33 to be made under this subsection to a State eligible to receive the grant in
34 the fiscal year. However—

35 (A) a grant to a State under this subsection shall be at least \$100,000
36 in a fiscal year; and

37 (B) to the extent each State grant under this subsection is more than
38 \$100,000 in a fiscal year, the Secretary shall ensure that those States
39 are treated equitably.

40 (4) A State receiving a grant under this subsection may use the amounts
41 provided under the grant only to test operators of commercial motor vehicles.

1 (5) *There is available to the Secretary to carry out this subsection*
2 *§_____ from amounts made available under section 31104 of this title*
3 *for the fiscal year ending September 30, 19__.*

4 (b) *SUPPLEMENTAL GRANTS.—(1) The Secretary may make a grant under*
5 *this subsection in a fiscal year to a State eligible to receive a grant under*
6 *subsection (a) of this section in that fiscal year. A grant made under this*
7 *subsection shall be used for testing operators of commercial motor vehicles.*

8 (2) *Amounts of grants under this subsection shall be distributed among the*
9 *States eligible to receive grants under subsection (a) of this section in the fis-*
10 *cal year on the basis of the number of written and driving tests administered,*
11 *and the number of drivers' licenses for the operation of commercial motor ve-*
12 *hicles issued, in the prior fiscal year.*

13 (3) *There is available to the Secretary to carry out this subsection*
14 *§_____ from amounts made available under section 31104 of this title*
15 *for the fiscal year ending September 30, 19__.*

16 (c) *MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant*
17 *to a State under this section only if the State agrees that the total expenditure*
18 *of amounts of the State and political subdivisions of the State, exclusive of*
19 *United States Government amounts, for testing operators of commercial motor*
20 *vehicles will be maintained at a level at least equal to the average level of*
21 *that expenditure for its last 2 fiscal years before October 27, 1986.*

22 (d) *AVAILABILITY OF AMOUNTS.—(1) Amounts made available to a State*
23 *under this section remain available for obligation by the State for the fiscal*
24 *year for which the amounts are made available. Any of those amounts not*
25 *obligated before the last day of that fiscal year are no longer available for*
26 *obligation by the State and are available to the Secretary to carry out this*
27 *chapter.*

28 (2) *Amounts made available to the Secretary under this section remain*
29 *available until expended.*

30 (e) *GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of*
31 *a grant to a State under this section is a contractual obligation of the Gov-*
32 *ernment for payment of the amount of the grant.*

33 (f) *TESTING AND FITNESS PROGRAM STUDIES.—In this section, develop-*
34 *ment of a program for testing and ensuring the fitness of individuals who*
35 *operate commercial motor vehicles includes studies of—*

36 (1) *the number of vehicles that will need to be tested under the pro-*
37 *gram in a calendar year;*

38 (2) *facilities at which testing of those individuals could be conducted;*
39 *and*

40 (3) *additional resources (including personnel) that will be necessary*
41 *to conduct the testing.*

1 **§31313. Grants for issuing commercial drivers' licenses and**
 2 **complying with State participation requirements**

3 (a) *GENERAL AUTHORITY.*—The Secretary of Transportation may make a
 4 grant under this section to a State in a fiscal year if the State makes an
 5 agreement with the Secretary to participate in that fiscal year in the commer-
 6 cial driver's license program established by this chapter and the information
 7 system required by section 31309 of this title and to comply with the require-
 8 ments of section 31311(a) of this title.

9 (b) *AMOUNTS OF GRANTS.*—The Secretary shall decide on the amount of
 10 a grant in a fiscal year to be made under this section to a State eligible to
 11 receive the grant in the fiscal year. However—

12 (1) a grant to a State under this section shall be at least \$100,000
 13 in a fiscal year; and

14 (2) to the extent each State grant under this section is more than
 15 \$100,000 in a fiscal year, the Secretary shall ensure that those States
 16 are treated equitably.

17 (c) *LIMITATION ON USE.*—A State receiving a grant under this section may
 18 use the amounts provided under the grant only for issuing commercial driv-
 19 ers' licenses and complying with the requirements of section 31311(a) of this
 20 title.

21 (d) *AVAILABILITY OF AMOUNTS.*—(1) Amounts made available to a State
 22 under this section remain available for obligation by the State for the fiscal
 23 year for which the amounts are made available. Any of those amounts not
 24 obligated before the last day of that fiscal year are no longer available for
 25 obligation by the State and are available to the Secretary to carry out this
 26 chapter.

27 (2) Amounts made available to the Secretary under this section remain
 28 available until expended.

29 (e) *GRANTS AS CONTRACTUAL OBLIGATIONS.*—Approval by the Secretary of
 30 a grant to a State under this section is a contractual obligation of the United
 31 States Government for payment of the amount of the grant.

32 (f) *AUTHORIZATION.*—There is available to the Secretary to carry out this
 33 section \$_____ from amounts made available under section 31104 of
 34 this title for the fiscal year ending September 30, 19__.

35 **§31314. Withholding amounts for State noncompliance**

36 (a) *FIRST FISCAL YEAR.*—The Secretary of Transportation shall withhold
 37 5 percent of the amount required to be apportioned to a State under section
 38 104(b)(1), (2), (5), and (6) of title 23 on the first day of the fiscal year after
 39 the first fiscal year beginning after September 30, 1992, throughout which the
 40 State does not comply substantially with a requirement of section 31311(a)
 41 of this title.

1 (b) *SECOND FISCAL YEAR.*—The Secretary shall withhold 10 percent of the
2 amount required to be apportioned to a State under section 104(b)(1), (2),
3 (5), and (6) of title 23 on the first day of each fiscal year after the 2d fiscal
4 year beginning after September 30, 1992, throughout which the State does not
5 comply substantially with a requirement of section 31311(a) of this title.

6 (c) *AVAILABILITY FOR APPORTIONMENT.*—(1) Amounts withheld under this
7 section from apportionment to a State before October 1, 1995, remain avail-
8 able for apportionment to the State as follows:

9 (A) If the amounts would have been apportioned under section
10 104(b)(5)(B) of title 23 but for this section, the amounts remain avail-
11 able until the end of the 2d fiscal year following the fiscal year for which
12 the amounts are authorized to be appropriated.

13 (B) If the amounts would have been apportioned under section
14 104(b)(1), (2), or (6) of title 23 but for this section, the amounts remain
15 available until the end of the 3d fiscal year following the fiscal year for
16 which the amounts are authorized to be appropriated.

17 (2) Amounts withheld under this section from apportionment to a State
18 after September 30, 1995, are not available for apportionment to the State.

19 (d) *APPORTIONMENT AFTER COMPLIANCE.*—(1) If, before the last day of the
20 period for which amounts withheld under this section from apportionment are
21 to remain available for apportionment to a State under subsection (c)(1) of
22 this section, the State substantially complies with all of the requirements of
23 section 31311(a) of this title for a period of 365 days, the Secretary, on the
24 day following the last day of that period, shall apportion to the State the
25 withheld amounts remaining available for apportionment to that State.

26 (2) Amounts apportioned under paragraph (1) of this subsection remain
27 available for expenditure until the end of the 3d fiscal year following the fis-
28 cal year in which the amounts are apportioned. Amounts not obligated at the
29 end of that period lapse or, for amounts apportioned under section 104(b)(5)
30 of title 23, lapse and are available for projects under section 118(b) of title
31 23.

32 (e) *LAPSE.*—If, at the end of the period for which amounts withheld under
33 this section from apportionment are available for apportionment to a State
34 under subsection (c)(1) of this section, the State has not substantially com-
35 plied with all of the requirements of section 31311(a) of this title for a 365-
36 day period, the amounts lapse or, for amounts withheld from apportionment
37 under section 104(b)(5) of title 23, the amounts lapse and are available for
38 projects under section 118(b) of title 23.

39 **§31315. Waiver authority**

40 After notice and an opportunity for comment, the Secretary of Transpor-
41 tation may waive any part of this chapter or a regulation prescribed under

1 *this chapter as it applies to a class of individuals or commercial motor vehi-*
 2 *cles if the Secretary decides the waiver is not contrary to the public interest*
 3 *and does not diminish the safe operation of commercial motor vehicles. A*
 4 *waiver under this section shall be published in the Federal Register with rea-*
 5 *sons for the waiver.*

6 **§31316. Limitation on statutory construction**

7 *This chapter does not affect the authority of the Secretary of Transporta-*
 8 *tion to regulate commercial motor vehicle safety involving motor vehicles*
 9 *with a gross vehicle weight rating of less than 26,001 pounds or a lesser gross*
 10 *vehicle weight rating the Secretary decides is appropriate under section*
 11 *31301(4)(A) of this title.*

12 **§31317. Procedure for prescribing regulations**

13 *Regulations prescribed by the Secretary of Transportation to carry out this*
 14 *chapter (except section 31307) shall be prescribed under section 553 of title*
 15 *5 without regard to sections 556 and 557 of title 5.*

16 **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.*

17 **§31501. Definitions**

18 *In this chapter—*

19 (1) *“migrant worker” means an individual going to or from employ-*
 20 *ment in agriculture as provided under section 3121(g) of the Internal*
 21 *Revenue Code of 1986 (26 U.S.C. 3121(g)) or section 203(f) of the Fair*
 22 *Labor Standards Act of 1938 (29 U.S.C. 203(f)).*

23 (2) *“motor carrier”, “motor common carrier”, “motor private car-*
 24 *rier”, “motor vehicle”, and “United States” have the same meanings*
 25 *given those terms in section 10102 of this title.*

26 (3) *“motor carrier of migrant workers”—*

27 (A) *means a person (except a motor common carrier) providing*
 28 *transportation referred to in section 10521(a) of this title by a*
 29 *motor vehicle (except a passenger automobile or station wagon) for*
 30 *at least 3 migrant workers at a time to or from their employment;*
 31 *but*

32 (B) *does not include a migrant worker providing transportation*
 33 *for migrant workers and their immediate families.*

34 **§31502. Requirements for qualifications, hours of service,**
 35 **safety, and equipment standards**

36 (a) *APPLICATION.—This section applies to transportation—*

37 (1) *described in sections 10521 and 10522 of this title; and*

1 (2) to the extent the transportation is in the United States and is be-
2 tween places in a foreign country, or between a place in a foreign coun-
3 try and a place in another foreign country.

4 (b) *MOTOR CARRIER AND PRIVATE MOTOR CARRIER REQUIREMENTS.*—The
5 Secretary of Transportation may prescribe requirements for—

6 (1) qualifications and maximum hours of service of employees of, and
7 safety of operation and equipment of, a motor carrier; and

8 (2) qualifications and maximum hours of service of employees of, and
9 standards of equipment of, a motor private carrier, when needed to pro-
10 mote safety of operation.

11 (c) *MIGRANT WORKER MOTOR CARRIER REQUIREMENTS.*—The Secretary
12 may prescribe requirements for the comfort of passengers, qualifications and
13 maximum hours of service of operators, and safety of operation and equip-
14 ment of a motor carrier of migrant workers. The requirements only apply to
15 a carrier transporting a migrant worker—

16 (1) at least 75 miles; and

17 (2) across the boundary of a State, territory, or possession of the Unit-
18 ed States.

19 (d) *CONSIDERATIONS.*—Before prescribing or revising any requirement
20 under this section, the Secretary shall consider the costs and benefits of the
21 requirement.

22 **§31503. Research, investigation, and testing**

23 (a) *GENERAL AUTHORITY.*—The Secretary of Transportation may inves-
24 tigate and report on the need for regulation by the United States Government
25 of sizes, weight, and combinations of motor vehicles and qualifications and
26 maximum hours of service of employees of a motor carrier subject to sub-
27 chapter II of chapter 105 of this title and a motor private carrier. The Sec-
28 retary shall use the services of each department, agency, or instrumentality
29 of the Government and each organization of motor carriers having special
30 knowledge of a matter being investigated.

31 (b) *USE OF SERVICES.*—In carrying out this chapter, the Secretary may
32 use the services of a department, agency, or instrumentality of the Govern-
33 ment having special knowledge about safety, to conduct scientific and tech-
34 nical research, investigation, and testing when necessary to promote safety of
35 operation and equipment of motor vehicles. The Secretary may reimburse the
36 department, agency, or instrumentality for the services provided.

37 **§31504. Identification of motor vehicles**

38 (a) *GENERAL AUTHORITY.*—The Secretary of Transportation may—

39 (1) issue and require the display of an identification plate on a motor
40 vehicle used in transportation provided by a motor private carrier and

1 a motor carrier of migrant workers subject to section 31502(c) of this
2 title, except a motor contract carrier; and

3 (2) require each of those motor private carriers and motor carriers of
4 migrant workers to pay the reasonable cost of the plate.

5 (b) *LIMITATION.*—A motor private carrier or a motor carrier of migrant
6 workers may use an identification plate only as authorized by the Secretary.

7 **CHAPTER 317—PARTICIPATION IN INTERNATIONAL**
8 **REGISTRATION PLAN AND INTERNATIONAL FUEL TAX**
9 **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.*

10 **§31701. Definitions**

11 *In this chapter—*

12 (1) “commercial motor vehicle”, with respect to—

13 (A) the International Registration Plan, has the same meaning
14 given the term “apportionable vehicle” under the Plan; and

15 (B) the International Fuel Tax Agreement, has the same meaning
16 given the term “qualified motor vehicle” under the Agreement.

17 (2) “fuel use tax” means a tax imposed on or measured by the con-
18 sumption of fuel in a motor vehicle.

19 (3) “International Fuel Tax Agreement” means the interstate agree-
20 ment on collecting and distributing fuel use taxes paid by motor carriers,
21 developed under the auspices of the National Governors’ Association.

22 (4) “International Registration Plan” means the interstate agreement
23 on apportioning vehicle registration fees paid by motor carriers, devel-
24 oped by the American Association of Motor Vehicle Administrators.

25 (5) “Regional Fuel Tax Agreement” means the interstate agreement on
26 collecting and distributing fuel use taxes paid by motor carriers in the
27 States of Maine, Vermont, and New Hampshire.

28 (6) “State” means the 48 contiguous States and the District of Colum-
29 bia.

30 **§31702. Working group**

31 (a) *ESTABLISHMENT.*—The Secretary of Transportation shall establish a
32 working group of State and local government officials, including representa-
33 tives of the National Governors’ Association, the American Association of
34 Motor Vehicle Administrators, the National Conference of State Legislatures,
35 the Federation of Tax Administrators, and the Board of Directors for the

1 *International Fuel Tax Agreement, and a representative of the Regional Fuel*
2 *Tax Agreement.*

3 (b) *PURPOSES.*—*The purposes of the working group are—*

4 (1) *to propose procedures to resolve disputes among States participat-*
5 *ing in the International Registration Plan and among States participat-*
6 *ing in the International Fuel Tax Agreement, including designating the*
7 *Secretary or any other person to resolve the disputes; and*

8 (2) *to provide technical assistance to States participating or seeking*
9 *to participate in the Plan or Agreement.*

10 (c) *CONSULTATION REQUIREMENT.*—*In carrying out subsection (b) of this*
11 *section, the working group shall consult with members of the motor carrier*
12 *industry.*

13 (d) *REPORT.*—(1) *Not later than December 18, 1993, the working group*
14 *shall submit a report to—*

15 (A) *the Secretary;*

16 (B) *the Committee on Commerce, Science, and Transportation of the*
17 *Senate;*

18 (C) *the Committee on Public Works and Transportation of the House*
19 *of Representatives;*

20 (D) *the Committee on the Judiciary of the House of Representatives;*

21 (E) *the States participating in the International Registration Plan;*

22 *and*

23 (F) *the States participating in the International Fuel Tax Agreement.*

24 (2) *The report shall contain a detailed statement of the working group's*
25 *findings and conclusions and its joint recommendations about the matters re-*
26 *ferred to in subsection (b) of this section. After submitting the report, the*
27 *working group periodically may review and modify the findings and conclu-*
28 *sions and the joint recommendations as appropriate and submit a report con-*
29 *taining the modifications to the Secretary and the committees specified in*
30 *paragraph (1) of this subsection.*

31 (e) *RELATIONSHIP TO OTHER LAWS.*—*The Federal Advisory Committee Act*
32 *(5 App. U.S.C.) does not apply to the working group.*

33 **§31703. Grants**

34 (a) *GENERAL AUTHORITY.*—*The Secretary of Transportation may make*
35 *grants to States and appropriate persons to facilitate participation in the*
36 *International Registration Plan and the International Fuel Tax Agreement*
37 *and to make administrative improvements in any other base State fuel use*
38 *tax agreement in existence as of January 1, 1991. A grant may include*
39 *amounts for technical assistance, personnel training, travel costs, and tech-*
40 *nology and equipment associated with the participation.*

1 (b) *CONTRACTUAL OBLIGATION.*—Approval by the Secretary of a grant
2 with amounts made available under this section is a contractual obligation
3 of the United States Government for payment of the Government's share of
4 the grant.

5 **§ 31704. Vehicle registration**

6 After September 30, 1996, a State that is not participating in the Inter-
7 national Registration Plan may not establish, maintain, or enforce a com-
8 mercial motor vehicle registration law, regulation, or agreement that limits
9 the operation in that State of a commercial motor vehicle that is not reg-
10 istered under the laws of the State, if the vehicle is registered under the laws
11 of a State participating in the Plan.

12 **§ 31705. Fuel use tax**

13 (a) *REPORTING REQUIREMENTS.*—After September 30, 1996, a State may
14 establish, maintain, or enforce a law or regulation that has a fuel use tax
15 reporting requirement (including any tax reporting form) only if the require-
16 ment conforms with the International Fuel Tax Agreement.

17 (b) *PAYMENT.*—After September 30, 1996, a State may establish, maintain,
18 or enforce a law or regulation that provides for the payment of a fuel use
19 tax only if the law or regulation conforms with the International Fuel Tax
20 Agreement as it applies to collection of a fuel use tax by a single base State
21 and proportional sharing of fuel use taxes charged among the States where
22 a commercial motor vehicle is operated.

23 (c) *LIMITATION.*—If the International Fuel Tax Agreement is amended, a
24 State not participating in the Agreement when the amendment is made is not
25 subject to the conformity requirements of subsections (a) and (b) of this sec-
26 tion in regard to the amendment until after a reasonable time, but not earlier
27 than the expiration of—

28 (1) the 365-day period beginning on the first day that States partici-
29 pating in the Agreement are required to comply with the amendment;
30 or

31 (2) the 365-day period beginning on the day the relevant office of the
32 State receives written notice of the amendment from the Secretary of
33 Transportation.

34 (d) *NONAPPLICATION.*—This section does not apply to a State that was
35 participating in the Regional Fuel Tax Agreement on January 1, 1991, and
36 that continues to participate in that Agreement after that date.

37 **§ 31706. Enforcement**

38 (a) *CIVIL ACTIONS.*—On request of the Secretary of Transportation, the At-
39 torney General may bring a civil action in a court of competent jurisdiction
40 to enforce compliance with sections 31704 and 31705 of this title.

1 (b) *VENUE*.—An action under this section may be brought only in the State
2 in which an order is required to enforce compliance.

3 (c) *RELIEF*.—Subject to section 1341 of title 28, the court, on a proper
4 showing—

5 (1) shall issue a temporary restraining order or a preliminary or per-
6 manent injunction; and

7 (2) may require by the injunction that the State or any person comply
8 with sections 31704 and 31705 of this title.

9 **§31707. Limitations on statutory construction**

10 Sections 31704 and 31705 of this title do not limit the amount of money
11 a State may charge for registration of a commercial motor vehicle or the
12 amount of any fuel use tax a State may impose.

13 **§31708. Authorization of appropriations**

14 (a) *GENERAL*.—From amounts made available under section 31104 of this
15 title, the Secretary of Transportation shall provide the following amounts for
16 each of the fiscal years ending September 30, 1993-1997:

17 (1) \$1,000,000 for activities of the working group under section 31702
18 of this title.

19 (2) \$5,000,000 for grants under section 31703 of this title.

20 (b) *AVAILABILITY OF AMOUNTS*.—Amounts appropriated under this section
21 remain available until expended.

22 **PART C—INFORMATION, STANDARDS, AND**
23 **REQUIREMENTS**

24 **CHAPTER 321—GENERAL**

Sec.

32101. Definitions.

32102. Authorization of appropriations.

25 **§32101. Definitions**

26 In this part (except section 32304 and chapter 329)—

27 (1) “bumper standard” means a minimum performance standard that
28 substantially reduces—

29 (A) the damage to the front or rear end of a passenger motor ve-
30 hicle from a low-speed collision (including a collision with a fixed
31 barrier) or from towing the vehicle; or

32 (B) the cost of repairing the damage.

33 (2) “insurer” means a person in the business of issuing, or reinsuring
34 any part of, a passenger motor vehicle insurance policy.

35 (3) “interstate commerce” means commerce between a place in a State
36 and—

37 (A) a place in another State; or

38 (B) another place in the same State through another State.

1 (4) “make”, when describing a passenger motor vehicle, means the
2 trade name of the manufacturer of the vehicle.

3 (5) “manufacturer” means a person—

4 (A) manufacturing or assembling passenger motor vehicles or pas-
5 senger motor vehicle equipment; or

6 (B) importing motor vehicles or motor vehicle equipment for re-
7 sale.

8 (6) “model”, when describing a passenger motor vehicle, means a cat-
9 egory of passenger motor vehicles based on the size, style, and type of
10 a make of vehicle.

11 (7) “motor vehicle” means a vehicle driven or drawn by mechanical
12 power and manufactured primarily for use on public streets, roads, and
13 highways, but does not include a vehicle operated only on a rail line.

14 (8) “motor vehicle accident” means an accident resulting from the
15 maintenance or operation of a passenger motor vehicle or passenger
16 motor vehicle equipment.

17 (9) “multipurpose passenger vehicle” means a passenger motor vehicle
18 constructed on a truck chassis or with special features for occasional off-
19 road operation.

20 (10) “passenger motor vehicle” means a motor vehicle with motive
21 power designed to carry not more than 12 individuals, but does not in-
22 clude—

23 (A) a motorcycle; or

24 (B) a truck not designed primarily to carry its operator or pas-
25 sengers.

26 (11) “passenger motor vehicle equipment” means—

27 (A) a system, part, or component of a passenger motor vehicle as
28 originally made;

29 (B) a similar part or component made or sold for replacement
30 or improvement of a system, part, or component, or as an accessory
31 or addition to a passenger motor vehicle; or

32 (C) a device made or sold for use in towing a passenger motor
33 vehicle.

34 (12) “State” means a State of the United States, the District of Co-
35 lumbia, Puerto Rico, the Northern Mariana Islands, Guam, American
36 Samoa, and the Virgin Islands.

37 (13) “United States district court” means a district court of the Unit-
38 ed States, a United States court for Guam, the Virgin Islands, and
39 American Samoa, and the district court for the Northern Mariana Is-
40 lands.

1 **§32102. Authorization of appropriations**

2 *The following amounts may be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out*
3 *this part:*

4 (1) \$6,731,430 for the fiscal year ending September 30, 1993.

5 (2) \$6,987,224 for the fiscal year ending September 30, 1994.

6 (3) \$7,252,739 for the fiscal year ending September 30, 1995.

7 **CHAPTER 323—CONSUMER INFORMATION**

8 *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.*

9 **§32301. Definitions**

10 *In this chapter—*

11 (1) *“crashworthiness” means the protection a passenger motor vehicle*
12 *gives its passengers against personal injury or death from a motor vehi-*
13 *cle accident.*

14 (2) *“damage susceptibility” means the susceptibility of a passenger*
15 *motor vehicle to damage in a motor vehicle accident.*

16 **§32302. Passenger motor vehicle information**

17 (a) *INFORMATION PROGRAM.—The Secretary of Transportation shall main-*
18 *tain a program for developing the following information on passenger motor*
19 *vehicles:*

20 (1) *damage susceptibility.*

21 (2) *crashworthiness.*

22 (3) *the degree of difficulty of diagnosis and repair of damage to, or*
23 *failure of, mechanical and electrical systems.*

24 (4) *vehicle operating costs dependent on the characteristics referred to*
25 *in clauses (1)–(3) of this subsection, including insurance information ob-*
26 *tained under section 32303 of this title.*

27 (b) *MOTOR VEHICLE INFORMATION.—To assist a consumer in buying a*
28 *passenger motor vehicle, the Secretary shall provide to the public information*
29 *developed under subsection (a) of this section. The information shall be in a*
30 *simple and understandable form that allows comparison of the characteristics*
31 *referred to in subsection (a)(1)–(3) of this section among the makes and mod-*
32 *els of passenger motor vehicles. The Secretary may require passenger motor*
33 *vehicle dealers to distribute the information to prospective buyers.*

1 (c) *INSURANCE COST INFORMATION.*—The Secretary shall prescribe regula-
 2 tions that require passenger motor vehicle dealers to distribute to prospective
 3 buyers information the Secretary develops and provides to the dealers that
 4 compares insurance costs for different makes and models of passenger motor
 5 vehicles based on damage susceptibility and crashworthiness.

6 **§ 32303. Insurance information**

7 (a) *GENERAL REPORTS AND INFORMATION REQUIREMENTS.*—(1) In carry-
 8 ing out this chapter, the Secretary of Transportation may require an insurer,
 9 or a designated agent of the insurer, to make reports and provide the Sec-
 10 retary with information. The reports and information may include accident
 11 claim information by make, model, and model year of passenger motor vehicle
 12 about the kind and extent of—

13 (A) physical damage and repair costs; and

14 (B) personal injury.

15 (2) In deciding which reports and information are to be provided under
 16 this subsection, the Secretary shall—

17 (A) consider the cost of preparing and providing the reports and infor-
 18 mation;

19 (B) consider the extent to which the reports and information will con-
 20 tribute to carrying out this chapter; and

21 (C) consult with State authorities and public and private agencies the
 22 Secretary considers appropriate.

23 (3) To the extent possible, the Secretary shall obtain reports and informa-
 24 tion under this subsection on a voluntary basis.

25 (b) *REQUESTED INFORMATION ON CRASHWORTHINESS, DAMAGE SUSCEPTI-
 26 BILITY, AND REPAIR AND PERSONAL INJURY COST.*—When requested by the
 27 Secretary, an insurer shall give the Secretary information—

28 (1) about the extent to which the insurance premiums charged by the
 29 insurer are affected by damage susceptibility, crashworthiness, and the
 30 cost of repair and personal injury, for each make and model of passenger
 31 motor vehicle; and

32 (2) available to the insurer about the effect of damage susceptibility,
 33 crashworthiness, and the cost of repair and personal injury for each
 34 make and model of passenger motor vehicle on the risk incurred by the
 35 insurer in insuring that make and model.

36 (c) *DISCLOSURE.*—In distributing information received under this section,
 37 the Secretary may disclose identifying information about a person that may
 38 be an insured, a claimant, a passenger, an owner, a witness, or an individual
 39 involved in a motor vehicle accident, only with the consent of the person.

40 **§ 32304. Passenger motor vehicle country of origin labeling**

41 (a) *DEFINITIONS.*—In this section—

1 (1) “allied supplier” means a supplier of passenger motor vehicle
2 equipment that is wholly owned by the manufacturer, or if a joint ven-
3 ture vehicle assembly arrangement, a supplier that is wholly owned by
4 one member of the joint venture arrangement.

5 (2)(A) “carline”—

6 (i) means a name given a group of passenger motor vehicles that
7 has a degree of commonality in construction such as body and chas-
8 sis;

9 (ii) does not consider a level of decor or opulence; and

10 (iii) except for light duty trucks, is not generally distinguished
11 by characteristics such as roof line, number of doors, seats, or win-
12 dows; and

13 (B) light duty trucks are different carlines than passenger motor vehi-
14 cles.

15 (3) “country of origin”, when referring to the origin of an engine or
16 transmission, means the country from which the largest share of the dol-
17 lar value added to an engine or transmission has originated—

18 (A) with the United States and Canada treated as separate coun-
19 tries; and

20 (B) the estimate of the percentage of the dollar value shall be
21 based on the purchase price of direct materials, as received at indi-
22 vidual engine or transmission plants, of engines of the same dis-
23 placement and transmissions of the same transmission type.

24 (4) “dealer” means a person residing or located in the United States,
25 including the District of Columbia or a territory or possession of the
26 United States, and engaged in selling or distributing new passenger
27 motor vehicles to the ultimate purchaser.

28 (5) “final assembly place” means the plant, factory, or other place at
29 which a new passenger motor vehicle is produced or assembled by a man-
30 ufacturer, and from which the vehicle is delivered to a dealer or importer
31 with all component parts necessary for the mechanical operation of the
32 vehicle included with the vehicle, whether or not the component parts are
33 permanently installed in or on the vehicle.

34 (6) “foreign content” means passenger motor vehicle equipment that
35 is not of United States/Canadian origin.

36 (7) “manufacturer” means a person—

37 (A) engaged in manufacturing or assembling new passenger
38 motor vehicles;

39 (B) importing new passenger motor vehicles for resale; or

1 (C) acting for and under the control of such a manufacturer, as-
2 sembler, or importer in connection with the distribution of new pas-
3 senger motor vehicles.

4 (8) “new passenger motor vehicle” means a passenger motor vehicle for
5 which a manufacturer, distributor, or dealer has never transferred the eq-
6 uitable or legal title to the vehicle to an ultimate purchaser.

7 (9) “of United States/Canadian origin”, when referring to passenger
8 motor vehicle equipment, means—

9 (A) for an outside supplier, passenger motor vehicle equipment
10 whose purchase price contains at least 70 percent value added in
11 the United States and Canada; and

12 (B) for an allied supplier, that part of the individual passenger
13 motor vehicle equipment whose purchase price the manufacturer de-
14 termines remains after subtracting the total of the purchase prices
15 of all material of foreign content purchased from outside suppliers,
16 with the determination of the United States/Canadian origin or of
17 the foreign content from outside suppliers being consistent with
18 subclause (A) of this clause.

19 (10) “outside supplier” means a supplier of passenger motor vehicle
20 equipment to a manufacturer’s allied supplier, or a person other than
21 an allied supplier, who ships directly to the manufacturer’s final assem-
22 bly place.

23 (11) “passenger motor vehicle” means a motor vehicle with motive
24 power, manufactured primarily for use on public streets, roads, and
25 highways, and designed to carry not more than 12 individuals—

26 (A) including a multipurpose vehicle or light duty truck when the
27 vehicle or truck is rated at not more than 8,500 pounds gross vehicle
28 weight; but

29 (B) not including—

30 (i) a motorcycle;

31 (ii) a truck not designed primarily to carry its operator or
32 passengers; or

33 (iii) a vehicle operated only on a rail line.

34 (12) “passenger motor vehicle equipment”—

35 (A) means a system, subassembly, or component received at the
36 final vehicle assembly place for installation on, or attachment to,
37 a passenger motor vehicle at the time of its first shipment by the
38 manufacturer to a dealer for sale to an ultimate purchaser; but

39 (B) does not include minor parts (including nuts, bolts, clips,
40 screws, pins, braces, and other attachment hardware) and other

1 *similar items the Secretary of Transportation may prescribe by reg-*
2 *ulation after consulting with manufacturers and labor.*

3 (13) “percentage (by value)”, when referring to passenger motor vehi-
4 *cle equipment of United States/Canadian origin, means the percentage*
5 *remaining after subtracting the percentage (by value) of passenger motor*
6 *vehicle equipment that is not of United States/Canadian origin that will*
7 *be installed or included on those vehicles produced in a carline, from 100*
8 *percent—*

9 (A) *with value being expressed in terms of the purchase price;*
10 and

11 (B) *for outside suppliers and allied suppliers, the value used is*
12 *the purchase price of the equipment paid at the final assembly*
13 *place.*

14 (14) “State” *means a State of the United States, the District of Co-*
15 *lumbia, Puerto Rico, Guam, the Canal Zone, American Samoa, and the*
16 *Virgin Islands.*

17 (15) “value added in the United States and Canada” *means a per-*
18 *centage determined by subtracting the total purchase price of foreign con-*
19 *tent from the total purchase price, and dividing the remainder by the*
20 *total purchase price, excluding costs incurred or profits made at the final*
21 *assembly place and beyond (including advertising, assembly, labor, inter-*
22 *est payments, and profits), with the following groupings being used:*

23 (A) *engines of same displacement produced at the same plant.*

24 (B) *transmissions of the same type produced at the same plant.*

25 (b) *MANUFACTURER REQUIREMENT.—(1) Each manufacturer of a new pas-*
26 *senger motor vehicle manufactured after September 30, 1994, and distributed*
27 *in commerce for sale in the United States, shall establish each year for each*
28 *model year and cause to be attached in a prominent place on each of those*
29 *vehicles, at least one label. The label shall contain the following information:*

30 (A) *the percentage (by value) of passenger motor vehicle equipment of*
31 *United States/Canadian origin installed on vehicles in the carline to*
32 *which that vehicle belongs, identified by the words “U.S./Canadian con-*
33 *tent”.*

34 (B) *the final assembly place for that vehicle by city, State (where ap-*
35 *propriate) and country.*

36 (C) *if at least 15 percent (by value) of equipment installed on pas-*
37 *senger motor vehicles in a carline originated in any country other than*
38 *the United States and Canada, the names of at least the 2 countries in*
39 *which the greatest amount (by value) of that equipment originated and*
40 *the percentage (by value) of the equipment originating in each country.*

1 (D) the country of origin of the engine and the transmission for each
2 vehicle.

3 (2) At the beginning of each model year, each manufacturer shall establish
4 the percentages required for each carline to be indicated on the label under
5 this subsection. Those percentages are applicable to that carline for the entire
6 model year. A manufacturer may round those percentages to the nearest 5
7 percent.

8 (3) A manufacturer complying with the requirement of paragraph (1)(B)
9 of this subsection satisfies the disclosure requirement of section 3(b) of the
10 Automobile Information Disclosure Act (15 U.S.C. 1232(b)).

11 (c) *DEALER REQUIREMENT.*—Each dealer engaged in the sale or distribu-
12 tion of a new passenger motor vehicle manufactured after September 30, 1994,
13 shall cause to be maintained on that vehicle the label required to be attached
14 to that vehicle under subsection (b) of this section.

15 (d) *FORM AND CONTENT OF LABEL.*—The Secretary of Transportation
16 shall prescribe by regulation the form and content of the label required under
17 subsection (b) of this section and the manner and location in which the label
18 is attached. The Secretary shall permit a manufacturer to comply with this
19 section by allowing the manufacturer to disclose the information required
20 under subsection (b)(1) on the label required by section 3 of the Automobile
21 Information Disclosure Act (15 U.S.C. 1232), on the label required by section
22 32908 of this title, or on a separate label that is readily visible.

23 (e) *REGULATIONS.*—In consultation with the Secretaries of Commerce and
24 the Treasury, the Secretary of Transportation shall prescribe regulations nec-
25 essary to carry out this section, including regulations establishing a procedure
26 to verify the label information required under subsection (b)(1) of this section.
27 Those regulations shall provide the ultimate purchaser of a new passenger
28 motor vehicle with the best and most understandable information possible
29 about the foreign content and United States/Canadian origin of the equip-
30 ment of the vehicles without imposing costly and unnecessary burdens on the
31 manufacturers. The Secretary of Transportation shall prescribe the regula-
32 tions promptly to provide adequate lead time for each manufacturer to com-
33 ply with this section. The regulations shall include provisions applicable to
34 outside suppliers and allied suppliers to require those suppliers to certify
35 whether passenger motor vehicle equipment provided by those suppliers is of
36 United States origin, of United States/Canadian origin, or of foreign content
37 and to provide other information the Secretary of Transportation decides is
38 necessary to allow each manufacturer to comply reasonably with this section
39 and to rely on that certification and information.

40 (f) *PREEMPTION.*—(1) When a label content requirement prescribed under
41 this section is in effect, a State or a political subdivision of a State may not

1 adopt or enforce a law or regulation related to the content of vehicles covered
2 by a requirement under this section.

3 (2) A State or a political subdivision of a State may prescribe requirements
4 related to the content of passenger motor vehicles obtained for its own use.

5 **§ 32305. Information and assistance from other departments,**
6 **agencies, and instrumentalities**

7 (a) *AUTHORITY TO REQUEST.*—The Secretary of Transportation may re-
8 quest information necessary to carry out this chapter from a department,
9 agency, or instrumentality of the United States Government. The head of the
10 department, agency, or instrumentality shall provide the information.

11 (b) *DETAILING PERSONNEL.*—The head of a department, agency, or instru-
12 mentality may detail, on a reimbursable basis, personnel to assist the Sec-
13 retary in carrying out this chapter.

14 **§ 32306. Personnel**

15 (a) *GENERAL AUTHORITY.*—In carrying out this chapter, the Secretary of
16 Transportation may—

17 (1) appoint and fix the pay of employees without regard to the provi-
18 sions of title 5 governing appointment in the competitive service and
19 chapter 51 and subchapter III of chapter 53 of title 5; and

20 (2) make contracts with persons for research and preparation of re-
21 ports.

22 (b) *STATUS OF ADVISORY COMMITTEE MEMBERS.*—A member of an advi-
23 sory committee appointed under section 325 of this title to carry out this
24 chapter is a special United States Government employee under chapter 11 of
25 title 18.

26 **§ 32307. Investigative powers**

27 (a) *GENERAL AUTHORITY.*—In carrying out this chapter, the Secretary of
28 Transportation may—

29 (1) inspect and copy records of any person at reasonable times;

30 (2) order a person to file written reports or answers to specific ques-
31 tions, including reports or answers under oath; and

32 (3) conduct hearings, administer oaths, take testimony, and require
33 (by subpoena or otherwise) the appearance and testimony of witnesses and
34 the production of records the Secretary considers advisable.

35 (b) *WITNESS FEES AND MILEAGE.*—A witness summoned under subsection
36 (a) of this section is entitled to the same fee and mileage the witness would
37 have been paid in a court of the United States.

38 (c) *CIVIL ACTIONS TO ENFORCE.*—A civil action to enforce a subpoena or
39 order of the Secretary under subsection (a) of this section may be brought in
40 the United States district court for the judicial district in which the proceed-
41 ing by the Secretary is conducted. The court may punish a failure to obey

1 *an order of the court to comply with the subpoena or order of the Secretary*
2 *as a contempt of court.*

3 *(d) CONFIDENTIALITY OF INFORMATION.—Information obtained by the Sec-*
4 *retary under this section related to a confidential matter referred to in section*
5 *1905 of title 18 may be disclosed only to another officer or employee of the*
6 *United States Government for use in carrying out this chapter. This sub-*
7 *section does not authorize information to be withheld from a committee of*
8 *Congress authorized to have the information.*

9 **§ 32308. General prohibitions, civil penalty, and enforcement**

10 *(a) PROHIBITIONS.—A person may not—*

11 *(1) fail to provide the Secretary of Transportation with information*
12 *requested by the Secretary in carrying out this chapter; or*

13 *(2) fail to comply with applicable regulations prescribed by the Sec-*
14 *retary in carrying out this chapter.*

15 *(b) CIVIL PENALTY.—(1) A person that violates subsection (a) of this sec-*
16 *tion is liable to the United States Government for a civil penalty of not more*
17 *than \$1,000 for each violation. Each failure to provide information or comply*
18 *with a regulation in violation of subsection (a) is a separate violation. The*
19 *maximum penalty under this subsection for a related series of violations is*
20 *\$400,000.*

21 *(2) The Secretary may compromise the amount of a civil penalty imposed*
22 *under this section.*

23 *(3) In determining the amount of a penalty or compromise, the appro-*
24 *priateness of the penalty or compromise to the size of the business of the per-*
25 *son charged and the gravity of the violation shall be considered.*

26 *(4) The Government may deduct the amount of a civil penalty imposed or*
27 *compromised under this section from amounts it owes the person liable for*
28 *the penalty.*

29 *(c) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring a*
30 *civil action in a United States district court to enjoin a violation of sub-*
31 *section (a) of this section.*

32 *(2) When practicable, the Secretary shall—*

33 *(A) notify a person against whom an action under this subsection is*
34 *planned;*

35 *(B) give the person an opportunity to present that person's views; and*

36 *(C) give the person a reasonable opportunity to comply.*

37 *(3) The failure of the Secretary to comply with paragraph (2) of this sub-*
38 *section does not prevent a court from granting appropriate relief.*

39 *(d) VENUE AND SERVICE.—A civil action under this section may be*
40 *brought in the judicial district in which the violation occurred or the defend-*
41 *ant is found, resides, or does business. Process in the action may be served*

1 *in any other judicial district in which the defendant resides or is found. A*
 2 *subpena for a witness in the action may be served in any judicial district.*

3 **§ 32309. Criminal penalty for labeling violations**

4 (a) *DEFINITIONS.*—*The definitions in section 32304 of this title apply to*
 5 *this section.*

6 (b) *PENALTIES.*—*A manufacturer of a passenger motor vehicle distributed*
 7 *in commerce for sale in the United States that willfully fails to attach the*
 8 *label required under section 32304 of this title to a new passenger motor vehi-*
 9 *cle that the manufacturer manufactures or imports, or a dealer that fails to*
 10 *maintain that label as required under section 32304, is liable to the United*
 11 *States Government for a civil penalty of not more than \$1,000 for each viola-*
 12 *tion. Each failure to attach or maintain that label for each vehicle is a sepa-*
 13 *rate violation.*

14 **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.

15 **§ 32501. Purpose**

16 *The purpose of this chapter is to reduce economic loss resulting from dam-*
 17 *age to passenger motor vehicles involved in motor vehicle accidents by provid-*
 18 *ing for the maintenance and enforcement of bumper standards.*

19 **§ 32502. Bumper standards**

20 (a) *GENERAL REQUIREMENTS AND NONAPPLICATION.*—*The Secretary of*
 21 *Transportation shall prescribe by regulation bumper standards for passenger*
 22 *motor vehicles and may prescribe by regulation bumper standards for pas-*
 23 *senger motor vehicle equipment manufactured in, or imported into, the Unit-*
 24 *ed States. A standard does not apply to a passenger motor vehicle or pas-*
 25 *senger motor vehicle equipment—*

26 (1) *intended only for export;*

27 (2) *labeled for export on the vehicle or equipment and the outside of*
 28 *any container of the vehicle or equipment; and*

29 (3) *exported.*

30 (b) *LIMITATIONS.*—*A standard under this section—*

31 (1) *may not conflict with a motor vehicle safety standard prescribed*
 32 *under chapter 301 of this title;*

1 (2) may not specify a dollar amount for the cost of repairing damage
2 to a passenger motor vehicle; and

3 (3) to the greatest practicable extent, may not preclude the attachment
4 of a detachable hitch.

5 (c) *EXEMPTIONS.*—For good cause, the Secretary may exempt from any
6 part of a standard—

7 (1) a multipurpose passenger vehicle; or

8 (2) a make, model, or class of a passenger motor vehicle manufactured
9 for a special use, if the standard would interfere unreasonably with the
10 special use of the vehicle.

11 (d) *COST REDUCTION AND CONSIDERATIONS.*—When prescribing a stand-
12 ard under this section, the Secretary shall design the standard to obtain the
13 maximum feasible reduction of costs to the public, considering—

14 (1) the costs and benefits of carrying out the standard;

15 (2) the effect of the standard on insurance costs and legal fees and
16 costs;

17 (3) savings in consumer time and inconvenience; and

18 (4) health and safety, including emission standards.

19 (e) *PROCEDURES.*—Section 553 of title 5 applies to a standard prescribed
20 under this section. However, the Secretary shall give an interested person an
21 opportunity to make oral and written presentations of information, views,
22 and arguments. A transcript of each oral presentation shall be kept. Under
23 conditions prescribed by the Secretary, the Secretary may conduct a hearing
24 to resolve an issue of fact material to a standard.

25 (f) *EFFECTIVE DATE.*—The Secretary shall prescribe an effective date for
26 a standard under this section. That date may not be earlier than the date
27 the standard is prescribed nor later than 18 months after the date the stand-
28 ard is prescribed. However, the Secretary may prescribe a later date when
29 the Secretary submits to Congress and publishes the reasons for the later date.
30 A standard only applies to a passenger motor vehicle or passenger motor vehi-
31 cle equipment manufactured on or after the effective date.

32 (g) *RESEARCH.*—The Secretary shall conduct research necessary to carry
33 out this chapter.

34 **§32503. Judicial review of bumper standards**

35 (a) *FILING AND VENUE.*—A person that may be adversely affected by a
36 standard prescribed under section 32502 of this title may apply for review
37 of the standard by filing a petition for review in the United States Court of
38 Appeals for the District of Columbia Circuit or in the court of appeals of the
39 United States for the circuit in which the person resides or has its principal
40 place of business. The petition must be filed not later than 59 days after the
41 standard is prescribed.

1 (b) *NOTIFYING SECRETARY.*—The clerk of the court shall send immediately
2 a copy of the petition to the Secretary of Transportation. The Secretary shall
3 file with the court a record of the proceeding in which the standard was pre-
4 scribed.

5 (c) *ADDITIONAL PROCEEDINGS.*—(1) On request of the petitioner, the court
6 may order the Secretary to receive additional evidence and evidence in rebut-
7 tal if the court is satisfied the additional evidence is material and there were
8 reasonable grounds for not presenting the evidence in the proceeding before
9 the Secretary.

10 (2) The Secretary may modify findings of fact or make new findings be-
11 cause of the additional evidence presented. The Secretary shall file a modified
12 or new finding, a recommendation to modify or set aside a standard, and
13 the additional evidence with the court.

14 (d) *SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.*—A judgment
15 of a court under this section may be reviewed only by the Supreme Court
16 under section 1254 of title 28. A remedy under this section is in addition
17 to any other remedies provided by law.

18 **§ 32504. Certificates of compliance**

19 Under regulations prescribed by the Secretary of Transportation, a manu-
20 facturer or distributor of a passenger motor vehicle or passenger motor vehicle
21 equipment subject to a standard prescribed under section 32502 this title shall
22 give the distributor or dealer at the time of delivery a certificate that the vehi-
23 cle or equipment complies with the standard.

24 **§ 32505. Information and compliance requirements**

25 (a) *GENERAL AUTHORITY.*—(1) To enable the Secretary of Transportation
26 to decide whether a manufacturer of passenger motor vehicles or passenger
27 motor vehicle equipment is complying with this chapter and standards pre-
28 scribed under this chapter, the Secretary may require the manufacturer to—

29 (A) keep records;

30 (B) make reports;

31 (C) provide items and information, including vehicles and equipment
32 for testing at a negotiated price not more than the manufacturer's cost;
33 and

34 (D) allow an officer or employee designated by the Secretary to inspect
35 vehicles and relevant records of the manufacturer.

36 (2) To enforce this chapter, an officer or employee designated by the Sec-
37 retary, on presenting appropriate credentials and a written notice to the
38 owner, operator, or agent in charge, may inspect a facility in which pas-
39 senger motor vehicles or passenger motor vehicle equipment is manufactured,
40 held for introduction in interstate commerce, or held for sale after introduc-

1 *tion in interstate commerce. An inspection shall be conducted at a reasonable*
2 *time, in a reasonable way, and with reasonable promptness.*

3 *(b) POWERS OF SECRETARY AND CIVIL ACTIONS TO ENFORCE.—(1) In carrying out this chapter, the Secretary may—*

4 *(A) inspect and copy records of any person at reasonable times;*

5 *(B) order a person to file written reports or answers to specific ques-*
6 *tions, including reports or answers under oath; and*

7 *(C) conduct hearings, administer oaths, take testimony, and require*
8 *(by subpoena or otherwise) the appearance and testimony of witnesses and*
9 *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 States.*

12 *(3) A civil action to enforce a subpoena or order of the Secretary under this*
13 *subsection may be brought in the United States district court for the judicial*
14 *district in which the proceeding by the Secretary was conducted. The court*
15 *may punish a failure to obey an order of the court to comply with the sub-*
16 *pena or order of the Secretary as a contempt of court.*

17 *(c) CONFIDENTIALITY OF INFORMATION.—(1) Information obtained by the*
18 *Secretary under this chapter related to a confidential matter referred to in*
19 *section 1905 of title 18 may be disclosed only—*

20 *(A) to another officer or employee of the United States Government for*
21 *use in carrying out this chapter; or*

22 *(B) in a proceeding under this chapter.*

23 *(2) This subsection does not authorize information to be withheld from a*
24 *committee of Congress authorized to have the information.*

25 *(3) Subject to paragraph (1) of this subsection, the Secretary, on request,*
26 *shall make available to the public at cost information the Secretary submits*
27 *or receives in carrying out this chapter.*

28 **§ 32506. Prohibited acts**

29 *(a) GENERAL.—Except as provided in this section, a person may not—*

30 *(1) manufacture for sale, sell, offer for sale, introduce or deliver for*
31 *introduction in interstate commerce, or import into the United States,*
32 *a passenger motor vehicle or passenger motor vehicle equipment manu-*
33 *factured on or after the date an applicable standard under section 32502*
34 *of this title takes effect, unless it conforms to the standard;*

35 *(2) fail to comply with an applicable regulation prescribed by the Sec-*
36 *retary of Transportation under this chapter;*

37 *(3) fail to keep records, refuse access to or copying of records, fail to*
38 *make reports or provide items or information, or fail or refuse to allow*
39 *entry or inspection, as required by this chapter or a regulation pre-*
40 *scribed under this chapter; or*
41

1 (4) fail to provide the certificate required by section 32504 of this title,
2 or provide a certificate that the person knows, or in the exercise of rea-
3 sonable care has reason to know, is false or misleading in a material
4 respect.

5 (b) *NONAPPLICATION.*—Subsection (a)(1) of this section does not apply to—

6 (1) the sale, offer for sale, or introduction or delivery for introduction
7 in interstate commerce of a passenger motor vehicle or passenger motor
8 vehicle equipment after the first purchase of the vehicle or equipment in
9 good faith other than for resale (but this clause does not prohibit a stand-
10 ard from requiring that a vehicle or equipment be manufactured to com-
11 ply with the standard over a specified period of operation or use); or

12 (2) a person—

13 (A) establishing that the person had no reason to know, by exer-
14 cising reasonable care, that the vehicle or equipment does not com-
15 ply with the standard; or

16 (B) holding, without knowing about a noncompliance and before
17 that first purchase, a certificate issued under section 32504 of this
18 title stating that the vehicle or equipment complies with the stand-
19 ard.

20 (c) *IMPORTING NONCOMPLYING VEHICLES AND EQUIPMENT.*—(1) The Sec-
21 retaries of Transportation and the Treasury may prescribe joint regulations
22 authorizing a passenger motor vehicle or passenger motor vehicle equipment
23 not complying with a standard prescribed under section 32502 of this title
24 to be imported into the United States subject to conditions (including provid-
25 ing a bond) the Secretaries consider appropriate to ensure that the vehicle or
26 equipment will—

27 (A) comply, after importation, with the standards prescribed under
28 section 32502 of this title;

29 (B) be exported; or

30 (C) be abandoned to the United States Government.

31 (2) The Secretaries may prescribe joint regulations that allow a passenger
32 motor vehicle or passenger motor vehicle equipment to be imported into the
33 United States after the first purchase in good faith other than for resale.

34 (d) *LIABILITY UNDER OTHER LAW.*—Compliance with a standard under
35 this chapter does not exempt a person from liability provided by law.

36 **§32507. Penalties and enforcement**

37 (a) *CIVIL PENALTY.*—(1) A person that violates section 32506(a) of this
38 title is liable to the United States Government for a civil penalty of not more
39 than \$1,000 for each violation. A separate violation occurs for each passenger
40 motor vehicle or item of passenger motor vehicle equipment involved in a vio-
41 lation of section 32506(a)(1) or (4) of this title—

1 (A) that does not comply with a standard prescribed under section
2 32502 of this title; or

3 (B) for which a certificate is not provided, or for which a false or mis-
4 leading certificate is provided, under section 32504 of this title.

5 (2) The maximum civil penalty under this subsection for a related series
6 of violations is \$800,000.

7 (3) The Secretary of Transportation imposes a civil penalty under this sub-
8 section. The Attorney General or the Secretary, with the concurrence of the
9 Attorney General, shall bring a civil action in a United States district court
10 to collect the penalty.

11 (b) *CRIMINAL PENALTY.*—A person knowingly and willfully violating sec-
12 tion 32506(a)(1) of this title after receiving a notice of noncompliance from
13 the Secretary shall be fined under title 18, imprisoned for not more than one
14 year, or both. If the person is a corporation, the penalties of this subsection
15 also apply to a director, officer, or individual agent of the corporation who,
16 with knowledge of the Secretary's notice, knowingly and willfully authorizes,
17 orders, or performs an act that is any part of the violation.

18 (c) *CIVIL ACTIONS TO ENFORCE.*—(1) The Secretary or the Attorney Gen-
19 eral may bring a civil action in a United States district court to enjoin a
20 violation of this chapter or the sale, offer for sale, introduction or delivery
21 for introduction in interstate commerce, or importation into the United
22 States, of a passenger motor vehicle or passenger motor vehicle equipment that
23 is found, before the first purchase in good faith other than for resale, not to
24 comply with a standard prescribed under section 32502 of this title.

25 (2) When practicable, the Secretary shall—

26 (A) notify a person against whom an action under this subsection is
27 planned;

28 (B) give the person an opportunity to present that person's views; and

29 (C) except for a knowing and willful violation, give the person a rea-
30 sonable opportunity to comply.

31 (3) The failure of the Secretary to comply with paragraph (2) of this sub-
32 section does not prevent a court from granting appropriate relief.

33 (d) *JURY TRIAL DEMAND.*—In a trial for criminal contempt for violating
34 an injunction or restraining order issued under subsection (c) of this section,
35 the violation of which is also a violation of this chapter, the defendant may
36 demand a jury trial. The defendant shall be tried as provided in rule 42(b)
37 of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

38 (e) *VENUE.*—A civil action under subsection (a) or (c) of this section may
39 be brought in the judicial district in which the violation occurred or the de-
40 fendant is found, resides, or does business. Process in the action may be served

1 in any other judicial district in which the defendant resides or is found. A
2 subpoena for a witness in the action may be served in any judicial district.

3 **§ 32508. Civil actions by owners of passenger motor vehicles**

4 When an owner of a passenger motor vehicle sustains damages as a result
5 of a motor vehicle accident because the vehicle did not comply with a stand-
6 ard prescribed under section 32502 of this title, the owner may bring a civil
7 action against the manufacturer to recover the damages. The action may be
8 brought in the United States District Court for the District of Columbia or
9 in the United States district court for the judicial district in which the owner
10 resides. The action must be brought not later than 3 years after the date of
11 the accident. The court shall award costs and a reasonable attorney's fee to
12 the owner when a judgment is entered for the owner.

13 **§ 32509. Information and assistance from other departments,**
14 **agencies, and instrumentalities**

15 (a) GENERAL AUTHORITY.—The Secretary of Transportation may request
16 information necessary to carry out this chapter from a department, agency,
17 or instrumentality of the United States Government. The head of the depart-
18 ment, agency, or instrumentality shall provide the information.

19 (b) DETAILING PERSONNEL.—The head of a department, agency, or instru-
20 mentality may detail, on a reimbursable basis, personnel to assist the Sec-
21 retary in carrying out this chapter.

22 **§ 32510. Annual report**

23 Not later than March 31 of each year, the Secretary of Transportation shall
24 submit to Congress and the President a report on the progress in carrying
25 out section 32501 of this title. The report shall include—

26 (1) a statement of the cost savings resulting from carrying out this
27 chapter; and

28 (2) recommendations for legislative or other action the Secretary de-
29 cides may be appropriate.

30 **§ 32511. Relationship to other motor vehicle standards**

31 (a) PREEMPTION.—Except as provided in this section, a State or a politi-
32 cal subdivision of a State may prescribe or enforce a bumper standard for
33 a passenger motor vehicle or passenger motor vehicle equipment only if the
34 standard is identical to a standard prescribed under section 32502 of this
35 title.

36 (b) ENFORCEMENT.—This chapter and chapter 301 of this title do not affect
37 the authority of a State to enforce a bumper standard about an aspect of per-
38 formance of a passenger motor vehicle or passenger motor vehicle equipment
39 not covered by a standard prescribed under section 32502 of this title if the
40 State bumper standard—

1 (1) does not conflict with a standard prescribed under chapter 301 of
 2 this title; and

3 (2) was in effect or prescribed by the State on October 20, 1972.

4 (c) *ADDITIONAL AND HIGHER STANDARDS OF PERFORMANCE.*—The United
 5 States Government, a State, or a political subdivision of a State may pre-
 6 scribe a bumper standard for a passenger motor vehicle or passenger motor
 7 vehicle equipment obtained for its own use that imposes additional or higher
 8 standards of performance than a standard prescribed under section 32502 of
 9 this title.

10 **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.

11 **§ 32701. Findings and purposes**

12 (a) *FINDINGS.*—Congress finds that—

13 (1) buyers of motor vehicles rely heavily on the odometer reading as
 14 an index of the condition and value of a vehicle;

15 (2) buyers are entitled to rely on the odometer reading as an accurate
 16 indication of the mileage of the vehicle;

17 (3) an accurate indication of the mileage assists a buyer in deciding
 18 on the safety and reliability of the vehicle; and

19 (4) motor vehicles move in, or affect, interstate and foreign commerce.

20 (b) *PURPOSES.*—The purposes of this chapter are—

21 (1) to prohibit tampering with motor vehicle odometers; and

22 (2) to provide safeguards to protect purchasers in the sale of motor
 23 vehicles with altered or reset odometers.

24 **§ 32702. Definitions**

25 In this chapter—

26 (1) “auction company” means a person taking possession of a motor
 27 vehicle owned by another to sell at an auction.

28 (2) “dealer” means a person that sold at least 5 motor vehicles during
 29 the prior 12 months to buyers that in good faith bought the vehicles other
 30 than for resale.

31 (3) “distributor” means a person that sold at least 5 motor vehicles
 32 during the prior 12 months for resale.

1 (4) “leased motor vehicle” means a motor vehicle leased to a person
2 for at least 4 months by a lessor that leased at least 5 vehicles during
3 the prior 12 months.

4 (5) “odometer” means an instrument for measuring and recording the
5 distance a motor vehicle is driven, but does not include an auxiliary in-
6 strument designed to be reset by the operator of the vehicle to record
7 mileage of a trip.

8 (6) “repair” and “replace” mean to restore to a sound working condi-
9 tion by replacing any part of an odometer or by correcting any inoper-
10 ative part of an odometer.

11 (7) “title” means the certificate of title or other document issued by
12 the State indicating ownership.

13 (8) “transfer” means to change ownership by sale, gift, or other means.

14 **§ 32703. Preventing tampering**

15 A person may not—

16 (1) advertise for sale, sell, use, install, or have installed, a device that
17 makes an odometer of a motor vehicle register a mileage different from
18 the mileage the vehicle was driven, as registered by the odometer within
19 the designed tolerance of the manufacturer of the odometer;

20 (2) disconnect, reset, alter, or have disconnected, reset, or altered, an
21 odometer of a motor vehicle intending to change the mileage registered
22 by the odometer;

23 (3) with intent to defraud, operate a motor vehicle on a public street,
24 road, or highway if the person knows that the odometer of the vehicle
25 is disconnected or not operating; or

26 (4) conspire to violate this section or section 32704 or 32705 of this
27 title.

28 **§ 32704. Service, repair, and replacement**

29 (a) *ADJUSTING MILEAGE.*—A person may service, repair, or replace an
30 odometer of a motor vehicle if the mileage registered by the odometer remains
31 the same as before the service, repair, or replacement. If the mileage cannot
32 remain the same—

33 (1) the person shall adjust the odometer to read zero; and

34 (2) the owner of the vehicle or agent of the owner shall attach a writ-
35 ten notice to the left door frame of the vehicle specifying the mileage be-
36 fore the service, repair, or replacement and the date of the service, repair,
37 or replacement.

38 (b) *REMOVING OR ALTERING NOTICE.*—A person may not, with intent to
39 defraud, remove or alter a notice attached to a motor vehicle as required by
40 this section.

1 **§32705. Disclosure requirements on transfer of motor vehi-**
2 **cles**

3 (a) *WRITTEN DISCLOSURE REQUIREMENTS.*—(1) Under regulations pre-
4 scribed by the Secretary of Transportation, a person transferring ownership
5 of a motor vehicle shall give the transferee a written disclosure—

6 (A) of the cumulative mileage registered by the odometer; or

7 (B) that the mileage is unknown if the transferor knows that the mile-
8 age registered by the odometer is incorrect.

9 (2) A person making a written disclosure required by a regulation pre-
10 scribed under paragraph (1) of this subsection may not make a false state-
11 ment in the disclosure.

12 (3) A person acquiring a motor vehicle for resale may accept a disclosure
13 under this section only if it is complete.

14 (4) The regulations prescribed by the Secretary shall provide the way in
15 which information is disclosed and retained under this section.

16 (b) *MILEAGE STATEMENT REQUIREMENT FOR LICENSING.*—(1) A motor ve-
17 hicle the ownership of which is transferred may not be licensed for use in a
18 State unless the transferee, in submitting an application to a State for the
19 title on which the license will be issued, includes with the application the
20 transferor's title and, if that title contains the space referred to in paragraph
21 (3)(A)(iii) of this subsection, a statement, signed and dated by the transferor,
22 of the mileage disclosure required under subsection (a) of this section. This
23 paragraph does not apply to a transfer of ownership of a motor vehicle that
24 has not been licensed before the transfer.

25 (2)(A) Under regulations prescribed by the Secretary, if the title to a motor
26 vehicle issued to a transferor by a State is in the possession of a lienholder
27 when the transferor transfers ownership of the vehicle, the transferor may use
28 a written power of attorney (if allowed by State law) in making the mileage
29 disclosure required under subsection (a) of this section. Regulations prescribed
30 under this paragraph—

31 (i) shall prescribe the form of the power of attorney;

32 (ii) shall provide that the form be printed by means of a secure print-
33 ing process (or other secure process);

34 (iii) shall provide that the State issue the form to the transferee;

35 (iv) shall provide that the person exercising the power of attorney re-
36 tain a copy and submit the original to the State with a copy of the title
37 showing the restatement of the mileage;

38 (v) may require that the State retain the power of attorney and the
39 copy of the title for an appropriate period or that the State adopt alter-
40 native measures consistent with section 32701(b) of this title, after con-
41 sidering the costs to the State;

1 (vi) shall ensure that the mileage at the time of transfer be disclosed
2 on the power of attorney document;

3 (vii) shall ensure that the mileage be restated exactly by the person
4 exercising the power of attorney in the space referred to in paragraph
5 (3)(A)(iii) of this subsection;

6 (viii) may not require that a motor vehicle be titled in the State in
7 which the power of attorney was issued;

8 (ix) shall consider the need to facilitate normal commercial trans-
9 actions in the sale or exchange of motor vehicles; and

10 (x) shall provide other conditions the Secretary considers appropriate.

11 (B) Section 32709(a) and (b) applies to a person granting or granted a
12 power of attorney under this paragraph.

13 (3)(A) A motor vehicle the ownership of which is transferred may be li-
14 censed for use in a State only if the title issued by the State to the trans-
15 feree—

16 (i) is produced by means of a secure printing process (or other secure
17 process);

18 (ii) indicates the mileage disclosure required to be made under sub-
19 section (a) of this section; and

20 (iii) contains a space for the transferee to disclose the mileage at the
21 time of a future transfer and to sign and date the disclosure.

22 (B) Subparagraph (A) of this paragraph does not require a State to verify,
23 or preclude a State from verifying, the mileage information contained in the
24 title.

25 (c) LEASED MOTOR VEHICLES.—(1) For a leased motor vehicle, the regula-
26 tions prescribed under subsection (a) of this section shall require written dis-
27 closure about mileage to be made by the lessee to the lessor when the lessor
28 transfers ownership of that vehicle.

29 (2) Under those regulations, the lessor shall provide written notice to the
30 lessee of—

31 (A) the mileage disclosure requirements of subsection (a) of this sec-
32 tion; and

33 (B) the penalties for failure to comply with those requirements.

34 (3) The lessor shall retain the disclosures made by a lessee under paragraph
35 (1) of this subsection for at least 4 years following the date the lessor transfers
36 the leased motor vehicle.

37 (4) If the lessor transfers ownership of a leased motor vehicle without ob-
38 taining possession of the vehicle, the lessor, in making the disclosure required
39 by subsection (a) of this section, may indicate on the title the mileage dis-
40 closed by the lessee under paragraph (1) of this subsection unless the lessor

1 *has reason to believe that the disclosure by the lessee does not reflect the actual*
2 *mileage of the vehicle.*

3 *(d) STATE ALTERNATE VEHICLE MILEAGE DISCLOSURE REQUIREMENTS.—*
4 *The requirements of subsections (b) and (c)(1) of this section on the disclosure*
5 *of motor vehicle mileage when motor vehicles are transferred or leased apply*
6 *in a State unless the State has in effect alternate motor vehicle mileage disclo-*
7 *sure requirements approved by the Secretary. The Secretary shall approve al-*
8 *ternate motor vehicle mileage disclosure requirements submitted by a State*
9 *unless the Secretary decides that the requirements are not consistent with the*
10 *purpose of the disclosure required by subsection (b) or (c), as the case may*
11 *be.*

12 *(e) AUCTION SALES.—If a motor vehicle is sold at an auction, the auction*
13 *company conducting the auction shall maintain the following records for at*
14 *least 4 years after the date of the sale:*

15 *(1) the name of the most recent owner of the motor vehicle (except the*
16 *auction company) and the name of the buyer of the motor vehicle.*

17 *(2) the vehicle identification number required under chapter 301 or*
18 *331 of this title.*

19 *(3) the odometer reading on the date the auction company took posses-*
20 *sion of the motor vehicle.*

21 *(f) APPLICATION AND REVISION OF STATE LAW.—(1) Except as provided*
22 *in paragraph (2) of this subsection, subsections (b)–(e) of this section apply*
23 *to the transfer of a motor vehicle after April 28, 1989.*

24 *(2) If a State requests, the Secretary shall assist the State in revising its*
25 *laws to comply with subsection (b) of this section. If a State requires time*
26 *beyond April 28, 1989, to revise its laws to achieve compliance, the Secretary,*
27 *on request of the State, may grant additional time that the Secretary consid-*
28 *ers reasonable by publishing a notice in the Federal Register. The notice shall*
29 *include the reasons for granting the additional time. In granting additional*
30 *time, the Secretary shall ensure that the State is making reasonable efforts*
31 *to achieve compliance.*

32 **§ 32706. Inspections, investigations, and records**

33 *(a) AUTHORITY TO INSPECT AND INVESTIGATE.—Subject to section 32707*
34 *of this title, the Secretary of Transportation may conduct an inspection or*
35 *investigation necessary to carry out this chapter or a regulation prescribed*
36 *or order issued under this chapter. The Secretary shall cooperate with State*
37 *and local officials to the greatest extent possible in conducting an inspection*
38 *or investigation. The Secretary may give the Attorney General information*
39 *about a violation of this chapter or a regulation prescribed or order issued*
40 *under this chapter.*

1 (b) *ENTRY, INSPECTION, AND IMPOUNDMENT.*—(1) *In carrying out sub-*
2 *section (a) of this section, an officer or employee designated by the Secretary,*
3 *on display of proper credentials and written notice to the owner, operator,*
4 *or agent in charge, may—*

5 (A) *enter and inspect commercial premises in which a motor vehicle*
6 *or motor vehicle equipment is manufactured, held for shipment or sale,*
7 *maintained, or repaired;*

8 (B) *enter and inspect noncommercial premises in which the Secretary*
9 *reasonably believes there is a motor vehicle or motor vehicle equipment*
10 *that is an object of a violation of this chapter;*

11 (C) *inspect that motor vehicle or motor vehicle equipment; and*

12 (D) *impound for not more than 72 hours for inspection a motor vehi-*
13 *cle or motor vehicle equipment that the Secretary reasonably believes is*
14 *an object of a violation of this chapter.*

15 (2) *An inspection or impoundment under this subsection shall be conducted*
16 *at a reasonable time, in a reasonable way, and with reasonable promptness.*
17 *The written notice may consist of a warrant issued under section 32707 of*
18 *this title.*

19 (c) *REASONABLE COMPENSATION.*—*When the Secretary impounds for in-*
20 *spection a motor vehicle (except a vehicle subject to subchapter II of chapter*
21 *105 of this title) or motor vehicle equipment under subsection (b)(1)(D) of this*
22 *section, the Secretary shall pay reasonable compensation to the owner of the*
23 *vehicle or equipment if the inspection or impoundment results in denial of*
24 *use, or reduction in value, of the vehicle or equipment.*

25 (d) *RECORDS AND INFORMATION REQUIREMENTS.*—(1) *To enable the Sec-*
26 *retary to decide whether a dealer or distributor is complying with this chapter*
27 *and regulations prescribed and orders issued under this chapter, the Secretary*
28 *may require the dealer or distributor—*

29 (A) *to keep records;*

30 (B) *to provide information from those records if the Secretary states*
31 *the purpose for requiring the information and identifies the information*
32 *to the fullest extent practicable; and*

33 (C) *to allow an officer or employee designated by the Secretary to in-*
34 *spect relevant records of the dealer or distributor.*

35 (2) *This subsection and subsection (e)(1)(B) of this section do not authorize*
36 *the Secretary to require a dealer or distributor to provide information on a*
37 *regular periodic basis.*

38 (e) *ADMINISTRATIVE AUTHORITY AND CIVIL ACTIONS TO ENFORCE.*—(1)
39 *In carrying out this chapter, the Secretary may—*

40 (A) *inspect and copy records of any person at reasonable times;*

1 (B) order a person to file written reports or answers to specific ques-
2 tions, including reports or answers under oath; and

3 (C) conduct hearings, administer oaths, take testimony, and require
4 (by subpoena or otherwise) the appearance and testimony of witnesses and
5 the production of records the Secretary considers advisable.

6 (2) A witness summoned under this subsection is entitled to the same fee
7 and mileage the witness would have been paid in a court of the United States.

8 (3) A civil action to enforce a subpoena or order of the Secretary under this
9 subsection may be brought in the United States district court for the judicial
10 district in which the proceeding by the Secretary was conducted. The court
11 may punish a failure to obey an order of the court to comply with the sub-
12 poena or order of the Secretary as a contempt of court.

13 (f) *PROHIBITIONS.*—A person may not fail to keep records, refuse access to
14 or copying of records, fail to make reports or provide information, fail to
15 allow entry or inspection, or fail to permit impoundment, as required under
16 this section.

17 **§ 32707. Administrative warrants**

18 (a) *DEFINITION.*—In this section, “probable cause” means a valid public
19 interest in the effective enforcement of this chapter or a regulation prescribed
20 under this chapter sufficient to justify the inspection or impoundment in the
21 circumstances stated in an application for a warrant under this section.

22 (b) *WARRANT REQUIREMENT AND ISSUANCE.*—(1) Except as provided in
23 paragraph (4) of this subsection, an inspection or impoundment under section
24 32706 of this title may be carried out only after a warrant is obtained.

25 (2) A judge of a court of the United States or a State court of record or
26 a United States magistrate may issue a warrant for an inspection or im-
27 poundment under section 32706 of this title within the territorial jurisdiction
28 of the court or magistrate. The warrant must be based on an affidavit that—

29 (A) establishes probable cause to issue the warrant; and

30 (B) is sworn to before the judge or magistrate by an officer or em-
31 ployee who knows the facts alleged in the affidavit.

32 (3) The judge or magistrate shall issue the warrant when the judge or mag-
33 istrate decides there is a reasonable basis for believing that probable cause ex-
34 ists to issue the warrant. The warrant must—

35 (A) identify the premises, property, or motor vehicle to be inspected
36 and the items or type of property to be impounded;

37 (B) state the purpose of the inspection, the basis for issuing the war-
38 rant, and the name of the affiant;

39 (C) direct an individual authorized under section 32706 of this title
40 to inspect the premises, property, or vehicle for the purpose stated in the

1 warrant and, when appropriate, to impound the property specified in
2 the warrant;

3 (D) direct that the warrant be served during the hours specified in the
4 warrant; and

5 (E) name the judge or magistrate with whom proof of service is to be
6 filed.

7 (4) A warrant under this section is not required when—

8 (A) the owner, operator, or agent in charge of the premises consents;

9 (B) it is reasonable to believe that the mobility of the motor vehicle
10 to be inspected makes it impractical to obtain a warrant;

11 (C) an application for a warrant cannot be made because of an emer-
12 gency;

13 (D) records are to be inspected and copied under section
14 32706(e)(1)(A) of this title; or

15 (E) a warrant is not constitutionally required.

16 (c) SERVICE AND IMPOUNDMENT OF PROPERTY.—(1) A warrant issued
17 under this section must be served and proof of service filed not later than 10
18 days after its issuance date. The judge or magistrate may allow additional
19 time in the warrant if the Secretary of Transportation demonstrates a need
20 for additional time. Proof of service must be filed promptly with a written
21 inventory of the property impounded under the warrant. The inventory shall
22 be made in the presence of the individual serving the warrant and the indi-
23 vidual from whose possession or premises the property was impounded, or if
24 that individual is not present, a credible individual except the individual
25 making the inventory. The individual serving the warrant shall verify the in-
26 ventory. On request, the judge or magistrate shall send a copy of the inventory
27 to the individual from whose possession or premises the property was im-
28 pounded and to the applicant for the warrant.

29 (2) When property is impounded under a warrant, the individual serving
30 the warrant shall—

31 (A) give the person from whose possession or premises the property
32 was impounded a copy of the warrant and a receipt for the property;
33 or

34 (B) leave the copy and receipt at the place from which the property
35 was impounded.

36 (3) The judge or magistrate shall file the warrant, proof of service, and all
37 documents filed about the warrant with the clerk of the United States district
38 court for the judicial district in which the inspection is made.

1 **§32708. Confidentiality of information**

2 (a) *GENERAL.*—Information obtained by the Secretary of Transportation
3 under this chapter related to a confidential matter referred to in section 1905
4 of title 18 may be disclosed only—

5 (1) to another officer or employee of the United States Government for
6 use in carrying out this chapter; or

7 (2) in a proceeding under this chapter.

8 (b) *WITHHOLDING INFORMATION FROM CONGRESS.*—This section does not
9 authorize information to be withheld from a committee of Congress authorized
10 to have the information.

11 **§32709. Penalties and enforcement**

12 (a) *CIVIL PENALTY.*—(1) A person that violates this chapter or a regulation
13 prescribed or order issued under this chapter is liable to the United States
14 Government for a civil penalty of not more than \$2,000 for each violation.
15 A separate violation occurs for each motor vehicle or device involved in the
16 violation. The maximum penalty under this subsection for a related series of
17 violations is \$100,000.

18 (2) The Secretary of Transportation shall impose a civil penalty under this
19 subsection. The Attorney General shall bring a civil action to collect the pen-
20 alty. Before referring a penalty claim to the Attorney General, the Secretary
21 may compromise the amount of the penalty. Before compromising the amount
22 of the penalty, the Secretary shall give the person charged with a violation
23 an opportunity to establish that the violation did not occur.

24 (3) In determining the amount of a civil penalty under this subsection, the
25 Secretary shall consider—

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 (b) *CRIMINAL PENALTY.*—A person that knowingly and willfully violates
32 this chapter or a regulation prescribed or order issued under this chapter shall
33 be fined under title 18, imprisoned for not more than 3 years, or both. If the
34 person is a corporation, the penalties of this subsection also apply to a direc-
35 tor, officer, or individual agent of a corporation who knowingly and willfully
36 authorizes, orders, or performs an act in violation of this chapter or a regula-
37 tion prescribed or order issued under this chapter without regard to penalties
38 imposed on the corporation.

39 (c) *CIVIL ACTIONS BY ATTORNEY GENERAL.*—The Attorney General may
40 bring a civil action to enjoin a violation of this chapter or a regulation pre-
41 scribed or order issued under this chapter. The action may be brought in the

1 *United States district court for the judicial district in which the violation oc-*
 2 *curred or the defendant is found, resides, or does business. Process in the ac-*
 3 *tion may be served in any other judicial district in which the defendant re-*
 4 *sides or is found. A subpoena for a witness in the action may be served in*
 5 *any judicial district.*

6 (d) *CIVIL ACTIONS BY STATES.—(1) When a person violates this chapter*
 7 *or a regulation prescribed or order issued under this chapter, the chief law*
 8 *enforcement officer of the State in which the violation occurs may bring a*
 9 *civil action—*

10 (A) *to enjoin the violation; or*

11 (B) *to recover amounts for which the person is liable under section*
 12 *32710 of this title for each person on whose behalf the action is brought.*

13 (2) *An action under this subsection may be brought in an appropriate*
 14 *United States district court or in a State court of competent jurisdiction. The*
 15 *action must be brought not later than 2 years after the claim accrues.*

16 **§32710. Civil actions by private persons**

17 (a) *VIOLATION AND AMOUNT OF DAMAGES.—A person that violates this*
 18 *chapter or a regulation prescribed or order issued under this chapter, with*
 19 *intent to defraud, is liable for 3 times the actual damages or \$1,500, which-*
 20 *ever is greater.*

21 (b) *CIVIL ACTIONS.—A person may bring a civil action to enforce a claim*
 22 *under this section in an appropriate United States district court or in an-*
 23 *other court of competent jurisdiction. The action must be brought not later*
 24 *than 2 years after the claim accrues. The court shall award costs and a rea-*
 25 *sonable attorney's fee to the person when a judgment is entered for that per-*
 26 *son.*

27 **§32711. Relationship to State law**

28 *Except to the extent that State law is inconsistent with this chapter, this*
 29 *chapter does not—*

30 (1) *affect a State law on disconnecting, altering, or tampering with*
 31 *an odometer with intent to defraud; or*

32 (2) *exempt a person from complying with that law.*

33 **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.*

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32909. *Judicial review of regulations.*

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32911. *Compliance.*

32912. *Civil penalties.*
 32913. *Compromising and remitting civil penalties.*
 32914. *Collecting civil penalties.*
 32915. *Appealing civil penalties.*
 32916. *Reports to Congress.*
 32917. *Standards for executive agency automobiles.*
 32918. *Preemption.*

1 **§ 32901. Definitions**

2 (a) *GENERAL.—In this chapter—*

3 (1) *“alternative fuel” means—*

4 (A) *methanol;*

5 (B) *denatured ethanol;*

6 (C) *other alcohols;*

7 (D) *except as provided in subsection (b) of this section, a mixture*
 8 *containing at least 85 percent of methanol, denatured ethanol, and*
 9 *other alcohols by volume with gasoline or other fuels;*

10 (E) *natural gas;*

11 (F) *liquefied petroleum gas;*

12 (G) *hydrogen;*

13 (H) *coal derived liquid fuels;*

14 (I) *fuels (except alcohol) derived from biological materials;*

15 (J) *electricity (including electricity from solar energy); and*

16 (K) *any other fuel the Secretary of Transportation prescribes by*
 17 *regulation that is not substantially petroleum and that would yield*
 18 *substantial energy security and environmental benefits.*

19 (2) *“alternative fueled automobile” means an automobile that is a—*

20 (A) *dedicated automobile; or*

21 (B) *dual fueled automobile.*

22 (3) *except as provided in section 32908 of this title, “automobile”*
 23 *means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel,*
 24 *manufactured primarily for use on public streets, roads, and highways*
 25 *(except a vehicle operated only on a rail line), and rated at—*

26 (A) *not more than 6,000 pounds gross vehicle weight; or*

27 (B) *more than 6,000, but less than 10,000, pounds gross vehicle*
 28 *weight, if the Secretary decides by regulation that—*

29 (i) *an average fuel economy standard under this chapter for*
 30 *the vehicle is feasible; and*

31 (ii) *an average fuel economy standard under this chapter for*
 32 *the vehicle will result in significant energy conservation or the*
 33 *vehicle is substantially used for the same purposes as a vehicle*
 34 *rated at not more than 6,000 pounds gross vehicle weight.*

35 (4) *“automobile manufactured by a manufacturer” includes every*
 36 *automobile manufactured by a person that controls, is controlled by, or*

1 *is under common control with the manufacturer, but does not include an*
2 *automobile manufactured by the person that is exported not later than*
3 *30 days after the end of the model year in which the automobile is man-*
4 *ufactured.*

5 (5) *“average fuel economy” means average fuel economy determined*
6 *under section 32904 of this title.*

7 (6) *“average fuel economy standard” means a performance standard*
8 *specifying a minimum level of average fuel economy applicable to a*
9 *manufacturer in a model year.*

10 (7) *“dedicated automobile” means an automobile that operates only on*
11 *alternative fuel.*

12 (8) *“dual fueled automobile” means an automobile that—*

13 (A) *is capable of operating on alternative fuel and on gasoline*
14 *or diesel fuel;*

15 (B) *provides equal or superior energy efficiency, as calculated for*
16 *the applicable model year during fuel economy testing for the Unit-*
17 *ed States Government, when operating on alternative fuel as when*
18 *operating on gasoline or diesel fuel;*

19 (C) *for model years 1993–1995 for an automobile capable of oper-*
20 *ating on a mixture of an alternative fuel and gasoline or diesel fuel*
21 *and if the Administrator of the Environmental Protection Agency*
22 *decides to extend the application of this subclause, for an additional*
23 *period ending not later than the end of the last model year to which*
24 *section 32905(b) and (d) of this title applies, provides equal or supe-*
25 *rior energy efficiency, as calculated for the applicable model year*
26 *during fuel economy testing for the Government, when operating on*
27 *a mixture of alternative fuel and gasoline or diesel fuel containing*
28 *exactly 50 percent gasoline or diesel fuel as when operating on gaso-*
29 *line or diesel fuel; and*

30 (D) *for a passenger automobile, meets or exceeds the minimum*
31 *driving range prescribed under subsection (c) of this section.*

32 (9) *“fuel” means—*

33 (A) *gasoline;*

34 (B) *diesel oil; or*

35 (C) *other liquid or gaseous fuel that the Secretary decides by reg-*
36 *ulation to include in this definition as consistent with the need of*
37 *the United States to conserve energy.*

38 (10) *“fuel economy” means the average number of miles traveled by*
39 *an automobile for each gallon of gasoline (or equivalent amount of other*
40 *fuel) used, as determined by the Administrator under section 32904(c)*
41 *of this title.*

1 (11) “import” means to import into the customs territory of the Unit-
2 ed States.

3 (12) “manufacture” (except under section 32902(d) of this title) means
4 to produce or assemble in the customs territory of the United States or
5 to import.

6 (13) “manufacturer” means—

7 (A) a person engaged in the business of manufacturing auto-
8 mobiles, including a predecessor or successor of the person to the ex-
9 tent provided under regulations prescribed by the Secretary; and

10 (B) if more than one person is the manufacturer of an auto-
11 mobile, the person specified under regulations prescribed by the Sec-
12 retary.

13 (14) “model” means a class of automobiles as decided by regulation
14 by the Administrator after consulting and coordinating with the Sec-
15 retary.

16 (15) “model year”, when referring to a specific calendar year,
17 means—

18 (A) the annual production period of a manufacturer, as decided
19 by the Administrator, that includes January 1 of that calendar
20 year; or

21 (B) that calendar year if the manufacturer does not have an an-
22 nual production period.

23 (16) “passenger automobile” means an automobile that the Secretary
24 decides by regulation is manufactured primarily for transporting not
25 more than 10 individuals, but does not include an automobile capable
26 of off-highway operation that the Secretary decides by regulation—

27 (A) has a significant feature (except 4-wheel drive) designed for
28 off-highway operation; and

29 (B) is a 4-wheel drive automobile or is rated at more than 6,000
30 pounds gross vehicle weight.

31 (b) *AUTHORITY TO CHANGE PERCENTAGE.*—The Secretary may prescribe
32 regulations changing the percentage referred to in subsection (a)(1)(D) of this
33 section to not less than 70 percent because of requirements relating to cold
34 start, safety, or vehicle functions.

35 (c) *MINIMUM DRIVING RANGES FOR DUAL FUELED PASSENGER AUTO-*
36 *MOBILES.*—(1) The Secretary shall prescribe by regulation the minimum
37 driving range that dual fueled automobiles that are passenger automobiles
38 must meet when operating on alternative fuel to be dual fueled automobiles
39 under sections 32905 and 32906 of this title. A determination whether a dual

1 *fueled automobile meets the minimum driving range requirement under this*
2 *paragraph shall be based on the combined Agency city/highway fuel economy*
3 *as determined for average fuel economy purposes for those automobiles.*

4 (2)(A) *The Secretary may prescribe a lower range for a specific model than*
5 *that prescribed under paragraph (1) of this subsection. A manufacturer may*
6 *petition for a lower range than that prescribed under paragraph (1) for a*
7 *specific model.*

8 (B) *The minimum driving range prescribed for dual fueled automobiles (ex-*
9 *cept electric automobiles) under subparagraph (A) of this paragraph or para-*
10 *graph (1) of this subsection must be at least 200 miles.*

11 (C) *If the Secretary prescribes a minimum driving range of 200 miles for*
12 *dual fueled automobiles (except electric automobiles) under paragraph (1) of*
13 *this subsection, subparagraph (A) of this paragraph does not apply to dual*
14 *fueled automobiles (except electric automobiles).*

15 (3) *In prescribing a minimum driving range under paragraph (1) of this*
16 *subsection and in taking an action under paragraph (2) of this subsection,*
17 *the Secretary shall consider the purpose set forth in section 3 of the Alter-*
18 *native Motor Fuels Act of 1988 (Public Law 100-494, 102 Stat. 2442),*
19 *consumer acceptability, economic practicability, technology, environmental*
20 *impact, safety, drivability, performance, and other factors the Secretary con-*
21 *siders relevant.*

22 **§32902. Average fuel economy standards**

23 (a) *NON-PASSENGER AUTOMOBILES.—At least 18 months before the begin-*
24 *ning of each model year, the Secretary of Transportation shall prescribe by*
25 *regulation average fuel economy standards for automobiles (except passenger*
26 *automobiles) manufactured by a manufacturer in that model year. Each*
27 *standard shall be the maximum feasible average fuel economy level that the*
28 *Secretary decides the manufacturers can achieve in that model year. The Sec-*
29 *retary may prescribe separate standards for different classes of automobiles.*

30 (b) *PASSENGER AUTOMOBILES.—Except as provided in this section, the av-*
31 *erage fuel economy standard for passenger automobiles manufactured by a*
32 *manufacturer in a model year after model year 1984 shall be 27.5 miles a*
33 *gallon.*

34 (c) *AMENDING PASSENGER AUTOMOBILE STANDARDS.—(1) Subject to*
35 *paragraph (2) of this subsection, the Secretary of Transportation may pre-*
36 *scribe regulations amending the standard under subsection (b) of this section*
37 *for a model year to a level that the Secretary decides is the maximum feasible*
38 *average fuel economy level for that model year. Section 553 of title 5 applies*
39 *to a proceeding to amend the standard. However, any interested person may*
40 *make an oral presentation and a transcript shall be taken of that presen-*
41 *tation.*

1 (2) If an amendment increases the standard above 27.5 miles a gallon or
2 decreases the standard below 26.0 miles a gallon, the Secretary of Transpor-
3 tation shall submit the amendment to Congress. The procedures of section 551
4 of the Energy Policy and Conservation Act (42 U.S.C. 6421) apply to an
5 amendment, except that the 15 calendar days referred to in section 551(c) and
6 (d) of the Act (42 U.S.C. 6421(c), (d)) are deemed to be 60 calendar days,
7 and the 5 calendar days referred to in section 551(f)(4)(A) of the Act (42
8 U.S.C. 6421(f)(4)(A)) are deemed to be 20 calendar days. If either House of
9 Congress disapproves the amendment under those procedures, the amendment
10 does not take effect.

11 (d) EXEMPTIONS.—(1) Except as provided in paragraph (3) of this sub-
12 section, on application of a manufacturer that manufactured (whether in the
13 United States or not) fewer than 10,000 passenger automobiles in the model
14 year 2 years before the model year for which the application is made, the Sec-
15 retary of Transportation may exempt by regulation the manufacturer from
16 a standard under subsection (b) or (c) of this section. An exemption for a
17 model year applies only if the manufacturer manufactures (whether in the
18 United States or not) fewer than 10,000 passenger automobiles in the model
19 year. The Secretary may exempt a manufacturer only if the Secretary—

20 (A) finds that the applicable standard under those subsections is more
21 stringent than the maximum feasible average fuel economy level that the
22 manufacturer can achieve; and

23 (B) prescribes by regulation an alternative average fuel economy
24 standard for the passenger automobiles manufactured by the exempted
25 manufacturer that the Secretary decides is the maximum feasible average
26 fuel economy level for the manufacturers to which the alternative stand-
27 ard applies.

28 (2) An alternative average fuel economy standard the Secretary of Trans-
29 portation prescribes under paragraph (1)(B) of this subsection may apply to
30 an individually exempted manufacturer, to all automobiles to which this sub-
31 section applies, or to classes of passenger automobiles, as defined under regu-
32 lations of the Secretary, manufactured by exempted manufacturers.

33 (3) Notwithstanding paragraph (1) of this subsection, an importer reg-
34 istered under section 30141(c) of this title may not be exempted as a manu-
35 facturer under paragraph (1) for a motor vehicle that the importer—

36 (A) imports; or

37 (B) brings into compliance with applicable motor vehicle safety stand-
38 ards prescribed under chapter 301 of this title for an individual under
39 section 30142 of this title.

40 (4) The Secretary of Transportation may prescribe the contents of an ap-
41 plication for an exemption.

1 (e) *EMERGENCY VEHICLES.*—(1) *In this subsection, “emergency vehicle”*
2 *means an automobile manufactured primarily for use—*

3 (A) *as an ambulance or combination ambulance-hearse;*

4 (B) *by the United States Government or a State or local government*
5 *for law enforcement; or*

6 (C) *for other emergency uses prescribed by regulation by the Secretary*
7 *of Transportation.*

8 (2) *A manufacturer may elect to have the fuel economy of an emergency*
9 *vehicle excluded in applying a fuel economy standard under subsection (a),*
10 *(b), (c), or (d) of this section. The election is made by providing written no-*
11 *tice to the Secretary of Transportation and to the Administrator of the Envi-*
12 *ronmental Protection Agency.*

13 (f) *CONSIDERATIONS ON DECISIONS ON MAXIMUM FEASIBLE AVERAGE*
14 *FUEL ECONOMY.*—*When deciding maximum feasible average fuel economy*
15 *under this section, the Secretary of Transportation shall consider techno-*
16 *logical feasibility, economic practicability, the effect of other motor vehicle*
17 *standards of the Government on fuel economy, and the need of the United*
18 *States to conserve energy.*

19 (g) *REQUIREMENTS FOR OTHER AMENDMENTS.*—(1) *The Secretary of*
20 *Transportation may prescribe regulations amending an average fuel economy*
21 *standard prescribed under subsection (a) or (d) of this section if the amended*
22 *standard meets the requirements of subsection (a) or (d), as appropriate.*

23 (2) *When the Secretary of Transportation prescribes an amendment under*
24 *this section that makes an average fuel economy standard more stringent, the*
25 *Secretary shall prescribe the amendment (and submit the amendment to Con-*
26 *gress when required under subsection (c)(2) of this section) at least 18 months*
27 *before the beginning of the model year to which the amendment applies.*

28 (h) *LIMITATIONS.*—*In carrying out subsections (c), (f), and (g) of this sec-*
29 *tion, the Secretary of Transportation—*

30 (1) *may not consider the fuel economy of dedicated automobiles; and*

31 (2) *shall consider dual fueled automobiles to be operated only on gaso-*
32 *line or diesel fuel.*

33 (i) *CONSULTATION.*—*The Secretary of Transportation shall consult with the*
34 *Secretary of Energy in carrying out this section and section 32903 of this*
35 *title.*

36 (j) *SECRETARY OF ENERGY COMMENTS.*—(1) *Before issuing a notice pro-*
37 *posing to prescribe or amend an average fuel economy standard under sub-*
38 *section (a), (c), or (g) of this section, the Secretary of Transportation shall*
39 *give the Secretary of Energy at least 10 days from the receipt of the notice*
40 *during which the Secretary of Energy may, if the Secretary of Energy con-*
41 *cludes that the proposed standard would adversely affect the conservation*

1 goals of the Secretary of Energy, provide written comments to the Secretary
2 of Transportation about the impact of the standard on those goals. To the ex-
3 tent the Secretary of Transportation does not revise a proposed standard to
4 take into account comments of the Secretary of Energy on any adverse impact
5 of the standard, the Secretary of Transportation shall include those comments
6 in the notice.

7 (2) Before taking final action on a standard or an exemption from a stand-
8 ard under this section, the Secretary of Transportation shall notify the Sec-
9 retary of Energy and provide the Secretary of Energy a reasonable time to
10 comment.

11 **§ 32903. Credits for exceeding average fuel economy stand-**
12 **ards**

13 (a) *EARNING AND PERIOD FOR APPLYING CREDITS.*—When the average fuel
14 economy of passenger automobiles manufactured by a manufacturer in a par-
15 ticular model year exceeds an applicable average fuel economy standard under
16 section 32902(b)–(d) of this title (determined by the Secretary of Transpor-
17 tation without regard to credits under this section), the manufacturer earns
18 credits. The credits may be applied to—

19 (1) any of the 3 consecutive model years immediately before the model
20 year for which the credits are earned; and

21 (2) to the extent not used under clause (1) of this subsection, any of
22 the 3 consecutive model years immediately after the model year for which
23 the credits are earned.

24 (b) *PERIOD OF AVAILABILITY AND PLAN FOR FUTURE CREDITS.*—(1) Ex-
25 cept as provided in paragraph (2) of this subsection, credits under this section
26 are available to a manufacturer at the end of the model year in which earned.

27 (2)(A) Before the end of a model year, if a manufacturer has reason to be-
28 lieve that its average fuel economy for passenger automobiles will be less than
29 the applicable standard for that model year, the manufacturer may submit
30 a plan to the Secretary of Transportation demonstrating that the manufac-
31 turer will earn sufficient credits under this section within the next 3 model
32 years to allow the manufacturer to meet that standard for the model year in-
33 volved. Unless the Secretary finds that the manufacturer is unlikely to earn
34 sufficient credits under the plan, the Secretary shall approve the plan. Those
35 credits are available for the model year involved if—

36 (i) the Secretary approves the plan; and

37 (ii) the manufacturer earns those credits as provided by the plan.

38 (B) If the average fuel economy of a manufacturer is less than the applica-
39 ble standard under section 32902(b)–(d) of this title after applying credits
40 under subsection (a)(1) of this section, the Secretary of Transportation shall

1 *notify the manufacturer and give the manufacturer a reasonable time (of at*
 2 *least 60 days) to submit a plan.*

3 (c) *DETERMINING NUMBER OF CREDITS.—The number of credits a manu-*
 4 *facturer earns under this section equals the product of—*

5 (1) *the number of tenths of a mile a gallon by which the average fuel*
 6 *economy of the passenger automobiles manufactured by the manufacturer*
 7 *in the model year in which the credits are earned exceeds the applicable*
 8 *average fuel economy standard under section 32902(b)–(d) of this title;*
 9 *times*

10 (2) *the number of passenger automobiles manufactured by the manu-*
 11 *facturer during that model year.*

12 (d) *APPLYING CREDITS FOR PASSENGER AUTOMOBILES.—The Secretary of*
 13 *Transportation shall apply credits to a model year on the basis of the number*
 14 *of tenths of a mile a gallon by which the manufacturer involved was below*
 15 *the applicable average fuel economy standard for that model year and the*
 16 *number of passenger automobiles manufactured that model year by the manu-*
 17 *facturer. Credits applied to a model year are no longer available for another*
 18 *model year. Before applying credits, the Secretary shall give the manufacturer*
 19 *written notice and reasonable opportunity to comment.*

20 (e) *APPLYING CREDITS FOR NON-PASSENGER AUTOMOBILES.—Credits for*
 21 *a manufacturer of automobiles that are not passenger automobiles are earned*
 22 *and applied to a model year in which the average fuel economy of that class*
 23 *of automobiles is below the applicable average fuel economy standard under*
 24 *section 32902(a) of this title, to the same extent and in the same way as pro-*
 25 *vided in this section for passenger automobiles.*

26 (f) *REFUND OF COLLECTED PENALTY.—When a civil penalty has been col-*
 27 *lected under this chapter from a manufacturer that has earned credits under*
 28 *this section, the Secretary of the Treasury shall refund to the manufacturer*
 29 *the amount of the penalty to the extent the penalty is attributable to credits*
 30 *available under this section.*

31 **§ 32904. Calculation of average fuel economy**

32 (a) *METHOD OF CALCULATION.—(1) The Administrator of the Environ-*
 33 *mental Protection Agency shall calculate the average fuel economy of a manu-*
 34 *facturer subject to—*

35 (A) *section 32902(a) of this title in a way prescribed by the Adminis-*
 36 *trator; and*

37 (B) *section 32902(b)–(d) of this title by dividing—*

38 (i) *the number of passenger automobiles manufactured by the*
 39 *manufacturer in a model year; by*

40 (ii) *the sum of the fractions obtained by dividing the number of*
 41 *passenger automobiles of each model manufactured by the manufac-*

1 turer in that model year by the fuel economy measured for that
2 model.

3 (2)(A) In this paragraph, “electric vehicle” means a vehicle powered pri-
4 marily by an electric motor drawing electrical current from a portable source.

5 (B) If a manufacturer manufactures an electric vehicle, the Administrator
6 shall include in the calculation of average fuel economy under paragraph (1)
7 of this subsection equivalent petroleum based fuel economy values determined
8 by the Secretary of Energy for various classes of electric vehicles. The Sec-
9 retary shall review those values each year and determine and propose nec-
10 essary revisions based on the following factors:

11 (i) the approximate electrical energy efficiency of the vehicle, consider-
12 ing the kind of vehicle and the mission and weight of the vehicle.

13 (ii) the national average electrical generation and transmission effi-
14 ciencies.

15 (iii) the need of the United States to conserve all forms of energy and
16 the relative scarcity and value to the United States of all fuel used to
17 generate electricity.

18 (iv) the specific patterns of use of electric vehicles compared to petro-
19 leum-fueled vehicles.

20 (b) SEPARATE CALCULATIONS FOR PASSENGER AUTOMOBILES MANUFAC-
21 TURED DOMESTICALLY AND NOT DOMESTICALLY.—(1) In this subsection—

22 (A) a passenger automobile is deemed to be manufactured domestically
23 in a model year if at least 75 percent of the cost to the manufacturer
24 is attributable to value added in the United States or Canada, unless
25 the assembly of the automobile is completed in Canada and the auto-
26 mobile is imported into the United States more than 30 days after the
27 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 of
30 all passenger automobiles manufactured by the same manufacturer that
31 are not manufactured domestically.

32 (2)(A) Except as provided in paragraphs (4) and (5) of this subsection, the
33 Administrator shall make separate calculations under subsection (a)(1)(B) of
34 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 this
2 paragraph are deemed to be manufactured by separate manufacturers under
3 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 mesticallly before the end of the 4th model year covered by the plan. The Sec-
9 retary promptly shall consider and act on the plan. The Secretary shall ap-
10 prove the plan unless—

11 (i) the Secretary finds that the plan is inadequate to meet the require-
12 ments of this paragraph; or

13 (ii) the manufacturer previously has submitted a plan approved by the
14 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, for
17 each of the 4 model years covered by the plan, not more than 150,000 pas-
18 senger automobiles manufactured by that manufacturer but not qualifying as
19 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 the
23 automobiles is attributable to value added in the United States or Can-
24 ada;

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 of
27 the model year; and

28 (iv) the model or models are manufactured domestically before the end
29 of the 4th model year covered by the plan.

30 (4)(A) A manufacturer may file with the Secretary of Transportation a pe-
31 tition for an exemption from the requirement of separate calculations under
32 paragraph (2)(A) of this subsection if the manufacturer began automobile pro-
33 duction 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 end-
37 ing 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 model

1 years or, if requested by the manufacturer, a longer period provided by the
2 Secretary in the order granting the exemption. The exemption applies to pas-
3 senger automobiles manufactured by that manufacturer during the period of
4 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 for
9 not more than another 30 days. The Secretary shall decide whether to grant
10 or deny the exemption, and publish notice of the decision in the *Federal Reg-*
11 *ister*, not later than 90 days after the petition is filed, except that the Sec-
12 *retary* may extend the time for decision to a later date (not later than 150
13 *days* after the petition is filed) if the Secretary publishes notice of, and rea-
14 *sons* for, the extension in the *Federal Register*. If the Secretary does not make
15 a decision within the time provided in this subparagraph, the petition is
16 deemed to have been granted. Not later than 30 days after the end of the deci-
17 sion period, the Secretary shall submit a written statement of the reasons for
18 not making a decision to the Committee on Commerce, Science, and Trans-
19 portation of the Senate and the Committee on Energy and Commerce of the
20 House of Representatives.

21 (5)(A) A person adversely affected by a decision of the Secretary of Trans-
22 portation granting or denying an exemption may file, not later than 30 days
23 after publication of the notice of the decision, a petition for review in the
24 United States Court of Appeals for the District of Columbia Circuit. That
25 court has exclusive jurisdiction to review the decision and to affirm, remand,
26 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 by
28 the Supreme Court under section 1254 of title 28. Application for review by
29 the Supreme Court must be made not later than 30 days after entry of the
30 court's judgment.

31 (C) A decision of the Secretary of Transportation on a petition for an ex-
32 emption under this paragraph may be reviewed administratively or judicially
33 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 this
39 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 for

1 a manufacturer under testing and calculation procedures prescribed by the
 2 Administrator. However, except under section 32908 of this title, the Adminis-
 3 trator shall use the same procedures for passenger automobiles the Adminis-
 4 trator used for model year 1975 (weighted 55 percent urban cycle and 45 per-
 5 cent highway cycle), or procedures that give comparable results. A measure-
 6 ment of fuel economy or a calculation of average fuel economy (except under
 7 section 32908) shall be rounded off to the nearest .1 of a mile a gallon. The
 8 Administrator shall decide on the quantity of other fuel that is equivalent to
 9 one gallon of gasoline. To the extent practicable, fuel economy tests shall be
 10 carried out with emissions tests under section 206 of the Clean Air Act (42
 11 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 (except
 14 a technical or clerical amendment) in a procedure, at least 12 months before
 15 the beginning of the model year to which the procedure or amendment applies.

16 (e) *REPORTS AND CONSULTATION.*—The Administrator shall report meas-
 17 urements and calculations under this section to the Secretary of Transpor-
 18 tation and shall consult and coordinate with the Secretary in carrying out
 19 this section.

20 **§ 32905. Manufacturing incentives for alternative fuel auto-**
 21 **mobiles**

22 (a) *DEDICATED AUTOMOBILES.*—Except as provided in subsection (c) of
 23 this section or section 32904(a)(2) of this title, for any model of dedicated
 24 automobile manufactured by a manufacturer after model year 1992, the fuel
 25 economy measured for that model shall be based on the fuel content of the al-
 26 ternative fuel used to operate the automobile. A gallon of a liquid alternative
 27 fuel used to operate a dedicated automobile is deemed to contain .15 gallon
 28 of fuel.

29 (b) *DUAL FUELED AUTOMOBILES.*—Except as provided in subsection (d)
 30 of this section or section 32904(a)(2) of this title, for any model of dual fueled
 31 automobile manufactured by a manufacturer in model years 1993–2004, the
 32 Administrator of the Environmental Protection Agency shall measure the fuel
 33 economy for that model by dividing 1.0 by the sum of—

34 (1) .5 divided by the fuel economy measured under section 32904(c)
 35 of this title when operating the model on gasoline or diesel fuel; and

36 (2) .5 divided by the fuel economy measured under subsection (a) of
 37 this section when operating the model on alternative fuel.

38 (c) *GASEOUS FUEL DEDICATED AUTOMOBILES.*—For any model of gaseous
 39 fuel dedicated automobile manufactured by a manufacturer after model year
 40 1992, the Administrator shall measure the fuel economy for that model based
 41 on the fuel content of the gaseous fuel used to operate the automobile. One

1 hundred cubic feet of natural gas is deemed to contain .823 gallon equivalent
2 of natural gas. The Secretary of Transportation shall determine the appro-
3 priate gallon equivalent of other gaseous fuels. A gallon equivalent of gaseous
4 fuel is deemed to have a fuel content of .15 gallon of fuel.

5 (d) GASEOUS FUEL DUAL FUELED AUTOMOBILES.—For any model of gase-
6 ous fuel dual fueled automobile manufactured by a manufacturer in model
7 years 1993–2004, the Administrator shall measure the fuel economy for that
8 model by dividing 1.0 by the sum of—

9 (1) .5 divided by the fuel economy measured under section 32904(c)
10 of this title when operating the model on gasoline or diesel fuel; and

11 (2) .5 divided by the fuel economy measured under subsection (c) of
12 this section when operating the model on gaseous fuel.

13 (e) FUEL ECONOMY CALCULATIONS.—The Administrator shall calculate the
14 manufacturer's average fuel economy under section 32904(a)(1) of this title
15 for each model described under subsections (a)–(d) of this section by using as
16 the denominator the fuel economy measured for each model under subsections
17 (a)–(d).

18 (f) EXTENDING APPLICATION OF SUBSECTIONS (b) AND (d).—Not later
19 than December 31, 2001, the Secretary of Transportation shall—

20 (1) extend by regulation the application of subsections (b) and (d) of
21 this section for not more than 4 consecutive model years immediately
22 after model year 2004 and explain the basis on which the extension is
23 granted; or

24 (2) publish a notice explaining the reasons for not extending the appli-
25 cation of subsections (b) and (d) of this section.

26 (g) STUDY AND REPORT.—Not later than September 30, 2000, the Sec-
27 retary of Transportation, in consultation with the Secretary of Energy and
28 the Administrator, shall complete a study of the success of the policy of sub-
29 subsections (b) and (d) of this title, and submit to the Committees on Commerce,
30 Science, and Transportation and Governmental Affairs of the Senate and the
31 Committee on Energy and Commerce of the House of Representatives a report
32 on the results of the study, including preliminary conclusions on whether the
33 application of subsections (b) and (d) should be extended for up to 4 more
34 model years. The study and conclusions shall consider—

35 (1) the availability to the public of alternative fueled automobiles and
36 alternative fuel;

37 (2) energy conservation and security;

38 (3) environmental considerations; and

39 (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 1993–2004
4 for each category of automobile (except an electric automobile), the maximum
5 increase in average fuel economy for a manufacturer attributable to dual
6 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 a
10 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 manufac-
14 turer’s average fuel economy attributable to dual fueled automobiles by sub-
15 tracting from the manufacturer’s average fuel economy calculated under sec-
16 tion 32905(e) of this title the number equal to what the manufacturer’s aver-
17 age fuel economy would be if it were calculated by the formula in section
18 32904(a)(1) of this title by including as the denominator for each model of
19 dual fueled automobile the fuel economy when the automobiles are operated
20 on gasoline or diesel fuel. If the increase attributable to dual fueled auto-
21 mobiles for any model year described—

22 (A) in paragraph (1)(A) of this subsection is more than 1.2 miles a
23 gallon, the limitation in paragraph (1)(A) applies; and

24 (B) in paragraph (1)(B) of this subsection is more than .9 mile a gal-
25 lon, 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 fuel
28 economy standard for passenger automobiles for any model year below 27.5
29 miles a gallon, an increase in average fuel economy for passenger automobiles
30 of more than .7 mile a gallon to which a manufacturer of dual fueled auto-
31 mobiles would otherwise be entitled is reduced by an amount equal to the
32 amount of the reduction in the standard. However, the increase may not be
33 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 com-
41 ply 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 sub-
3 section 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 for
12 which the manufacturer is subject to an alternative average fuel economy
13 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 En-
16 vironmental 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 time
21 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 8,500
29 pounds gross vehicle weight regardless of whether the Secretary of Trans-
30 portation has applied this chapter to the automobile under section
31 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 person
35 (except a dealer buying as a dealer) that buys the automobile in good
36 faith other than for resale.

37 (b) LABELING REQUIREMENTS AND CONTENTS.—(1) Under regulations of
38 the Administrator of the Environmental Protection Agency, a manufacturer
39 of automobiles shall attach a label to a prominent place on each automobile
40 manufactured in a model year. The dealer shall maintain the label. The label
41 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 manu-
4 facturers.
- 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 sub-
19 section 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 fuel
22 economy of those automobiles under paragraph (1)(A) of this subsection is the
23 fuel economy for those automobiles when operated on alternative fuel, meas-
24 ured under section 32905(a) or (c) of this title, multiplied by .15. Each label
25 required under paragraph (1) of this subsection for dual fueled automobiles
26 shall—
- 27 (A) indicate the fuel economy of the automobile when operated on gas-
28 oline 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 operated;
31 and
- 32 (D) contain a statement informing the consumer that the additional
33 information required by subsection (c)(2) of this section is published and
34 distributed by the Secretary of Energy.
- 35 (c) FUEL ECONOMY INFORMATION BOOKLET.—(1) The Administrator shall
36 prepare the booklet referred to in subsection (b)(1)(D) of this section. The
37 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 automobiles
8 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 (1)
13 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 booklet
21 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 the
24 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.), except
30 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 car-
33 rying out this section.

34 **§ 32909. Judicial review of regulations**

35 (a) *FILING AND VENUE.*—(1) A person that may be adversely affected by
36 a regulation prescribed in carrying out section 32901–32904 or 32908 of this
37 title may apply for review of the regulation by filing a petition for review
38 in the United States Court of Appeals for the District of Columbia Circuit
39 or in the court of appeals of the United States for the circuit in which the
40 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 circuit
4 in which the person resides or has its principal place of business.

5 (b) *TIME FOR FILING AND JUDICIAL PROCEDURES.*—The petition must be
6 filed not later than 59 days after the regulation is prescribed, except that a
7 petition for review of a regulation prescribing an amendment of a standard
8 submitted to Congress under section 32902(c)(2) of this title must be filed not
9 later than 59 days after the end of the 60-day period referred to in section
10 32902(c)(2). The clerk of the court shall send immediately a copy of the peti-
11 tion to the Secretary of Transportation or the Administrator of the Environ-
12 mental Protection Agency, whoever prescribed the regulation. The Secretary
13 or the Administrator shall file with the court a record of the proceeding in
14 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 if
18 the court is satisfied the additional submissions are material and there were
19 reasonable grounds for not presenting the submissions in the proceeding before
20 the Secretary or Administrator.

21 (2) The Secretary or the Administrator may amend or set aside the regula-
22 tion, or prescribe a new regulation because of the additional submissions pre-
23 sented. The Secretary or Administrator shall file an amended or new regula-
24 tion and the additional submissions with the court. The court shall review
25 a changed or new regulation.

26 (d) *SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.*—A judgment
27 of a court under this section may be reviewed only by the Supreme Court
28 under section 1254 of title 28. A remedy under subsections (a)(1) and (c) of
29 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 of
32 Transportation or the Administrator of the Environmental Protection Agency
33 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 advisable.

39 (2) A witness summoned under paragraph (1)(C) of this subsection is enti-
40 tled to the same fee and mileage the witness would have been paid in a court
41 of the United States.

1 (b) *CIVIL ACTIONS TO ENFORCE.*—A civil action to enforce a subpoena or
2 order of the Secretary or Administrator under subsection (a) of this section
3 may be brought in the district court of the United States for the judicial dis-
4 trict in which the proceeding by the Secretary or Administrator was con-
5 ducted. The court may punish a failure to obey an order of the court to com-
6 ply with the subpoena or order of the Secretary or Administrator as a con-
7 tempt of court.

8 (c) *DISCLOSURE OF INFORMATION.*—The Secretary and the Administrator
9 each shall disclose information obtained under this chapter (except informa-
10 tion obtained under section 32904(c) of this title) under section 552 of title
11 5. However, the Secretary or Administrator may withhold information under
12 section 552(b)(4) of title 5 only if the Secretary or Administrator decides that
13 disclosure of the information would cause significant competitive damage. A
14 matter referred to in section 552(b)(4) and relevant to an administrative or
15 judicial proceeding under this chapter may be disclosed in that proceeding.
16 A measurement or calculation under section 32904(c) of this title shall be dis-
17 closed under section 552 of title 5 without regard to section 552(b).

18 (d) *REGULATIONS.*—The Administrator may prescribe regulations to carry
19 out duties of the Administrator under this chapter.

20 **§ 32911. Compliance**

21 (a) *GENERAL.*—A person commits a violation if the person fails to comply
22 with this chapter and regulations and standards prescribed and orders issued
23 under this chapter (except sections 32902, 32903, 32908(b), and 32917(b) and
24 regulations and standards prescribed and orders issued under those sections).
25 The Secretary of Transportation shall conduct a proceeding, with an oppor-
26 tunity for a hearing on the record, to decide whether a person has committed
27 a violation. Any interested person may participate in a proceeding under this
28 subsection.

29 (b) *AUTOMOBILE MANUFACTURERS.*—A manufacturer of automobiles com-
30 mits a violation if the manufacturer fails to comply with an applicable aver-
31 age fuel economy standard under section 32902 of this title. Compliance is
32 determined after considering credits available to the manufacturer under sec-
33 tion 32903 of this title. If average fuel economy calculations under section
34 32904(c) of this title indicate that a manufacturer has violated this sub-
35 section, the Secretary shall conduct a proceeding, with an opportunity for a
36 hearing on the record, to decide whether a violation has been committed. The
37 Secretary may not conduct the proceeding if further measurements of fuel
38 economy, further calculations of average fuel economy, or other information
39 indicates a violation has not been committed. The results of the measurements
40 and calculations and the information shall be published in the Federal Reg-

1 *ister. Any interested person may participate in a proceeding under this sub-*
2 *section.*

3 **§ 32912. Civil penalties**

4 (a) *GENERAL PENALTY.*—A person that violates section 32911(a) of this
5 title is liable to the United States Government for a civil penalty of not more
6 than \$10,000 for each violation. A separate violation occurs for each day the
7 violation continues.

8 (b) *PENALTY FOR MANUFACTURER VIOLATIONS OF FUEL ECONOMY STAND-*
9 *ARDS.*—Except as provided in subsection (c) of this section, a manufacturer
10 that violates a standard prescribed for a model year under section 32902 of
11 this title is liable to the Government for a civil penalty of \$5 multiplied by
12 each .1 of a mile a gallon by which the applicable average fuel economy
13 standard under that section exceeds the average fuel economy—

14 (1) *calculated under section 32904(a)(1)(A) or (B) of this title for*
15 *automobiles to which the standard applies manufactured by the manu-*
16 *facturer during the model year;*

17 (2) *multiplied by the number of those automobiles; and*

18 (3) *reduced by the credits available to the manufacturer under section*
19 *32903 of this title for the model year.*

20 (c) *HIGHER PENALTY AMOUNTS.*—(1)(A) *The Secretary of Transportation*
21 *shall prescribe by regulation a higher amount for each .1 of a mile a gallon*
22 *to be used in calculating a civil penalty under subsection (b) of this section,*
23 *if the Secretary decides that the increase in the penalty—*

24 (i) *will result in, or substantially further, substantial energy conserva-*
25 *tion for automobiles in model years in which the increased penalty may*
26 *be imposed; and*

27 (ii) *will not have a substantial deleterious impact on the economy of*
28 *the United States, a State, or a region of a State.*

29 (B) *The amount prescribed under subparagraph (A) of this paragraph may*
30 *not be more than \$10 for each .1 of a mile a gallon.*

31 (C) *The Secretary may make a decision under subparagraph (A)(ii) of this*
32 *paragraph only when the Secretary decides that it is likely that the increase*
33 *in the penalty will not—*

34 (i) *cause a significant increase in unemployment in a State or a re-*
35 *gion of a State;*

36 (ii) *adversely affect competition; or*

37 (iii) *cause a significant increase in automobile imports.*

38 (D) *A higher amount prescribed under subparagraph (A) of this paragraph*
39 *is effective for the model year beginning at least 18 months after the regula-*
40 *tion stating the higher amount becomes final.*

1 (2) *The Secretary shall publish in the Federal Register a proposed regula-*
2 *tion under this subsection and a statement of the basis for the regulation and*
3 *provide each manufacturer of automobiles a copy of the proposed regulation*
4 *and the statement. The Secretary shall provide a period of at least 45 days*
5 *for written public comments on the proposed regulation. The Secretary shall*
6 *submit a copy of the proposed regulation to the Federal Trade Commission*
7 *and request the Commission to comment on the proposed regulation within*
8 *that period. After that period, the Secretary shall give interested persons and*
9 *the Commission an opportunity at a public hearing to present oral informa-*
10 *tion, views, and arguments and to direct questions about disputed issues of*
11 *material fact to—*

12 (A) *other interested persons making oral presentations;*

13 (B) *employees and contractors of the Government that made written*
14 *comments or an oral presentation or participated in the development or*
15 *consideration of the proposed regulation; and*

16 (C) *experts and consultants that provided information to a person that*
17 *the person includes, or refers to, in an oral presentation.*

18 (3) *The Secretary may restrict the questions of an interested person and*
19 *the Commission when the Secretary decides that the questions are duplicative*
20 *or not likely to result in a timely and effective resolution of the issues. A tran-*
21 *script shall be kept of a public hearing under this subsection. A copy of the*
22 *transcript and written comments shall be available to the public at the cost*
23 *of reproduction.*

24 (4) *The Secretary shall publish a regulation prescribed under this sub-*
25 *section in the Federal Register with the decisions required under paragraph*
26 *(1) of this subsection.*

27 (5) *An officer or employee of a department, agency, or instrumentality of*
28 *the Government violates section 1905 of title 18 by disclosing, except in an*
29 *in camera proceeding by the Secretary or a court, information—*

30 (A) *provided to the Secretary or the court during consideration or re-*
31 *view of a regulation prescribed under this subsection; and*

32 (B) *decided by the Secretary to be confidential under section 11(d) of*
33 *the Energy Supply and Environmental Coordination Act of 1974 (15*
34 *U.S.C. 796(d)).*

35 (d) *WRITTEN NOTICE REQUIREMENT.—The Secretary shall impose a pen-*
36 *alty under this section by written notice.*

37 **§ 32913. Compromising and remitting civil penalties**

38 (a) *GENERAL AUTHORITY AND LIMITATIONS.—The Secretary of Transpor-*
39 *tation may compromise or remit the amount of a civil penalty imposed under*
40 *section 32912(a) or (b) of this title. However, the amount of a penalty im-*

1 posed under section 32912(b) may be compromised or remitted only to the extent—

2
3 (1) necessary to prevent the insolvency or bankruptcy of the manufacturer of automobiles;

4
5 (2) the manufacturer shows that the violation was caused by an act of God, a strike, or a fire; or

6
7 (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.

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10 (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.

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18 (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.

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24 (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.

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32 **§ 32914. Collecting civil penalties**

33 (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 States to collect the penalty. The validity and appropriateness of the final order imposing the penalty is not reviewable in the action.

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39 (b) *PRIORITY OF CLAIMS.*—A claim of a creditor against a bankrupt or insolvent manufacturer of automobiles has priority over a claim of the United States Government against the manufacturer for a civil penalty under section

1 32912(b) of this title when the creditor's claim is for credit extended before
2 a final judgment (without regard to section 32913(b)(1) and (2) of this title)
3 in an action to collect under subsection (a) of this section.

4 **§32915. Appealing civil penalties**

5 Any interested person may appeal a decision of the Secretary of Transpor-
6 tation to impose a civil penalty under section 32912(a) or (b) of this title,
7 or of the Federal Trade Commission under section 32913(b)(1) of this title,
8 in the United States Court of Appeals for the District of Columbia Circuit
9 or in the court of appeals of the United States for the circuit in which the
10 person resides or has its principal place of business. A person appealing a
11 decision must file a notice of appeal with the court not later than 30 days
12 after the decision and, at the same time, send a copy of the notice by certified
13 mail to the Secretary or the Commission. The Secretary or the Commission
14 promptly shall file with the court a certified copy of the record of the proceed-
15 ing in which the decision was made.

16 **§32916. Reports to Congress**

17 (a) ANNUAL REPORT.—Not later than January 15 of each year, the Sec-
18 retary of Transportation shall submit to each House of Congress, and publish
19 in the Federal Register, a report on the review by the Secretary of average
20 fuel economy standards prescribed under this chapter.

21 (b) JOINT EXAMINATIONS AFTER GRANTING EXEMPTIONS.—(1) After an
22 exemption has been granted under section 32904(b)(4) of this title, the Sec-
23 retaries of Transportation and Labor shall conduct annually a joint examina-
24 tion of the extent to which section 32904(b)(4)—

25 (A) achieves the purposes of this chapter;

26 (B) improves fuel efficiency (thereby facilitating conservation of petro-
27 leum and reducing petroleum imports);

28 (C) has promoted employment in the United States related to auto-
29 mobile manufacturing;

30 (D) has not caused unreasonable harm to the automobile manufactur-
31 ing sector in the United States; and

32 (E) has permitted manufacturers that have assembled passenger auto-
33 mobiles deemed to be manufactured domestically under section
34 32904(b)(1)(A) of this title thereafter to assemble in the United States
35 passenger automobiles of the same model that have less than 75 percent
36 of their value added in the United States or Canada, together with the
37 reasons.

38 (2) The Secretary of Transportation shall include the results of the exam-
39 ination under paragraph (1) of this subsection in each report submitted under
40 subsection (a) of this section more than 180 days after an exemption has been
41 granted under section 32904(b)(4) of this title, or submit the results of the

1 examination directly to Congress before the report is submitted when cir-
 2 cumstances warrant.

3 **§32917. Standards for executive agency automobiles**

4 (a) *DEFINITION.*—In this section, “executive agency” has the same meaning
 5 given that term in section 105 of title 5.

6 (b) *FLEET AVERAGE FUEL ECONOMY.*—(1) The President shall prescribe
 7 regulations that require passenger automobiles leased for at least 60 consecu-
 8 tive days or bought by executive agencies in a fiscal year to achieve a fleet
 9 average fuel economy (determined under paragraph (2) of this subsection) for
 10 that year of at least the greater of—

11 (A) 18 miles a gallon; or

12 (B) the applicable average fuel economy standard under section
 13 32902(b) or (c) of this title for the model year that includes January
 14 1 of that fiscal year.

15 (2) Fleet average fuel economy is—

16 (A) the total number of passenger automobiles leased for at least 60
 17 consecutive days or bought by executive agencies in a fiscal year (except
 18 automobiles designed for combat-related missions, law enforcement work,
 19 or emergency rescue work); divided by

20 (B) the sum of the fractions obtained by dividing the number of auto-
 21 mobiles of each model leased or bought by the fuel economy of that model.

22 **§32918. Preemption**

23 (a) *GENERAL.*—When an average fuel economy standard prescribed under
 24 this chapter is in effect, a State or a political subdivision of a State may
 25 not adopt or enforce a law or regulation related to fuel economy standards
 26 or average fuel economy standards for automobiles covered by an average fuel
 27 economy standard under this chapter.

28 (b) *REQUIREMENTS MUST BE IDENTICAL.*—When a requirement under sec-
 29 tion 32908 of this title is in effect, a State or a political subdivision of a
 30 State may adopt or enforce a law or regulation on disclosure of fuel economy
 31 or fuel operating costs for an automobile covered by section 32908 only if the
 32 law or regulation is identical to that requirement.

33 (c) *STATE AND POLITICAL SUBDIVISION AUTOMOBILES.*—A State or a po-
 34 litical subdivision of a State may prescribe requirements for fuel economy for
 35 automobiles obtained for its own use.

36 **CHAPTER 331—THEFT PREVENTION**

Sec.

33101. Definitions.

33102. Theft prevention standard for high theft lines.

33103. Theft prevention standard for other lines.

33104. Designation of high theft vehicle lines and parts.

33105. Cost limitations.

33106. Exemption for passenger motor vehicles equipped with anti-theft devices.

- 33107. *Voluntary vehicle identification standards.*
- 33108. *Monitoring compliance of manufacturers.*
- 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.*

1 **§ 33101. Definitions**

2 *In this chapter—*

3 (1) *“chop shop” means a building, lot, facility, or other structure or*
 4 *premise at which at least one person engages in receiving, concealing,*
 5 *destroying, disassembling, dismantling, reassembling, or storing a pas-*
 6 *senger motor vehicle or passenger motor vehicle part that has been un-*
 7 *lawfully obtained—*

8 (A) *to alter, counterfeit, deface, destroy, disguise, falsify, forge, ob-*
 9 *literate, or remove the identity of the vehicle or part, including the*
 10 *vehicle identification number or a derivative of that number; and*

11 (B) *to distribute, sell, or dispose of the vehicle or part in inter-*
 12 *state or foreign commerce.*

13 (2) *“covered major part” means a major part selected under sections*
 14 *33102(c)(1) and 33104 of this title for coverage by the vehicle theft pre-*
 15 *vention standard prescribed under section 33102 or 33103.*

16 (3) *“existing line” means a line introduced into commerce before Jan-*
 17 *uary 1, 1990.*

18 (4) *“first purchaser” means the person making the first purchase other*
 19 *than for resale.*

20 (5) *“line” means a name that a manufacturer of motor vehicles ap-*
 21 *plies to a group of motor vehicle models of the same make that have the*
 22 *same body or chassis, or otherwise are similar in construction or design.*

23 (6) *“major part” means—*

24 (A) *the engine;*

25 (B) *the transmission;*

26 (C) *each door to the passenger compartment;*

27 (D) *the hood;*

28 (E) *the grille;*

29 (F) *each bumper;*

30 (G) *each front fender;*

31 (H) *the deck lid, tailgate, or hatchback;*

32 (I) *each rear quarter panel;*

33 (J) *the trunk floor pan;*

1 (K) the frame or, for a unitized body, the supporting structure
2 serving as the frame; and

3 (L) any other part of a passenger motor vehicle that the Secretary
4 of Transportation by regulation specifies as comparable in design
5 or function to any of the parts listed in subclauses (A)–(K) of this
6 clause.

7 (7) “major replacement part” means a major part that is—

8 (A) an original major part in or on a completed motor vehicle
9 and customized or modified after manufacture of the vehicle but be-
10 fore the time of its delivery to the first purchaser; or

11 (B) not installed in or on a motor vehicle at the time of its deliv-
12 ery to the first purchaser and the equitable or legal title to the vehi-
13 cle has not been transferred to a first purchaser.

14 (8) “model year” has the same meaning given that term in section
15 32901(a) of this title.

16 (9) “new line” means a line introduced into commerce after December
17 31, 1989.

18 (10) “passenger motor vehicle” includes a multipurpose passenger ve-
19 hicle or light duty truck when that vehicle or truck is rated at not more
20 than 6,000 pounds gross vehicle weight.

21 (11) “vehicle theft prevention standard” means a minimum perform-
22 ance standard for identifying major parts of new motor vehicles and
23 major replacement parts by inscribing or affixing numbers or symbols
24 on those parts.

25 **§ 33102. Theft prevention standard for high theft lines**

26 (a) GENERAL.—(1) The Secretary of Transportation by regulation shall
27 prescribe a vehicle theft prevention standard that conforms to the require-
28 ments of this chapter. The standard shall apply to—

29 (A) covered major parts that manufacturers install in passenger motor
30 vehicles in lines designated under section 33104 of this title as high theft
31 lines; and

32 (B) major replacement parts for the major parts described in clause
33 (A) of this paragraph.

34 (2) The standard may apply only to—

35 (A) major parts that manufacturers install in passenger motor vehicles
36 having a model year designation later than the calendar year in which
37 the standard takes effect; and

38 (B) major replacement parts manufactured after the standard takes ef-
39 fect.

40 (b) STANDARD REQUIREMENTS.—The standard shall be practicable and
41 provide relevant objective criteria.

1 (c) *LIMITATIONS ON MAJOR PART AND REPLACEMENT PART STANDARDS.*—
 2 (1) *For a major part installed by the manufacturer of the motor vehicle, the*
 3 *standard may not require a part to have more than one identification.*

4 (2) *For a major replacement part, the standard may not require—*
 5 *(A) identification of a part not designed as a replacement for a major*
 6 *part required to be identified under the standard; or*
 7 *(B) the inscribing or affixing of identification except a symbol identi-*
 8 *fying the manufacturer and a common symbol identifying the part as*
 9 *a major replacement part.*

10 (d) *RECORDS AND REPORTS.*—*This chapter does not authorize the Sec-*
 11 *retary to require a person to keep records or make reports, except as provided*
 12 *in sections 33104(c), 33106(c), 33108(a), and 33112 of this title.*

13 **§33103. Theft prevention standard for other lines**

14 (a) *GENERAL.*—*Not later than October 25, 1994, the Secretary of Transpor-*
 15 *tation shall prescribe a vehicle theft standard that conforms to the require-*
 16 *ments of this chapter for covered major parts that manufacturers install in*
 17 *passenger motor vehicles (except light duty trucks) in not more than 50 per-*
 18 *cent of the lines not designated under section 33104 of this title as high theft*
 19 *lines.*

20 (b) *EXTENSION OF APPLICATION.*—(1) *Not later than 3 years after the*
 21 *standard is prescribed under subsection (a) of this section and based on the*
 22 *finding of the Attorney General under subsection (c) of this section to apply*
 23 *the standard, the Secretary shall apply that standard to covered major parts*
 24 *and major replacement parts for covered parts that manufacturers install in*
 25 *the lines of passenger motor vehicles (except light duty trucks)—*

26 *(A) not designated under section 33104 of this title as high theft lines;*
 27 *and*

28 *(B) not covered by the standard prescribed under subsection (a) of this*
 29 *section.*

30 (2) *The Secretary shall include as part of the regulatory proceeding under*
 31 *this subsection the finding of, and the record developed by, the Attorney Gen-*
 32 *eral under subsection (c) of this section.*

33 (c) *INITIAL REVIEW OF EFFECTIVENESS.*—*Before the Secretary begins a*
 34 *regulatory proceeding under subsection (b) of this section, the Attorney Gen-*
 35 *eral shall make a finding that the Secretary shall apply the standard pre-*
 36 *scribed under subsection (a) of this section unless the Attorney General finds,*
 37 *based on information collected and analyzed under section 33112 of this title*
 38 *and other information the Attorney General develops after providing notice*
 39 *and an opportunity for a public hearing, that applying the standard pre-*
 40 *scribed in subsection (a) to the remaining lines of passenger motor vehicles*
 41 *(except light duty trucks) not covered by that standard would not substan-*

1 tially inhibit chop shop operations and motor vehicle thefts. The Attorney
2 General also shall consider and include in the record additional costs, effec-
3 tiveness, competition, and available alternative factors. The Attorney General
4 shall submit to the Secretary the finding and record on which the finding is
5 based.

6 (d) *LONG RANGE REVIEW OF EFFECTIVENESS.*—(1) Not later than Decem-
7 ber 31, 1999, the Attorney General shall make separate findings, after notice
8 and an opportunity for a public hearing, on the following:

9 (A) whether the application of the standard under subsection (a) or
10 (b) of this subsection, or both, have been effective in substantially inhibit-
11 ing the operation of chop shops and motor vehicle theft.

12 (B) whether the anti-theft devices for which the Secretary has granted
13 exemptions under section 33106 of this title are an effective substitute
14 for parts marking in substantially inhibiting motor vehicle theft.

15 (2)(A) In making the finding under paragraph (1)(A) of this subsection,
16 the Attorney General shall—

17 (i) consider the additional cost, competition, and available alter-
18 natives;

19 (ii) base that finding on information collected and analyzed under sec-
20 tion 33112 of this title;

21 (iii) consider the effectiveness, the extent of use, and the extent to
22 which civil and criminal penalties under section 33115(b) of this title
23 and section 2322 of title 18 on chop shops have been effective in substan-
24 tially inhibiting operation of chop shops and motor vehicle theft;

25 (iv) base that finding on the 3-year and 5-year reports issued by the
26 Secretary under section 33113 of this title; and

27 (v) base that finding on other information the Attorney General devel-
28 ops and includes in the public record.

29 (B) The Attorney General shall submit a finding under paragraph (1)(A)
30 of this subsection promptly to the Secretary. If the Attorney General finds
31 that the application of the standard under subsection (a) or (b) of this section,
32 or both, has not been effective, the Secretary shall issue, not later than 180
33 days after receiving that finding, an order terminating the standard the At-
34 torney General found was ineffective. The termination is effective for the
35 model year beginning after the order is issued.

36 (3) In making a finding under paragraph (1)(B) of this subsection, the
37 Secretary shall consider the additional cost, competition, and available alter-
38 natives. If the Attorney General finds that the anti-theft devices are an effec-
39 tive substitute, the Secretary shall continue to grant exemptions under section
40 33106 of this title for the model years after model year 2000 at one of the
41 following levels that the Attorney General decides: at the level authorized be-

1 fore October 25, 1992, or at the level provided in section 33106(b)(2)(C) of
2 this title for model year 2000.

3 (e) *EFFECTIVE DATE OF STANDARD.*—A standard prescribed under this
4 section takes effect at least 6 months after the date the standard is prescribed,
5 except that the Secretary may prescribe an earlier effective date if the Sec-
6 retary—

7 (1) decides with good cause that the earlier date is in the public inter-
8 est; and

9 (2) publishes the reasons for the decision.

10 (f) *NOTIFICATION OF CONGRESS.*—The Secretary and the Attorney General
11 shall inform the appropriate legislative committees of Congress with jurisdic-
12 tion over this part and section 2322 of title 18 of actions taken or planned
13 under this section.

14 **§ 33104. Designation of high theft vehicle lines and parts**

15 (a) *DESIGNATION, NONAPPLICATION, SELECTION, AND PROCEDURES.*—(1)
16 For purposes of the standard under section 33102 of this title, the following
17 are high theft lines:

18 (A) a passenger motor vehicle line determined under subsection (b) of
19 this section to have had a new passenger motor vehicle theft rate in the
20 2-year period covering calendar years 1990 and 1991 greater than the
21 median theft rate for all new passenger motor vehicle thefts in that 2-
22 year period.

23 (B) a passenger motor vehicle line initially introduced into commerce
24 in the United States after December 31, 1989, that is selected under
25 paragraph (3) of this subsection as likely to have a theft rate greater
26 than the median theft rate referred to in clause (A) of this paragraph.

27 (C) subject to paragraph (2) of this subsection, a passenger motor vehi-
28 cle line having (for existing lines) or likely to have (for new lines) a theft
29 rate below the median theft rate referred to in clause (A) of this para-
30 graph, if the major parts in the vehicles are selected under paragraph
31 (3) of this subsection as interchangeable with the majority of the major
32 parts that are subject to the standard and are contained in the motor
33 vehicles of a line described in clause (A) or (B) of this paragraph.

34 (2) The standard may not apply to any major part of a line described in
35 paragraph (1)(C) of this subsection if all the passenger motor vehicles of lines
36 that are, or are likely to be, below the median theft rate, and that contain
37 parts interchangeable with the major parts of the line involved, account (for
38 existing lines), or the Secretary of Transportation determines they are likely
39 to account (for new lines), for more than 90 percent of the total annual pro-
40 duction of all lines of that manufacturer containing those interchangeable
41 parts.

1 (3) *The lines, and the major parts of the passenger motor vehicles in those*
2 *lines, that are to be subject to the standard may be selected by agreement be-*
3 *tween the manufacturer and the Secretary. If the manufacturer and the Sec-*
4 *retary disagree on the selection, the Secretary shall select the lines and parts,*
5 *after notice to the manufacturer and opportunity for written comment, and*
6 *subject to the confidentiality requirements of this chapter.*

7 (4) *To the maximum extent practicable, the Secretary shall prescribe rea-*
8 *sonable procedures designed to ensure that a selection under paragraph (3)*
9 *of this subsection is made at least 6 months before the first applicable model*
10 *year beginning after the selection.*

11 (5) *A manufacturer may not be required to comply with the standard*
12 *under a selection under paragraph (3) of this subsection for a model year be-*
13 *ginning earlier than 6 months after the date of the selection.*

14 (6) *A passenger motor vehicle line subject on October 25, 1992, to parts*
15 *marking requirements under sections 602 and 603 of the Motor Vehicle Infor-*
16 *mation and Cost Savings Act (Public Law 92-513, 86 Stat. 947), as added*
17 *by section 101(a) of the Motor Vehicle Theft Law Enforcement Act of 1984*
18 *(Public Law 98-547, 98 Stat. 2756), continues to be subject to the require-*
19 *ments of this section and section 33102 of this title unless the line is exempted*
20 *under section 33106 of this title.*

21 (b) *DETERMINING THEFT RATE FOR PASSENGER VEHICLES.—(1) In this*
22 *subsection, “new passenger motor vehicle thefts”, when used in reference to a*
23 *calendar year, means thefts in the United States in that year of passenger*
24 *motor vehicles with the same model-year designation as that calendar year.*

25 (2) *Under subsection (a) of this section, the theft rate for passenger motor*
26 *vehicles of a line shall be determined by a fraction—*

27 (A) *the numerator of which is the number of new passenger motor ve-*
28 *hicle thefts for that line during the 2-year period referred to in subsection*
29 *(a)(1)(A) of this section; and*

30 (B) *the denominator of which is the sum of the respective production*
31 *volumes of all passenger motor vehicles of that line (as reported to the*
32 *Administrator of the Environmental Protection Agency under chapter*
33 *329 of this title) that are of model years 1990 and 1991 and are distrib-*
34 *uted for sale in commerce in the United States.*

35 (3) *Under subsection (a) of this section, the median theft rate for all new*
36 *passenger motor vehicle thefts during that 2-year period is the theft rate mid-*
37 *way between the highest and the lowest theft rates determined under para-*
38 *graph (2) of this subsection. If there is an even number of theft rates deter-*
39 *mined under paragraph (2), the median theft rate is the arithmetic average*
40 *of the 2 adjoining theft rates midway between the highest and the lowest of*
41 *those theft rates.*

1 (4) *In consultation with the Director of the Federal Bureau of Investiga-*
 2 *tion, the Secretary periodically shall obtain from the most reliable source ac-*
 3 *curate and timely theft and recovery information and publish the information*
 4 *for review and comment. To the greatest extent possible, the Secretary shall*
 5 *use theft information reported by United States Government, State, and local*
 6 *police. After publication and opportunity for comment, the Secretary shall use*
 7 *the theft information to determine the median theft rate under this subsection.*
 8 *The Secretary and the Director shall take any necessary actions to improve*
 9 *the accuracy, reliability, and timeliness of the information, including ensur-*
 10 *ing that vehicles represented as stolen are really stolen.*

11 (5) *The Secretary periodically (but not more often than once every 2 years)*
 12 *may redetermine and prescribe by regulation the median theft rate under this*
 13 *subsection.*

14 (c) *PROVIDING INFORMATION.—The Secretary by regulation shall require*
 15 *each manufacturer to provide information necessary to select under subsection*
 16 *(a)(3) of this section the high theft lines and the major parts to be subject*
 17 *to the standard.*

18 (d) *APPLICATION.—Except as provided in section 33106 of this title, the*
 19 *Secretary may not make the standard inapplicable to a line that has been*
 20 *subject to the standard.*

21 **§ 33105. Cost limitations**

22 (a) *MAXIMUM MANUFACTURER COSTS.—A standard under section 33102 or*
 23 *33103 of this title may not impose—*

24 (1) *on a manufacturer of motor vehicles, compliance costs of more than*
 25 *\$15 a motor vehicle; or*

26 (2) *on a manufacturer of major replacement parts, compliance costs*
 27 *for each part of more than the reasonable amount (but less than \$15)*
 28 *that the Secretary of Transportation specifies in the standard.*

29 (b) *COSTS INVOLVED IN ENGINES AND TRANSMISSIONS.—For a manufac-*
 30 *turer engaged in identifying engines or transmissions on October 25, 1984,*
 31 *in a way that substantially complies with the standard—*

32 (1) *the costs of identifying engines and transmissions may not be con-*
 33 *sidered in calculating the manufacturer's costs under subsection (a) of*
 34 *this section; and*

35 (2) *the manufacturer may not be required under the standard to con-*
 36 *form to any identification system for engines and transmissions that im-*
 37 *poses greater costs on the manufacturer than are incurred under the*
 38 *identification system used by the manufacturer on October 25, 1984.*

39 (c) *COST ADJUSTMENTS.—(1) In this subsection—*

40 (A) *“base period” means calendar year 1984.*

1 (B) “price index” means the average over a calendar year of the
2 Consumer Price Index (all items—United States city average) published
3 monthly by the Secretary of Labor.

4 (2) At the beginning of each calendar year, as necessary data become avail-
5 able from the Bureau of Labor Statistics, the Secretary of Labor shall certify
6 to the Secretary of Transportation and publish in the Federal Register the
7 percentage difference between the price index for the 12 months before the be-
8 ginning of the calendar year and the price index for the base period. For
9 model years beginning in that calendar year, the amounts specified in sub-
10 section (a) of this section shall be adjusted by the percentage difference.

11 **§ 33106. Exemption for passenger motor vehicles equipped**
12 **with anti-theft devices**

13 (a) DEFINITIONS.—In this section—

14 (1) “anti-theft device” means a device to reduce or deter theft that—

15 (A) is in addition to the theft-deterrent devices required by motor
16 vehicle safety standard numbered 114 in section 571.114 of title 49,
17 Code of Federal Regulations;

18 (B) the manufacturer believes will be effective in reducing or de-
19 terring theft of motor vehicles; and

20 (C) does not use a signaling device reserved by State law for use
21 on police, emergency, or official vehicles, or on schoolbuses.

22 (2) “standard equipment” means equipment already installed in a
23 motor vehicle when it is delivered from the manufacturer and not an ac-
24 cessory or other item that the first purchaser customarily has the option
25 to have installed.

26 (b) GRANTING EXEMPTIONS AND LIMITATIONS.—(1) A manufacturer may
27 petition the Secretary of Transportation for an exemption from a requirement
28 of a standard prescribed under section 33102 or 33103 of this title for a line
29 of passenger motor vehicles equipped as standard equipment with an anti-
30 theft device that the Secretary decides is likely to be as effective in reducing
31 and deterring motor vehicle theft as compliance with the standard.

32 (2) The Secretary may grant an exemption—

33 (A) for model year 1987, for not more than 2 lines of a manufacturer;

34 (B) for each of the model years 1988–1996, for not more than 2 addi-
35 tional lines of a manufacturer;

36 (C) for each of the model years 1997–2000, for not more than one ad-
37 ditional line of a manufacturer; and

38 (D) for each of the model years after model year 2000, for the number
39 of lines that the Attorney General decides under section 33103(d)(3) of
40 this title.

1 (3) An additional exemption granted under subparagraph (2)(B) or (C) of
2 this paragraph does not affect an exemption previously granted.

3 (c) *PETITIONING PROCEDURE.*—A petition must be filed not later than 8
4 months before the start of production for the first model year covered by the
5 petition. The petition must include—

6 (1) a detailed description of the device;

7 (2) the reasons for the manufacturer's conclusion that the device will
8 be effective in reducing and deterring theft of motor vehicles; and

9 (3) additional information the Secretary reasonably may require to
10 make the decision described in subsection (b)(1) of this section.

11 (d) *DECISIONS AND APPROVALS.*—The Secretary shall make a decision
12 about a petition filed under this section not later than 120 days after the date
13 the petition is filed. A decision approving a petition must be based on sub-
14 stantial evidence. The Secretary may approve a petition in whole or in part.
15 If the Secretary does not make a decision within the 120-day period, the peti-
16 tion shall be deemed to be approved and the manufacturer shall be exempt
17 from the standard for the line covered by the petition for the subsequent model
18 year.

19 (e) *RESCISSIONS.*—The Secretary may rescind an exemption if the Sec-
20 retary decides that the anti-theft device has not been as effective in reducing
21 and deterring motor vehicle theft as compliance with the standard. A rescis-
22 sion may be effective only—

23 (1) for a model year after the model year in which the rescission oc-
24 curs; and

25 (2) at least 6 months after the manufacturer receives written notice
26 of the rescission from the Secretary.

27 **§ 33107. Voluntary vehicle identification standards**

28 (a) *ELECTION TO INSCRIBE OR AFFIX IDENTIFYING MARKS.*—The Sec-
29 retary of Transportation by regulation may prescribe a vehicle theft preven-
30 tion standard under which a person may elect to inscribe or affix an identify-
31 ing number or symbol on major parts of a motor vehicle manufactured or
32 owned by the person for purposes of section 511 of title 18 and related provi-
33 sions. The standard may include provisions for registration of the identifica-
34 tion with the Secretary or a person designated by the Secretary.

35 (b) *STANDARD REQUIREMENTS.*—The standard under this section shall be
36 practicable and provide relevant objective criteria.

37 (c) *VOLUNTARY COMPLIANCE.*—Compliance with the standard under this
38 section is voluntary. Failure to comply does not subject a person to a penalty
39 or enforcement under this chapter.

1 (d) *COMPLIANCE WITH OTHER STANDARDS.*—Compliance with the stand-
2 *ard under this section does not relieve a manufacturer from a requirement*
3 *of a standard prescribed under section 33102 or 33103 of this title.*

4 **§33108. Monitoring compliance of manufacturers**

5 (a) *RECORDS, REPORTS, INFORMATION, AND INSPECTION.*—To enable the
6 *Secretary of Transportation to decide whether a manufacturer of motor vehi-*
7 *cles containing a part subject to a standard prescribed under section 33102*
8 *or 33103 of this title, or a manufacturer of major replacement parts subject*
9 *to the standard, is complying with this chapter and the standard, the Sec-*
10 *retary may require the manufacturer to—*

11 (1) *keep records;*

12 (2) *make reports;*

13 (3) *provide items and information; and*

14 (4) *allow an officer or employee designated by the Secretary to inspect*
15 *the vehicles and parts and relevant records of the manufacturer.*

16 (b) *ENTRY AND INSPECTION.*—To enforce this chapter, an officer or em-
17 *ployee designated by the Secretary, on presenting appropriate credentials and*
18 *a written notice to the owner, operator, or agent in charge, may inspect a*
19 *facility in which motor vehicles containing major parts subject to the stand-*
20 *ard, or major replacement parts subject to the standard, are manufactured,*
21 *held for introduction into interstate commerce, or held for sale after introduc-*
22 *tion into interstate commerce. An inspection shall be conducted at a reason-*
23 *able time, in a reasonable way, and with reasonable promptness.*

24 (c) *CERTIFICATION OF COMPLIANCE.*—(1) A manufacturer of a motor vehi-
25 *cle subject to the standard, and a manufacturer of a major replacement part*
26 *subject to the standard, shall provide at the time of delivery of the vehicle or*
27 *part a certification that the vehicle or part conforms to the applicable motor*
28 *vehicle theft prevention standard. The certification shall accompany the vehi-*
29 *cle or part until its delivery to the first purchaser. The Secretary by regula-*
30 *tion may prescribe the type and form of the certification.*

31 (2) *This subsection does not apply to a motor vehicle or major replacement*
32 *part that is—*

33 (A) *intended only for export;*

34 (B) *labeled only for export on the vehicle or replacement part and the*
35 *outside of any container until exported; and*

36 (C) *exported.*

37 (d) *NOTIFICATION OF ERROR.*—A manufacturer shall notify the Secretary
38 *if the manufacturer discovers that—*

39 (1) *there is an error in the identification (required by the standard)*
40 *applied to a major part installed by the manufacturer in a motor vehicle*

1 during its assembly, or to a major replacement part manufactured by
2 the manufacturer; and

3 (2) the motor vehicle or major replacement part has entered interstate
4 commerce.

5 **§ 33109. National Stolen Passenger Motor Vehicle Informa-**
6 **tion System**

7 (a) GENERAL REQUIREMENTS.—(1) Not later than July 25, 1993, the At-
8 torney General shall establish, and thereafter maintain, a National Stolen
9 Passenger Motor Vehicle Information System containing the vehicle identifica-
10 tion numbers of stolen passenger motor vehicles and stolen passenger motor
11 vehicle parts. The System shall be located in the National Crime Information
12 Center and shall include at least the following information on each passenger
13 motor vehicle reported to a law enforcement authority as stolen and not recov-
14 ered:

15 (A) the vehicle identification number.

16 (B) the make and model year.

17 (C) the date on which the vehicle was reported as stolen.

18 (D) the location of the law enforcement authority that received the re-
19 port of the theft of the vehicle.

20 (E) the identification numbers of the vehicle parts (or derivatives of
21 those numbers), at the time of the theft, if those numbers are different
22 from the vehicle identification number of the vehicle.

23 (2) In establishing the System, the Attorney General shall consult with—

24 (A) State and local law enforcement authorities; and

25 (B) the National Crime Information Center Policy Advisory Board to
26 ensure the security of the information in the System and that the System
27 will not compromise the security of stolen passenger motor vehicle and
28 passenger motor vehicle parts information in the System.

29 (3) If the Attorney General decides that the Center is not able to perform
30 the functions of the System, the Attorney General shall make an agreement
31 for the operation of the System separate from the Center.

32 (4) The Attorney General shall prescribe by regulation the effective date of
33 the System.

34 (b) REQUESTS FOR INFORMATION.—(1) The Attorney General shall pre-
35 scribe by regulation procedures under which an individual or entity intend-
36 ing to transfer a passenger motor vehicle or passenger motor vehicle part may
37 obtain information on whether the vehicle or part is listed in the System as
38 stolen.

39 (2) On request of an insurance carrier, a person lawfully selling or distrib-
40 uting passenger motor vehicle parts in interstate commerce, or an individual
41 or enterprise engaged in the business of repairing passenger motor vehicles,

1 *the Attorney General (or the entity the Attorney General designates) immediately shall inform the insurance carrier, person, individual, or enterprise*
2 *whether the System has a record of a vehicle or vehicle part with a particular*
3 *vehicle identification number (or derivative of that number) being reported*
4 *as stolen. The Attorney General may require appropriate verification to ensure*
5 *that the request is legitimate and will not compromise the security of*
6 *the System.*

8 *(c) ADVISORY COMMITTEE.—(1) Not later than December 24, 1992, the At-*
9 *torney General shall establish in the Department of Justice an advisory com-*
10 *mittee. The Attorney General shall develop the System with the advice and*
11 *recommendations of the committee.*

12 *(2)(A) The committee is composed of the following 10 members:*

13 *(i) the Attorney General.*

14 *(ii) the Secretary of Transportation.*

15 *(iii) one individual who is qualified to represent the interests of the*
16 *law enforcement community at the State level.*

17 *(iv) one individual who is qualified to represent the interests of the*
18 *law enforcement community at the local level.*

19 *(v) one individual who is qualified to represent the interests of the*
20 *automotive recycling industry.*

21 *(vi) one individual who is qualified to represent the interests of the*
22 *automotive repair industry.*

23 *(vii) one individual who is qualified to represent the interests of the*
24 *automotive rebuilders industry.*

25 *(viii) one individual who is qualified to represent the interests of the*
26 *automotive parts suppliers industry.*

27 *(ix) one individual who is qualified to represent the interests of the*
28 *insurance industry.*

29 *(x) one individual who is qualified to represent the interests of con-*
30 *sumers.*

31 *(B) The Attorney General shall appoint the individuals described in sub-*
32 *paragraph (A)(iii)–(x) of this paragraph and shall serve as chairman of the*
33 *committee.*

34 *(3) The committee shall make recommendations on developing and carrying*
35 *out—*

36 *(A) the National Stolen Passenger Motor Vehicle Information System;*
37 *and*

38 *(B) the verification system under section 33110 of this title.*

39 *(4) Not later than April 25, 1993, the committee shall submit to the Attor-*
40 *ney General, the Secretary, and Congress a report including the recommenda-*
41 *tions of the committee.*

1 **§33110. Verifications involving junk and salvage motor vehi-**
 2 **cles**

3 (a) *DEFINITION.*—In this section, “vehicle identification number” means a
 4 unique identification number (or derivative of that number) assigned to a
 5 passenger motor vehicle by a manufacturer in compliance with applicable reg-
 6 ulations.

7 (b) *GENERAL REQUIREMENTS.*—(1) If an insurance carrier selling com-
 8 prehensive motor vehicle insurance coverage obtains possession of and trans-
 9 fers a junk motor vehicle or a salvage motor vehicle, the carrier shall—

10 (A) under procedures the Attorney General prescribes by regulation
 11 under section 33109 of this title in consultation with the Secretary of
 12 Transportation, verify whether the vehicle is reported as stolen; and

13 (B) provide the purchaser or transferee of the vehicle from the insur-
 14 ance carrier verification identifying the vehicle identification number
 15 and verifying that the vehicle has not been reported as stolen or, if re-
 16 ported as stolen, that the carrier has recovered the vehicle and has proper
 17 legal title to the vehicle.

18 (2)(A) This subsection does not prohibit an insurance carrier from transfer-
 19 ring a motor vehicle if, within a reasonable period of time during normal
 20 business operations (as decided by the Attorney General under section 33109
 21 of this title) using reasonable efforts, the carrier—

22 (i) has not been informed under the procedures prescribed in section
 23 33109 of this title that the vehicle has not been reported as stolen; or

24 (ii) has not otherwise established whether the vehicle has been reported
 25 as stolen.

26 (B) When a carrier transfers a motor vehicle for which the carrier has not
 27 established whether the vehicle has been reported as stolen, the carrier shall
 28 provide written certification to the transferee that the carrier has not estab-
 29 lished whether the vehicle has been reported as stolen.

30 (c) *REGULATIONS.*—In consultation with the Secretary, the Attorney Gen-
 31 eral shall prescribe regulations necessary to ensure that verification performed
 32 and provided by an insurance carrier under subsection (b)(1)(B) of this sec-
 33 tion is uniform, effective, and resistant to fraudulent use.

34 **§33111. Verifications involving motor vehicle major parts**

35 (a) *GENERAL REQUIREMENTS.*—A person engaged in the business of sal-
 36 vaging, dismantling, recycling, or repairing passenger motor vehicles may not
 37 knowingly sell in commerce or transfer or install a major part marked with
 38 an identification number without—

39 (1) first establishing, through a procedure the Attorney General by reg-
 40 ulation prescribes in consultation with the Secretary of Transportation

1 under section 33109 of this title, that the major part has not been re-
2 ported as stolen; and

3 (2) providing the purchaser or transferee with a verification—

4 (A) identifying the vehicle identification number (or derivative of
5 that number) of that major part; and

6 (B) verifying that the major part has not been reported as stolen.

7 (b) *NONAPPLICATION.*—(1) Subsection (a) of this section does not apply to
8 a person that—

9 (A) is the manufacturer of the major part;

10 (B) has purchased the major part directly from the manufacturer; or

11 (C) has received a verification from an insurance carrier under section
12 33110 of this title that the motor vehicle from which the major part is
13 derived has not been reported as stolen, or that the carrier has not estab-
14 lished whether that vehicle has been stolen.

15 (2) A person described under paragraph (1)(C) of this subsection that sub-
16 sequently transfers or sells in commerce the motor vehicle or a major part of
17 the vehicle shall provide the verification received from the carrier to the per-
18 son to whom the vehicle or part is transferred or sold.

19 (c) *REGULATIONS.*—The Attorney General shall prescribe regulations to
20 carry out this section. The regulations shall include regulations prescribed in
21 consultation with the Secretary that are necessary to ensure that a verifica-
22 tion a person provides under subsection (a)(2) of this section is uniform, effec-
23 tive, and resistant to fraudulent use.

24 **§33112. Insurance reports and information**

25 (a) *PURPOSES.*—The purposes of this section are—

26 (1) to prevent or discourage the theft of motor vehicles, particularly
27 those stolen for the removal of certain parts;

28 (2) to prevent or discourage the sale and distribution in interstate
29 commerce of used parts that are removed from those vehicles; and

30 (3) to help reduce the cost to consumers of comprehensive insurance
31 coverage for motor vehicles.

32 (b) *DEFINITIONS.*—In this section—

33 (1) “insurer” includes a person (except a governmental authority)
34 having a fleet of at least 20 motor vehicles that are used primarily for
35 rental or lease and are not covered by a theft insurance policy issued
36 by an insurer of passenger motor vehicles.

37 (2) “motor vehicle” includes a truck, a multipurpose passenger vehicle,
38 and a motorcycle.

39 (c) *ANNUAL INFORMATION REQUIREMENT.*—(1) An insurer providing com-
40 prehensive coverage for motor vehicles shall provide annually to the Secretary
41 of Transportation information on—

1 (A) the thefts and recoveries (in any part) of motor vehicles;
2 (B) the number of vehicles that have been recovered intact;
3 (C) the rating rules and plans, such as loss information and rating
4 characteristics, used by the insurer to establish premiums for comprehen-
5 sive coverage, including the basis for the premiums, and premium pen-
6 alties for motor vehicles considered by the insurer as more likely to be
7 stolen;

8 (D) the actions taken by the insurer to reduce the premiums, including
9 changing rate levels for comprehensive coverage because of a reduction in
10 thefts of motor vehicles;

11 (E) the actions taken by the insurer to assist in deterring or reducing
12 thefts of motor vehicles; and

13 (F) other information the Secretary requires to carry out this chapter
14 and to make the report and findings required by this chapter.

15 (2) The information on thefts and recoveries shall include an explanation
16 on how the information is obtained, the accuracy and timeliness of the infor-
17 mation, and the use made of the information, including the extent and fre-
18 quency of reporting the information to national, public, and private entities
19 such as the Federal Bureau of Investigation and State and local police.

20 (d) *REPORTS ON REDUCED CLAIMS PAYMENTS.*—An insurer shall report
21 promptly in writing to the Secretary if the insurer, in paying a claim under
22 an adjustment or negotiation between the insurer and the insured for a stolen
23 motor vehicle—

24 (1) reduces the payment to the insured by the amount of the value,
25 salvage or otherwise, of a recovered part subject to a standard prescribed
26 under section 33102 or 33103 of this title; and

27 (2) the reduction is not made at the express election of the insured.

28 (e) *GENERAL EXEMPTIONS.*—The Secretary shall exempt from this section,
29 for one or more years, an insurer that the Secretary decides should be exempt-
30 ed because—

31 (1) the cost of preparing and providing the information is excessive
32 in relation to the size of the insurer's business; and

33 (2) the information from that insurer will not contribute significantly
34 to carrying out this chapter.

35 (f) *SMALL INSURER EXEMPTIONS.*—(1) In this subsection, "small insurer"
36 means an insurer whose premiums for motor vehicle insurance issued directly
37 or through an affiliate, including a pooling arrangement established under
38 State law or regulation for the issuance of motor vehicle insurance, account
39 for—

40 (A) less than one percent of the total premiums for all forms of motor
41 vehicle insurance issued by insurers in the United States; and

1 (B) less than 10 percent of the total premiums for all forms of motor
2 vehicle insurance issued by insurers in any State.

3 (2) The Secretary shall exempt by regulation a small insurer from this sec-
4 tion if the Secretary finds that the exemption will not significantly affect the
5 validity or usefulness of the information collected and compiled under this
6 section, nationally or State-by-State. However, the Secretary may not exempt
7 an insurer under this paragraph that is considered an insurer only because
8 of subsection (b)(1) of this section.

9 (3) Regulations under this subsection shall provide that eligibility as a
10 small insurer shall be based on the most recent calendar year for which ade-
11 quate information is available, and that, once attained, the eligibility shall
12 continue without further demonstration of eligibility for one or more years,
13 as the Secretary considers appropriate.

14 (g) *PRESCRIBED FORM.*—Information required by this section shall be pro-
15 vided in the form the Secretary prescribes.

16 (h) *PERIODIC COMPILATIONS.*—Subject to section 552 of title 5, the Sec-
17 retary periodically shall compile and publish information obtained by the
18 Secretary under this section, in a form that will be helpful to the public, the
19 police, and Congress.

20 (i) *CONSULTATION.*—In carrying out this section, the Secretary shall con-
21 sult with public and private agencies and associations the Secretary considers
22 appropriate.

23 **§ 33113. Theft reports**

24 (a) *TRUCK, MULTIPURPOSE PASSENGER VEHICLE, AND MOTORCYCLE RE-*
25 *PORT.*—Not later than October 25, 1995, the Secretary of Transportation shall
26 submit a report to Congress that includes—

27 (1) information on the number of trucks, multipurpose passenger vehi-
28 cles, and motorcycles distributed for sale in interstate commerce that are
29 stolen and recovered annually, compiled by model, make, and line;

30 (2) information on the extent to which trucks, multipurpose passenger
31 vehicles, and motorcycles stolen annually are dismantled to recover parts
32 or are exported;

33 (3) a description of the market for the stolen parts;

34 (4) information on the premiums charged by insurers of comprehensive
35 coverage of trucks, multipurpose passenger vehicles, or motorcycles, in-
36 cluding any increase in the premiums charged because any of those
37 motor vehicles is a likely candidate for theft;

38 (5) an assessment of whether the identification of parts of trucks, mul-
39 tipurpose passenger vehicles, and motorcycles is likely—

40 (A) to decrease the theft rate of those motor vehicles;

41 (B) to increase the recovery rate of those motor vehicles;

1 (C) to decrease the trafficking in stolen parts of those motor vehi-
2 cles;

3 (D) to stem the export and import of those stolen motor vehicles
4 or parts; or

5 (E) to have benefits greater than the costs of the identification;
6 and

7 (6) recommendations on whether, and to what extent, the identifica-
8 tion of trucks, multipurpose passenger vehicles, and motorcycles should
9 be required by law.

10 (b) *MOTOR VEHICLE REPORT*.—Not later than October 25, 1997, the Sec-
11 retary shall submit a report to Congress that includes—

12 (1) information on—

13 (A) the methods and procedures used by public and private enti-
14 ties to collect, compile, and disseminate information on the theft
15 and recovery of motor vehicles, including classes of motor vehicles;
16 and

17 (B) the reliability and timeliness of the information and how the
18 information can be improved;

19 (2) information on the number of motor vehicles distributed for sale
20 in interstate commerce that are stolen and recovered annually, compiled
21 by class, model, make, and line;

22 (3) information on the extent to which motor vehicles stolen annually
23 are dismantled to recover parts or are exported;

24 (4) a description of the market for the stolen parts;

25 (5) information on—

26 (A) the costs to manufacturers and purchasers of passenger motor
27 vehicles of compliance with the standards prescribed under this
28 chapter;

29 (B) the beneficial impacts of the standards and the monetary
30 value of the impacts; and

31 (C) the extent to which the monetary value is greater than the
32 costs;

33 (6) information on the experience of officials of the United States Gov-
34 ernment, States, and localities in—

35 (A) making arrests and successfully prosecuting persons for vio-
36 lating a law set forth in title II or III of the Motor Vehicle Theft
37 Law Enforcement Act of 1984;

38 (B) preventing or reducing the number and rate of thefts of motor
39 vehicles that are dismantled for parts subject to this chapter; and

40 (C) preventing or reducing the availability of used parts that are
41 stolen from motor vehicles subject to this chapter;

1 (7) information on the premiums charged by insurers of comprehensive
2 coverage of motor vehicles subject to this chapter, including any increase
3 in the premiums charged because a motor vehicle is a likely candidate
4 for theft, and the extent to which the insurers have reduced for the benefit
5 of consumers the premiums, or foregone premium increases, because of
6 this chapter;

7 (8) information on the adequacy and effectiveness of laws of the Unit-
8 ed States and the States aimed at preventing the distribution and sale
9 of used parts that have been removed from stolen motor vehicles and the
10 adequacy of systems available to enforcement personnel for tracing parts
11 to determine if they have been stolen from a motor vehicle;

12 (9) an assessment of whether the identification of parts of other classes
13 of motor vehicles is likely—

14 (A) to decrease the theft rate of those vehicles;

15 (B) to increase the recovery rate of those vehicles;

16 (C) to decrease the trafficking in stolen parts of those vehicles;

17 (D) to stem the export and import of those stolen vehicles, parts,
18 or components; or

19 (E) to have benefits greater than the costs of the identification;

20 and

21 (10) other relevant and reliable information available to the Secretary
22 about the impact, including the beneficial impact, of the laws set forth
23 in titles II and III of the Motor Vehicle Theft Law Enforcement Act of
24 1984 on law enforcement, consumers, and manufacturers; and

25 (11) recommendations (including, as appropriate, legislative and ad-
26 ministrative recommendations) for—

27 (A) continuing without change the standards prescribed under
28 this chapter;

29 (B) amending this chapter to cover more or fewer lines of pas-
30 senger motor vehicles;

31 (C) amending this chapter to cover other classes of motor vehicles;

32 or

33 (D) ending the standards for all future motor vehicles.

34 (c) BASES OF REPORTS.—(1) The reports under subsections (a) and (b) of
35 this section each shall be based on—

36 (A) information reported under this chapter by insurers of motor vehi-
37 cles and manufacturers of motor vehicles and major replacement parts;

38 (B) information provided by the Federal Bureau of Investigation;

39 (C) experience obtained in carrying out this chapter;

40 (D) experience of the Government under the laws set forth in titles II
41 and III of the Motor Vehicle Theft Law Enforcement Act of 1984; and

- 1 (E) other relevant and reliable information available to the Secretary.
- 2 (2) In preparing each report, the Secretary shall consult with the Attorney
3 General and State and local law enforcement officials, as appropriate.
- 4 (3) The report under subsection (b) of this section shall—
- 5 (A) cover a period of at least 4 years after the standards required by
6 this chapter are prescribed; and
- 7 (B) reflect any information, as appropriate, from the report under
8 subsection (a) of this section, updated from the date of the report.
- 9 (4) At least 90 days before submitting each report to Congress, the Sec-
10 retary shall publish a proposed report for public review and an opportunity
11 of at least 45 days for written comment. The Secretary shall consider those
12 comments in preparing the report to be submitted and include a summary
13 of the comments with the submitted report.

14 **§ 33114. Prohibited acts**

- 15 (a) GENERAL.—A person may not—
- 16 (1) manufacture for sale, sell, offer for sale, introduce or deliver for
17 introduction in interstate commerce, or import into the United States,
18 a motor vehicle or major replacement part subject to a standard pre-
19 scribed under section 33102 or 33103 of this title, unless it conforms to
20 the standard;
- 21 (2) fail to comply with a regulation prescribed by the Secretary of
22 Transportation or Attorney General under this chapter;
- 23 (3) fail to keep specified records, refuse access to or copying of records,
24 fail to make reports or provide items or information, or fail or refuse
25 to allow entry or inspection, as required by this chapter;
- 26 (4) fail to provide the certification required by section 33108(c) of this
27 title, or provide a certification that the person knows, or in the exercise
28 of reasonable care has reason to know, is false or misleading in a mate-
29 rial respect; or
- 30 (5) knowingly—
- 31 (A) own, operate, maintain, or control a chop shop;
- 32 (B) conduct operations in a chop shop; or
- 33 (C) transport a passenger motor vehicle or passenger motor vehi-
34 cle part to or from a chop shop.
- 35 (b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to
36 a person establishing that in the exercise of reasonable care the person did
37 not have reason to know that the motor vehicle or major replacement part
38 was not in conformity with the standard.

39 **§ 33115. Civil penalties and enforcement**

- 40 (a) GENERAL PENALTY AND CIVIL ACTIONS TO COLLECT.—(1) A person
41 that violates section 33114(a)(1)–(4) of this title is liable to the United States

1 Government for a civil penalty of not more than \$1,000 for each violation.
2 The failure of more than one part of a single motor vehicle to conform to an
3 applicable standard under section 33102 or 33103 of this title is only a single
4 violation. The maximum penalty under this subsection for a related series of
5 violations is \$250,000.

6 (2) The Secretary of Transportation imposes a civil penalty under this sub-
7 section. The Secretary may compromise the amount of a penalty.

8 (3) In determining the amount of a civil penalty or compromise under this
9 subsection, the Secretary shall consider the size of the person's business and
10 the gravity of the violation.

11 (4) The Attorney General shall bring a civil action in a United States dis-
12 trict court to collect a civil penalty imposed under this subsection.

13 (5) The Government may deduct the amount of a civil penalty imposed or
14 compromised under this subsection from amounts it owes the person liable for
15 the penalty.

16 (b) *CHOP SHOP PENALTY AND ENFORCEMENT.*—(1) A person that violates
17 section 33114(a)(5) of this title is liable to the Government for a civil penalty
18 of not more than \$100,000 a day for each violation.

19 (2) As appropriate and in consultation with the Attorney General, the Sec-
20 retary shall—

21 (A) bring a civil action for a temporary or permanent injunction to
22 restrain a person violating section 33114(a)(5) of this section;

23 (B) impose and recover the penalty described in paragraph (1) of this
24 subsection; or

25 (C) take both the actions described in clauses (A) and (B) of this para-
26 graph.

27 (c) *CIVIL ACTIONS TO ENFORCE.*—(1) The Attorney General may bring a
28 civil action in a United States district court to enjoin a violation of this
29 chapter or the sale, offer for sale, introduction or delivery for introduction in
30 interstate commerce, or importation into the United States, of a passenger
31 motor vehicle containing a major part, or of a major replacement part, that
32 is subject to the standard and is determined before the sale of the vehicle or
33 part to a first purchaser not to conform to the standard.

34 (2)(A) When practicable, the Secretary—

35 (i) shall notify a person against whom an action under this subsection
36 is planned;

37 (ii) shall give the person an opportunity to present that person's
38 views; and

39 (iii) except for a knowing and willful violation, shall give the person
40 a reasonable opportunity to comply.

1 (B) The failure of the Secretary to comply with subparagraph (A) of this
 2 paragraph does not prevent a court from granting appropriate relief.

3 (d) *JURY TRIAL DEMAND.*—In a trial for criminal contempt for violating
 4 an injunction or restraining order issued under subsection (c) of this section,
 5 the violation of which is also a violation of this chapter, the defendant may
 6 demand a jury trial. The defendant shall be tried as provided in rule 42(b)
 7 of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

8 (e) *VENUE.*—A civil action under subsection (a) or (c) of this section may
 9 be brought in the judicial district in which the violation occurred or the de-
 10 fendant resides, is found, or transacts business. Process in the action may be
 11 served in any other judicial district in which the defendant resides or is
 12 found. A subpoena for a witness in the action may be served in any judicial
 13 district.

14 **§33116. Confidentiality of information**

15 (a) *GENERAL.*—Information obtained by the Secretary of Transportation
 16 under this chapter related to a confidential matter referred to in section 1905
 17 of title 18 may be disclosed only—

18 (1) to another officer or employee of the United States Government for
 19 use in carrying out this chapter; or

20 (2) in a proceeding under this chapter (except a proceeding under sec-
 21 tion 33104(a)(3)).

22 (b) *WITHHOLDING INFORMATION FROM CONGRESS.*—This section does not
 23 authorize information to be withheld from a committee of Congress authorized
 24 to have the information.

25 **§33117. Judicial review**

26 A person that may be adversely affected by a regulation prescribed under
 27 this chapter may obtain judicial review of the regulation under section 32909
 28 of this title. A remedy under this section is in addition to any other remedies
 29 provided by law.

30 **§33118. Preemption of State and local law**

31 When a motor vehicle theft prevention standard prescribed under section
 32 33102 or 33103 of this title is in effect, a State or political subdivision of
 33 a State may not have a different motor vehicle theft prevention standard for
 34 a motor vehicle or major replacement part.

35 **SUBTITLE VII—AVIATION PROGRAMS**

PART A—AIR COMMERCE AND SAFETY

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1 **PART A—AIR COMMERCE AND SAFETY**

2 **SUBPART I—GENERAL**

3 **CHAPTER 401—GENERAL PROVISIONS**

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40118.	Government-financed air transportation.
40119.	Security and research and development activities.
40120.	Relationship to other laws.

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 Sec-
7 retary of Transportation shall consider the following matters, among others,
8 as being in the public interest and consistent with public convenience and ne-
9 cessity:

1 (1) assigning and maintaining safety as the highest priority in air
2 commerce.

3 (2) before authorizing new air transportation services, evaluating the
4 safety implications of those services.

5 (3) preventing deterioration in established safety procedures, recogniz-
6 ing the clear intent, encouragement, and dedication of Congress to fur-
7 ther the highest degree of safety in air transportation and air commerce,
8 and to maintain the safety vigilance that has evolved in air transpor-
9 tation and air commerce and has come to be expected by the traveling
10 and shipping public.

11 (4) the availability of a variety of adequate, economic, efficient, and
12 low-priced services without unreasonable discrimination or unfair or de-
13 ceptive practices.

14 (5) coordinating transportation by, and improving relations among,
15 air carriers, and encouraging fair wages and working conditions.

16 (6) placing maximum reliance on competitive market forces and on
17 actual and potential competition—

18 (A) to provide the needed air transportation system; and

19 (B) to encourage efficient and well-managed air carriers to earn
20 adequate profits and attract capital, considering any material dif-
21 ferences between interstate air transportation and foreign air trans-
22 portation.

23 (7) developing and maintaining a sound regulatory system that is re-
24 sponsive to the needs of the public and in which decisions are reached
25 promptly to make it easier to adapt the air transportation system to the
26 present and future needs of—

27 (A) the commerce of the United States;

28 (B) the United States Postal Service; and

29 (C) the national defense.

30 (8) encouraging air transportation at major urban areas through sec-
31 ondary or satellite airports if consistent with regional airport plans of
32 regional and local authorities, and if endorsed by appropriate State au-
33 thorities—

34 (A) encouraging the transportation by air carriers that provide,
35 in a specific market, transportation exclusively at those airports;
36 and

37 (B) fostering an environment that allows those carriers to estab-
38 lish themselves and develop secondary or satellite airport services.

39 (9) preventing unfair, deceptive, predatory, or anticompetitive prac-
40 tices in air transportation.

1 (10) *avoiding unreasonable industry concentration, excessive market*
2 *domination, monopoly powers, and other conditions that would tend to*
3 *allow at least one air carrier or foreign air carrier unreasonably to in-*
4 *crease prices, reduce services, or exclude competition in air transpor-*
5 *tation.*

6 (11) *maintaining a complete and convenient system of continuous*
7 *scheduled interstate air transportation for small communities and iso-*
8 *lated areas with direct financial assistance from the United States Gov-*
9 *ernment when appropriate.*

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

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

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

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

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

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

24 (b) *ALL-CARGO AIR TRANSPORTATION CONSIDERATIONS.—In carrying out*
25 *subpart II of this part and those provisions of subpart IV applicable in carry-*
26 *ing out subpart II, the Secretary of Transportation shall consider the follow-*
27 *ing matters, among others and in addition to the matters referred to in sub-*
28 *section (a) of this section, as being in the public interest for all-cargo air*
29 *transportation:*

30 (1) *encouraging and developing an expedited all-cargo air transpor-*
31 *tation system provided by private enterprise and responsive to—*

32 (A) *the present and future needs of shippers;*

33 (B) *the commerce of the United States; and*

34 (C) *the national defense.*

35 (2) *encouraging and developing an integrated transportation system*
36 *relying on competitive market forces to decide the extent, variety, qual-*
37 *ity, and price of services provided.*

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

40 (c) *GENERAL SAFETY CONSIDERATIONS.—In carrying out subpart III of*
41 *this part and those provisions of subpart IV applicable in carrying out sub-*

1 *part III, the Administrator of the Federal Aviation Administration shall con-*
2 *sider the following matters:*

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

5 *(2) the public right of freedom of transit through the navigable air-*
6 *space.*

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

11 *(1) regulating air commerce in a way that best promotes its develop-*
12 *ment and safety and fulfills national defense requirements.*

13 *(2) promoting, encouraging, and developing civil aeronautics.*

14 *(3) controlling the use of the navigable airspace and regulating civil*
15 *and military operations in that airspace in the interest of the safety and*
16 *efficiency of both of those operations.*

17 *(4) consolidating research and development for air navigation facili-*
18 *ties and the installation and operation of those facilities.*

19 *(5) developing and operating a common system of air traffic control*
20 *and navigation for military and civil aircraft.*

21 *(6) providing assistance to law enforcement agencies in the enforce-*
22 *ment of laws related to regulation of controlled substances, to the extent*
23 *consistent with aviation safety.*

24 *(e) INTERNATIONAL AIR TRANSPORTATION.—In formulating United States*
25 *international air transportation policy, the Secretaries of State and Trans-*
26 *portation shall develop a negotiating policy emphasizing the greatest degree*
27 *of competition compatible with a well-functioning international air transpor-*
28 *tation system, including the following:*

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

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

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

36 *(4) the maximum degree of multiple and permissive international au-*
37 *thority for air carriers so that they will be able to respond quickly to*
38 *a shift in market demand.*

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

41 *(6) integrating domestic and international air transportation.*

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

2 (8) opportunities for carriers of foreign countries to increase their ac-
3 cess to places in the United States if exchanged for benefits of similar
4 magnitude for air carriers or the traveling public with permanent link-
5 age between rights granted and rights given away.

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

8 (A) excessive landing and user fees;

9 (B) unreasonable ground handling requirements;

10 (C) unreasonable restrictions on operations;

11 (D) prohibitions against change of gauge; and

12 (E) similar restrictive practices.

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

15 (f) *STRENGTHENING COMPETITION.*—In selecting an air carrier to provide
16 foreign air transportation from among competing applicants, the Secretary
17 of Transportation shall consider, in addition to the matters specified in sub-
18 sections (a) and (b) of this section, the strengthening of competition among
19 air carriers operating in the United States to prevent unreasonable concentra-
20 tion in the air carrier industry.

21 **§ 40102. Definitions**

22 (a) *GENERAL DEFINITIONS.*—In this part—

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

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

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

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

33 (A) a landing area;

34 (B) a light;

35 (C) apparatus or equipment for distributing weather information,
36 signaling, radio-directional finding, or radio or other electro-
37 magnetic communication; and

38 (D) another structure or mechanism for guiding or controlling
39 flight in the air or the landing and takeoff of aircraft.

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

1 (6) “aircraft” means any contrivance invented, used, or designed to
2 navigate, or fly in, the air.

3 (7) “aircraft engine” means an engine used, or intended to be used,
4 to propel an aircraft, including a part, appurtenance, and accessory of
5 the engine, except a propeller.

6 (8) “airman” means an individual—

7 (A) in command, or as pilot, mechanic, or member of the crew,
8 who navigates aircraft when under way;

9 (B) except to the extent the Administrator of the Federal Aviation
10 Administration may provide otherwise for individuals employed
11 outside the United States, who is directly in charge of inspecting,
12 maintaining, overhauling, or repairing aircraft, aircraft engines,
13 propellers, or appliances; or

14 (C) who serves as an aircraft dispatcher or air traffic control-
15 tower operator.

16 (9) “airport” means a landing area used regularly by aircraft for re-
17 ceiving or discharging passengers or cargo.

18 (10) “all-cargo air transportation” means the transportation by air-
19 craft in interstate air transportation of only property or only mail, or
20 both.

21 (11) “appliance” means an instrument, equipment, apparatus, a part,
22 an appurtenance, or an accessory used, capable of being used, or in-
23 tended to be used, in operating or controlling aircraft in flight, including
24 a parachute, communication equipment, and another mechanism in-
25 stalled in or attached to aircraft during flight, and not a part of an air-
26 craft, aircraft engine, or propeller.

27 (12) “cargo” means property, mail, or both.

28 (13) “charter air carrier” means an air carrier holding a certificate
29 of public convenience and necessity that authorizes it to provide charter
30 air transportation.

31 (14) “charter air transportation” means charter trips in air transpor-
32 tation authorized under this part.

33 (15) “citizen of the United States” means—

34 (A) an individual who is a citizen of the United States;

35 (B) a partnership each of whose partners is an individual who
36 is a citizen of the United States; or

37 (C) a corporation or association organized under the laws of the
38 United States or a State, the District of Columbia, or a territory
39 or possession of the United States, of which the president and at
40 least two-thirds of the board of directors and other managing offi-
41 cers are citizens of the United States, and in which at least 75 per-

1 cent of the voting interest is owned or controlled by persons that are
2 citizens of the United States.

3 (16) “civil aircraft” means an aircraft except a public aircraft.

4 (17) “civil aircraft of the United States” means an aircraft registered
5 under chapter 441 of this title.

6 (18) “conditional sales contract” means a contract—

7 (A) for the sale of an aircraft, aircraft engine, propeller, appli-
8 ance, or spare part, under which the buyer takes possession of the
9 property but title to the property vests in the buyer at a later time
10 on—

11 (i) paying any part of the purchase price;

12 (ii) performing another condition; or

13 (iii) the happening of a contingency; or

14 (B) to bail or lease an aircraft, aircraft engine, propeller, appli-
15 ance, or spare part, under which the bailee or lessee—

16 (i) agrees to pay an amount substantially equal to the value
17 of the property; and

18 (ii) is to become, or has the option of becoming, the owner
19 of the property on complying with the contract.

20 (19) “conveyance” means an instrument, including a conditional sales
21 contract, affecting title to, or an interest in, property.

22 (20) “Federal airway” means a part of the navigable airspace that
23 the Administrator designates as a Federal airway.

24 (21) “foreign air carrier” means a person, not a citizen of the United
25 States, undertaking by any means, directly or indirectly, to provide for-
26 eign air transportation.

27 (22) “foreign air commerce” means the transportation of passengers
28 or property by aircraft for compensation, the transportation of mail by
29 aircraft, or the operation of aircraft in furthering a business or vocation,
30 between a place in the United States and a place outside the United
31 States when any part of the transportation or operation is by aircraft.

32 (23) “foreign air transportation” means the transportation of pas-
33 sengers or property by aircraft as a common carrier for compensation,
34 or the transportation of mail by aircraft, between a place in the United
35 States and a place outside the United States when any part of the trans-
36 portation is by aircraft.

37 (24) “interstate air commerce” means the transportation of passengers
38 or property by aircraft for compensation, the transportation of mail by
39 aircraft, or the operation of aircraft in furthering a business or voca-
40 tion—

41 (A) between a place in—

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

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

6 (iii) the District of Columbia and another place in the Dis-
7 trict of Columbia; or

8 (iv) a territory or possession of the United States and an-
9 other place in the same territory or possession; and

10 (B) when any part of the transportation or operation is by air-
11 craft.

12 (25) “interstate air transportation” means the transportation of pas-
13 sengers or property by aircraft as a common carrier for compensation,
14 or the transportation of mail by aircraft—

15 (A) between a place in—

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

19 (ii) Hawaii and another place in Hawaii through the air-
20 space over a place outside Hawaii;

21 (iii) the District of Columbia and another place in the Dis-
22 trict of Columbia; or

23 (iv) a territory or possession of the United States and an-
24 other place in the same territory or possession; and

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

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

28 (27) “intrastate air transportation” means the transportation by a
29 common carrier of passengers or property for compensation, entirely in
30 the same State, by turbojet-powered aircraft capable of carrying at least
31 30 passengers.

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

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

38 (30) “navigable airspace” means airspace above the minimum alti-
39 tudes of flight prescribed by regulations under subparts I and III of this
40 part, including airspace needed to ensure safety in the takeoff and land-
41 ing of aircraft.

1 (31) “navigate aircraft” and “navigation of aircraft” include piloting
2 aircraft.

3 (32) “operate aircraft” and “operation of aircraft” mean using air-
4 craft for the purposes of air navigation, including—

5 (A) the navigation of aircraft; and

6 (B) causing or authorizing the operation of aircraft with or with-
7 out the right of legal control of the aircraft.

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

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

13 (35) “price” means a rate, fare, or charge for air transportation.

14 (36) “propeller” includes a part, appurtenance, and accessory of a
15 propeller.

16 (37) “public aircraft”—

17 (A) means an aircraft—

18 (i) used only for the United States Government; or

19 (ii) owned and operated (except for commercial purposes), or
20 exclusively leased for at least 90 continuous days, by a govern-
21 ment (except the United States Government), including a
22 State, the District of Columbia, or a territory or possession of
23 the United States, or political subdivision of that government;
24 but

25 (B) does not include a government-owned aircraft transporting
26 passengers or property for commercial purposes.

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

31 (39) “State authority” means an authority of a State designated
32 under State law—

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

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

39 (40) “ticket agent” means a person (except an air carrier, a foreign
40 air carrier, or an employee of an air carrier or foreign air carrier) that

1 as a principal or agent sells, offers for sale, negotiates for, or holds itself
2 out as selling, providing, or arranging for, air transportation.

3 (41) "United States" means the States of the United States, the Dis-
4 trict of Columbia, and the territories and possessions of the United
5 States, including the territorial sea and the overlying airspace.

6 (b) LIMITED DEFINITION.—In subpart II of this part, "control" means con-
7 trol by any means.

8 **§ 40103. Sovereignty and use of airspace**

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

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

18 (b) USE OF AIRSPACE.—(1) The Administrator of the Federal Aviation Ad-
19 ministration shall develop plans and policy for the use of the navigable air-
20 space and assign by regulation or order the use of the airspace necessary to
21 ensure the safety of aircraft and the efficient use of airspace. The Adminis-
22 trator may modify or revoke an assignment when required in the public inter-
23 est.

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

26 (A) navigating, protecting, and identifying aircraft;

27 (B) protecting individuals and property on the ground;

28 (C) using the navigable airspace efficiently; and

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

31 (3) To establish security provisions that will encourage and allow maxi-
32 mum use of the navigable airspace by civil aircraft consistent with national
33 security, the Administrator, in consultation with the Secretary of Defense,
34 shall—

35 (A) establish areas in the airspace the Administrator decides are nec-
36 essary in the interest of national defense; and

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

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

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

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

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

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

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

19 **§ 40104. Promotion of civil aeronautics and air commerce**

20 The Administrator of the Federal Aviation Administration shall encourage
21 the development of civil aeronautics and air commerce in and outside the
22 United States. In carrying out this section, the Administrator shall take ac-
23 tion that the Administrator considers necessary to establish, within available
24 resources, a program to distribute civil aviation information in each region
25 served by the Administration. The program shall provide, on request, infor-
26 mational material and expertise on civil aviation to State and local school
27 administrators, college and university officials, and officers of other interested
28 organizations.

29 **§ 40105. International negotiations, agreements, and obliga-**
30 **tions**

31 (a) ADVICE AND CONSULTATION.—The Secretary of State shall advise the
32 Administrator of the Federal Aviation Administration and the Secretaries of
33 Transportation and Commerce, and consult with them as appropriate, about
34 negotiations for an agreement with a government of a foreign country to es-
35 tablish or develop air navigation, including air routes and services. The Sec-
36 retary of Transportation shall consult with the Secretary of State in carrying
37 out this part to the extent this part is related to foreign air transportation.

38 (b) ACTIONS OF SECRETARY AND ADMINISTRATOR.—(1) In carrying out
39 this part, the Secretary of Transportation and the Administrator—

40 (A) shall act consistently with obligations of the United States Govern-
41 ment under an international agreement;

1 (B) shall consider applicable laws and requirements of a foreign coun-
2 try; and

3 (C) may not limit compliance by an air carrier with obligations or
4 liabilities imposed by the government of a foreign country when the Sec-
5 retary takes any action related to a certificate of public convenience and
6 necessity issued under chapter 411 of this title.

7 (2) This subsection does not apply to an agreement between an air carrier
8 or an officer or representative of an air carrier and the government of a for-
9 eign country, if the Secretary of Transportation disapproves the agreement
10 because it is not in the public interest. Section 40106(b)(2) of this title ap-
11 plies to this subsection.

12 (c) *CONSULTATION ON INTERNATIONAL AIR TRANSPORTATION POLICY.*—In
13 carrying out section 40101(e) of this title, the Secretaries of State and Trans-
14 portation, to the maximum extent practicable, shall consult on broad policy
15 goals and individual negotiations with—

16 (1) the Secretaries of Commerce and Defense;

17 (2) airport operators;

18 (3) scheduled air carriers;

19 (4) charter air carriers;

20 (5) airline labor;

21 (6) consumer interest groups;

22 (7) travel agents and tour organizers; and

23 (8) other groups, institutions, and governmental authorities affected by
24 international aviation policy.

25 (d) *CONGRESSIONAL OBSERVERS AT INTERNATIONAL AVIATION NEGOTIA-*
26 *TIONS.*—The President shall grant to at least one representative of each House
27 of Congress the privilege of attending international aviation negotiations as
28 an observer if the privilege is requested in advance in writing.

29 **§ 40106. Emergency powers**

30 (a) *DEVIATIONS FROM REGULATIONS.*—Appropriate military authority
31 may authorize aircraft of the armed forces of the United States to deviate
32 from air traffic regulations prescribed under section 40103(b)(1) and (2) of
33 this title when the authority decides the deviation is essential to the national
34 defense because of a military emergency or urgent military necessity. The au-
35 thority shall—

36 (1) give the Administrator of the Federal Aviation Administration
37 prior notice of the deviation at the earliest practicable time; and

38 (2) to the extent time and circumstances allow, make every reasonable
39 effort to consult with the Administrator and arrange for the deviation
40 in advance on a mutually agreeable basis.

1 (b) *SUSPENSION OF AUTHORITY.*—(1) *When the President decides that the*
2 *government of a foreign country is acting inconsistently with the Convention*
3 *for the Suppression of Unlawful Seizure of Aircraft or that the government*
4 *of a foreign country allows territory under its jurisdiction to be used as a*
5 *base of operations or training of, or as a sanctuary for, or arms, aids, or*
6 *abets, a terrorist organization that knowingly uses the unlawful seizure, or*
7 *the threat of an unlawful seizure, of an aircraft as an instrument of policy,*
8 *the President may suspend the authority of—*

9 (A) *an air carrier or foreign air carrier to provide foreign air trans-*
10 *portation to and from that foreign country;*

11 (B) *a person to operate aircraft in foreign air commerce to and from*
12 *that foreign country;*

13 (C) *a foreign air carrier to provide foreign air transportation between*
14 *the United States and another country that maintains air service with*
15 *the foreign country; and*

16 (D) *a foreign person to operate aircraft in foreign air commerce be-*
17 *tween the United States and another country that maintains air service*
18 *with the foreign country.*

19 (2) *The President may act under this subsection without notice or a hear-*
20 *ing. The suspension remains in effect for as long as the President decides is*
21 *necessary to ensure the security of aircraft against unlawful seizure. Notwith-*
22 *standing section 40105(b) of this title, the authority of the President to sus-*
23 *pend rights under this subsection is a condition to a certificate of public con-*
24 *venience and necessity, air carrier operating certificate, foreign air carrier or*
25 *foreign aircraft permit, or foreign air carrier operating specification issued*
26 *by the Secretary of Transportation under this part.*

27 (3) *An air carrier or foreign air carrier may not provide foreign air trans-*
28 *portation, and a person may not operate aircraft in foreign air commerce,*
29 *in violation of a suspension of authority under this subsection.*

30 **§40107. Presidential transfers**

31 (a) *GENERAL AUTHORITY.*—*The President may transfer to the Adminis-*
32 *trator of the Federal Aviation Administration a duty, power, activity, or fa-*
33 *facility of a department, agency, or instrumentality of the executive branch of*
34 *the United States Government, or an officer or unit of a department, agency,*
35 *or instrumentality of the executive branch, related primarily to selecting, de-*
36 *veloping, testing, evaluating, establishing, operating, or maintaining a sys-*
37 *tem, procedure, facility, or device for safe and efficient air navigation and*
38 *air traffic control. In making a transfer, the President may transfer records*
39 *and property and make officers and employees from the department, agency,*
40 *instrumentality, or unit available to the Administrator.*

1 (b) *DURING WAR.*—If war occurs, the President by executive order may
2 transfer to the Secretary of Defense a duty, power, activity, or facility of the
3 Administrator. In making the transfer, the President may transfer records,
4 property, officers, and employees of the Administration to the Department of
5 Defense.

6 **§40108. Training schools**

7 (a) *AUTHORITY TO OPERATE.*—The Administrator of the Federal Aviation
8 Administration may operate schools to train officers and employees of the Ad-
9 ministration to carry out duties, powers, and activities of the Administrator.

10 (b) *ATTENDANCE.*—The Administrator may authorize officers and employ-
11 ees of other departments, agencies, or instrumentalities of the United States
12 Government, officers and employees of governments of foreign countries, and
13 individuals from the aeronautics industry to attend those schools. However,
14 if the attendance of any of those officers, employees, or individuals increases
15 the cost of operating the schools, the Administrator may require the payment
16 or transfer of amounts or other consideration to offset the additional cost. The
17 amount received may be credited to the appropriation current when the ex-
18 penditures are or were paid, the appropriation current when the amount is
19 received, or both.

20 **§40109. Authority to exempt**

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

24 (A) an air carrier not engaged directly in operating aircraft in air
25 transportation; or

26 (B) a foreign air carrier not engaged directly in operating aircraft in
27 foreign air transportation.

28 (2) The exemption is effective to the extent and for periods that the Sec-
29 retary decides are in the public interest.

30 (b) *SAFETY REGULATION.*—The Administrator of the Federal Aviation Ad-
31 ministration may grant an exemption from a regulation prescribed in carry-
32 ing out sections 40103(b)(1) and (2), 40119, 44901, 44903, 44906, and
33 44935–44937 of this title when the Administrator decides the exemption is in
34 the public interest.

35 (c) *OTHER ECONOMIC REGULATION.*—Except as provided in this section,
36 the Secretary may exempt to the extent the Secretary considers necessary a
37 person or class of persons from a provision of chapter 411, sections 41301–
38 41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701,
39 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter 419, sub-
40 chapter II of chapter 421, and section 46301(b) of this title, or a regulation

1 or term prescribed under any of those provisions, when the Secretary decides
2 that the exemption is consistent with the public interest.

3 (d) *LABOR REQUIREMENTS.*—The Secretary may not exempt an air carrier
4 from section 42112 of this title. However, the Secretary may exempt from sec-
5 tion 42112(b)(1) and (2) an air carrier not providing scheduled air transpor-
6 tation, and the operations conducted during daylight hours by an air carrier
7 providing scheduled air transportation, when the Secretary decides that—

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

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

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

18 (f) *SMALLER AIRCRAFT.*—(1) An air carrier is exempt from section
19 41101(a)(1) of this title, and the Secretary may exempt an air carrier from
20 another provision of subpart II of this part, if the air carrier—

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

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

25 (B) complies with liability insurance requirements and other regula-
26 tions the Secretary prescribes.

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

29 (3)(A) An exemption under this subsection applies to an air carrier provid-
30 ing air transportation between 2 places in Alaska, or between Alaska and
31 Canada, only if the carrier is authorized by Alaska to provide the transpor-
32 tation.

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

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

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

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

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

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

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

19 (D) granting the exemption will not result in an unreasonable advan-
 20 tage to any party in a labor dispute where the inability to accommodate
 21 traffic in a market is a result of the dispute.

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

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

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

28 (C) review the exemption at least every 30 days to ensure that the un-
 29 usual circumstances that established the need for the exemption still exist.

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

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

37 **§ 40110. General procurement authority**

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

40 (1) acquire, to the extent that amounts are available for obligation,
 41 services or an interest in property, including an interest in airspace im-

1 mediately adjacent to and needed for airports and other air navigation
2 facilities owned by the United States Government and operated by the
3 Administrator;

4 (2) dispose of an interest in property for adequate compensation; and

5 (3) construct and improve laboratories and other test facilities.

6 (b) *DUTIES AND POWERS.*—When carrying out subsection (a) of this sec-
7 tion, the Administrator of the Federal Aviation Administration—

8 (1) is the senior procurement executive referred to in section 16(3) of
9 the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) for ap-
10 proving the justification for using procedures other than competitive pro-
11 cedures, as required under section 303(f)(1)(B)(iii) of the Federal Prop-
12 erty and Administrative Services Act of 1949 (41 U.S.C.
13 253(f)(1)(B)(iii)); and

14 (2) may—

15 (A) lease an interest in property for not more than 20 years;

16 (B) consider the reasonable probable future use of the underlying
17 land in making an award for a condemnation of an interest in air-
18 space;

19 (C) construct, or acquire an interest in, a public building (as de-
20 fined in section 13 of the Public Buildings Act of 1959 (40 U.S.C.
21 612)) only under a delegation of authority from the Administrator
22 of General Services;

23 (D) use procedures other than competitive procedures, as provided
24 under section 303(c) of the Federal Property and Administrative
25 Services Act of 1949 (41 U.S.C. 253(c));

26 (E) use procedures other than competitive procedures only when
27 the property or services needed by the Administrator of the Federal
28 Aviation Administration are available from only one responsible
29 source or only from a limited number of responsible sources and no
30 other type of property or services will satisfy the needs of the Ad-
31 ministrator; and

32 (F) dispose of property under subsection (a)(2) of this section, ex-
33 cept for airport and airway property and technical equipment used
34 for the special purposes of the Administration, only under title II
35 of the Federal Property and Administrative Services Act of 1949
36 (40 U.S.C. 481 et seq.).

37 **§40111. Multiyear procurement contracts for services and re-**
38 **lated items**

39 (a) *GENERAL AUTHORITY.*—Notwithstanding section 1341(a)(1)(B) of title
40 31, the Administrator of the Federal Aviation Administration may make a
41 contract of not more than 5 years for the following types of services and items

1 of supply related to those services for which amounts otherwise would be
2 available for obligation only in the fiscal year for which appropriated:

3 (1) operation, maintenance, and support of facilities and installations.

4 (2) operation, maintenance, and modification of aircraft, vehicles, and
5 other highly complex equipment.

6 (3) specialized training requiring high quality instructor skills, in-
7 cluding training of pilots and aircrew members and foreign language
8 training.

9 (4) base services, including ground maintenance, aircraft refueling,
10 bus transportation, and refuse collection and disposal.

11 (b) *REQUIRED FINDINGS.*—The Administrator may make a contract under
12 this section only if the Administrator finds that—

13 (1) there will be a continuing requirement for the service consistent
14 with current plans for the proposed contract period;

15 (2) providing the service will require a substantial initial investment
16 in plant or equipment, or will incur a substantial contingent liability
17 for assembling, training, or transporting a specialized workforce; and

18 (3) the contract will promote the best interests of the United States
19 by encouraging effective competition and promoting economies in oper-
20 ation.

21 (c) *CONSIDERATIONS.*—When making a contract under this section, the Ad-
22 ministrator shall be guided by the following:

23 (1) The part of the cost of a plant or equipment amortized as a cost
24 of contract performance may not be more than the ratio between the pe-
25 riod of contract performance and the anticipated useful commercial life
26 (instead of physical life) of the plant or equipment, considering the loca-
27 tion and specialized nature of the plant or equipment, obsolescence, and
28 other similar factors.

29 (2) The Administrator shall consider the desirability of—

30 (A) obtaining an option to renew the contract for a reasonable
31 period of not more than 3 years, at a price that does not include
32 charges for nonrecurring costs already amortized; and

33 (B) reserving in the Administrator the right, on payment of the
34 unamortized part of the cost of the plant or equipment, to take title
35 to the plant or equipment under appropriate circumstances.

36 (d) *ENDING CONTRACTS.*—A contract made under this section shall be
37 ended if amounts are not made available to continue the contract into a sub-
38 sequent fiscal year. The cost of ending the contract may be paid from—

39 (1) an appropriation originally available for carrying out the con-
40 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 title
6 31 and to the extent that amounts otherwise are available for obligation, the
7 Administrator of the Federal Aviation Administration may make a contract
8 of more than one but not more than 5 fiscal years to purchase property, ex-
9 cept a contract to construct, alter, or make a major repair or improvement
10 to real property or a contract to purchase property to which section 111 of
11 the Federal Property and Administrative Services Act of 1949 (40 U.S.C.
12 759) applies.

13 (b) *REQUIRED FINDINGS.*—The Administrator may make a contract under
14 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 to
18 remain substantially unchanged during the proposed contract period in
19 terms of production rate, procurement rate, and total quantities;

20 (3) there is a reasonable expectation that throughout the proposed con-
21 tract period the Administrator will request appropriations for the con-
22 tract 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 from
26 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 this
29 section in a way that will allow the most efficient use of those contracts. The
30 regulations may provide for a cancellation provision in the contract to the
31 extent the provision is necessary and in the best interest of the United States.
32 The provision may include consideration of recurring and nonrecurring costs
33 of the contractor associated with producing the item to be delivered under the
34 contract. The regulations shall provide that, to the extent practicable—

35 (1) to broaden the aviation industrial base—

36 (A) a contract under this section shall be used to seek, retain, and
37 promote the use under that contract of subcontractors, vendors, or
38 suppliers; and

39 (B) on accrual of a payment or other benefit accruing on a con-
40 tract under this section to a subcontractor, vendor, or supplier par-

1 *ticipating in the contract, the payment or benefit shall be delivered*
 2 *in the most expeditious way practicable; and*

3 *(2) this section and regulations prescribed under this section may not*
 4 *be carried out in a way that precludes or curtails the existing ability*
 5 *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 national*
 13 *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 CEILING.—(1)*
 21 *If a contract under this section provides that performance is subject to an*
 22 *appropriation being made, it also may provide for a cancellation payment*
 23 *to be made to the contractor if the appropriation is not made.*

24 *(2) Before awarding a contract under this section containing a cancellation*
 25 *ceiling of more than \$100,000,000, the Administrator shall give written notice*
 26 *of the proposed contract and cancellation ceiling to the Committee on Com-*
 27 *merce, Science, and Transportation of the Senate and the Committee on Pub-*
 28 *lic Works and Transportation of the House of Representatives. The contract*
 29 *may not be awarded until the end of the 30-day period beginning on the date*
 30 *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 sub-
8 section does not prohibit or regulate the transportation of a firearm (as de-
9 fined 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 of
12 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 fuel
17 and oil, and to the design, material, workmanship, construction, performance,
18 maintenance, and operation of aircraft, aircraft engines, propellers, appli-
19 ances, and air navigation facilities. Each department, agency, and instru-
20 mentality may conduct scientific and technical research, investigations, and
21 tests necessary to assist the Secretary or Administrator of the Federal Avia-
22 tion Administration in carrying out this part. This part does not authorize
23 duplicating laboratory research activities of a department, agency, or instru-
24 mentality.

25 (d) INDEMNIFICATION.—The Administrator of the Federal Aviation Admin-
26 istration may indemnify an officer or employee of the Administration against
27 a claim or judgment arising out of an act that the Administrator decides was
28 committed within the scope of the official duties of the officer or employee.

29 **§40114. Reports and records**

30 (a) WRITTEN REPORTS.—(1) Except as provided in this part, the Secretary
31 of Transportation (or the Administrator of the Federal Aviation Administra-
32 tion with respect to aviation safety duties and powers designated to be carried
33 out by the Administrator) shall make a written report of each proceeding and
34 investigation under this part in which a formal hearing was held and shall
35 provide a copy to each party to the proceeding or investigation. The report
36 shall include the decision, conclusions, order, and requirements of the Sec-
37 retary or Administrator as appropriate.

38 (2) The Secretary (or the Administrator with respect to aviation safety du-
39 ties and powers designated to be carried out by the Administrator) shall have
40 all reports, orders, decisions, and regulations the Secretary or Administrator,
41 as appropriate, issues or prescribes published in the form and way best adapt-

1 ed for public use. A publication of the Secretary or Administrator is com-
2 petent evidence of its contents.

3 (b) *PUBLIC RECORDS.*—Except as provided in subpart II of this part, cop-
4 ies of tariffs and arrangements filed with the Secretary under subpart II, and
5 the statistics, tables, and figures contained in reports made to the Secretary
6 under subpart II, are public records. The Secretary is the custodian of those
7 records. A public record, or a copy or extract of it, certified by the Secretary
8 under the seal of the Department of Transportation is competent evidence in
9 an investigation by the Secretary and in a judicial proceeding.

10 **§ 40115. Withholding information**

11 (a) *OBJECTIONS TO DISCLOSURE.*—(1) A person may object to the public
12 disclosure of information—

13 (A) in a record filed under this part; or

14 (B) obtained under this part by the Secretary of Transportation or
15 State or the United States Postal Service.

16 (2) An objection must be in writing and must state the reasons for the ob-
17 jection. The Secretary of Transportation or State or the Postal Service shall
18 order the information withheld from public disclosure when the appropriate
19 Secretary or the Postal Service decides that disclosure of the information
20 would—

21 (A) prejudice the United States Government in preparing and present-
22 ing its position in international negotiations; or

23 (B) have an adverse effect on the competitive position of an air carrier
24 in foreign air transportation.

25 (b) *WITHHOLDING INFORMATION FROM CONGRESS.*—This section does not
26 authorize information to be withheld from a committee of Congress authorized
27 to have the information.

28 **§ 40116. State taxation**

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

32 (b) *PROHIBITIONS.*—Except as provided in subsection (c) of this section
33 and section 40117 of this title, a State or political subdivision of a State may
34 not levy or collect a tax, fee, head charge, or other charge on—

35 (1) an individual traveling in air commerce;

36 (2) the transportation of an individual traveling in air commerce;

37 (3) the sale of air transportation; or

38 (4) the gross receipts from that air commerce or transportation.

39 (c) *AIRCRAFT TAKING OFF OR LANDING IN STATE.*—A State or political
40 subdivision of a State may levy or collect a tax on or related to a flight of
41 a commercial aircraft or an activity or service on the aircraft only if the air-

1 *craft takes off or lands in the State or political subdivision as part of the*
 2 *flight.*

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

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

8 *(B) “assessment” means valuation for a property tax levied by a tax-*
 9 *ing district.*

10 *(C) “assessment jurisdiction” means a geographical area in a State*
 11 *used in determining the assessed value of property for ad valorem tax-*
 12 *ation.*

13 *(D) “commercial and industrial property” means property (except*
 14 *transportation property and land used primarily for agriculture or tim-*
 15 *ber growing) devoted to a commercial or industrial use and subject to*
 16 *a property tax levy.*

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

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

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

27 *(iii) levy or collect an ad valorem property tax on air carrier trans-*
 28 *portation property at a tax rate greater than the tax rate applicable to*
 29 *commercial and industrial property in the same assessment jurisdiction.*

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

32 *(e) OTHER ALLOWABLE TAXES AND CHARGES.—Except as provided in sub-*
 33 *section (d) of this section, a State or political subdivision of a State may levy*
 34 *or collect—*

35 *(1) taxes (except those taxes enumerated in subsection (b) of this sec-*
 36 *tion), including property taxes, net income taxes, franchise taxes, and*
 37 *sales or use taxes on the sale of goods or services; and*

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

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

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

2 (B) “State” means a State of the United States, the District of Colum-
3 bia, and a territory or possession of the United States.

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

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

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

14 (B) the State or political subdivision of the State in which the em-
15 ployee earns more than 50 percent of the pay received by the employee
16 from the carrier.

17 **§ 40117. Passenger facility fees**

18 (a) DEFINITIONS.—In this section—

19 (1) “airport”, “commercial service airport”, and “public agency” have
20 the same meanings given those terms in section 47102 of this title.

21 (2) “eligible agency” means a public agency that controls a commer-
22 cial service airport.

23 (3) “eligible airport-related project” means a project—

24 (A) for airport development or airport planning under subchapter
25 I of chapter 471 of this title;

26 (B) for terminal development described in section 47110(d) of this
27 title;

28 (C) for airport noise capability planning under section 47505 of
29 this title;

30 (D) to carry out noise compatibility measures eligible for assist-
31 ance under section 47504 of this title, whether or not a program for
32 those measures has been approved under section 47504; and

33 (E) for constructing gates and related areas at which passengers
34 board or exit aircraft.

35 (4) “passenger facility fee” means a fee imposed under this section.

36 (5) “passenger facility revenue” means revenue derived from a pas-
37 senger facility fee.

38 (b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may au-
39 thorize under this section an eligible agency to impose a passenger facility
40 fee of \$1, \$2, or \$3 on each paying passenger of an air carrier or foreign
41 air carrier boarding an aircraft at an airport the agency controls to finance

1 *an eligible airport-related project, including making payments for debt service*
2 *on indebtedness incurred to carry out the project, to be carried out in connec-*
3 *tion with the airport or any other airport the agency controls.*

4 *(2) A State, political subdivision of a State, or authority of a State or po-*
5 *litical subdivision that is not the eligible agency may not regulate or prohibit*
6 *the imposition or collection of a passenger facility fee or the use of the pas-*
7 *senger facility revenue.*

8 *(3) A passenger facility fee may be imposed on a passenger of an air car-*
9 *rier or foreign air carrier originating or connecting at the commercial service*
10 *airport that the agency controls.*

11 *(c) APPLICATIONS.—(1) An eligible agency must submit to the Secretary*
12 *an application for authority to impose a passenger facility fee. The applica-*
13 *tion shall contain information and be in the form that the Secretary may*
14 *require by regulation.*

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

20 *(A) The agency must provide written notice of individual projects*
21 *being considered for financing by a passenger facility fee and the date*
22 *and location of a meeting to present the projects to air carriers and for-*
23 *eign air carriers operating at the airport.*

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

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

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

40 *(3) After receiving an application, the Secretary shall provide notice and*
41 *an opportunity to air carriers, foreign air carriers, and other interested per-*

1 sons to comment on the application. The Secretary shall make a final decision
2 on the application not later than 120 days after receiving it.

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

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

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

12 (A) preserve or enhance capacity, safety, or security of the na-
13 tional air transportation system;

14 (B) reduce noise resulting from an airport that is part of the sys-
15 tem; or

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

18 (e) *LIMITATIONS ON IMPOSING FEES.*—(1) An eligible agency may impose
19 a passenger facility fee only—

20 (A) if the Secretary approves an application that the agency has sub-
21 mitted under subsection (c) of this section; and

22 (B) subject to terms the Secretary may prescribe to carry out the objec-
23 tives of this section.

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

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

27 (B) for the boarding to an eligible place under subchapter II of chap-
28 ter 417 of this title for which essential air service compensation is paid
29 under subchapter II; and

30 (C) for a project the Secretary does not approve under this section be-
31 fore October 1, 1993, if, during the fiscal year ending September 30,
32 1993, the amount available for obligation under subchapter II of chapter
33 417 of this title is less than \$38,600,000, except that this clause—

34 (i) does not apply if the amount available for obligation under
35 subchapter II of chapter 417 of this title is less than \$38,600,000
36 because of sequestration or other general appropriations reductions
37 applied proportionately to appropriations accounts throughout an
38 appropriation law; and

39 (ii) does not affect the authority of the Secretary to approve the
40 imposition of a fee or the use of revenues, derived from a fee im-
41 posed under an approval made under this section, by a public agen-

1 *cy that has received an approval to impose a fee under this section*
2 *before September 30, 1993, regardless of whether the fee is being im-*
3 *posed on September 30, 1993.*

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

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

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

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

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

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

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

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

38 *(3) The Secretary may set off amounts necessary to ensure compliance with*
39 *this section against amounts otherwise payable to an eligible agency under*
40 *subchapter I of chapter 471 of this title if the Secretary decides a passenger*

1 facility fee is excessive or that passenger facility revenue is not being used
2 as provided in this section.

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

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

7 (2) shall—

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

11 (B) establish procedures for handling and remitting money col-
12 lected;

13 (C) ensure that the money, less a uniform amount the Secretary
14 determines reflects the average necessary and reasonable expenses
15 (net of interest accruing to the carrier and agent after collection and
16 before remittance) incurred in collecting and handling the fee, is
17 paid promptly to the eligible agency for which they are collected;
18 and

19 (D) require that the amount collected for any air transportation
20 be noted on the ticket for that air transportation.

21 **§40118. Government-financed air transportation**

22 (a) *TRANSPORTATION BY AIR CARRIERS HOLDING CERTIFICATES.*—A de-
23 partment, agency, or instrumentality of the United States Government shall
24 take necessary steps to ensure that the transportation of passengers and prop-
25 erty by air is provided by an air carrier holding a certificate under section
26 41102 of this title if—

27 (1) the department, agency, or instrumentality—

28 (A) obtains the transportation for itself or in carrying out an ar-
29 rangement under which payment is made by the Government or
30 payment is made from amounts provided for the use of the Govern-
31 ment; or

32 (B) provides the transportation to or for a foreign country or
33 international or other organization without reimbursement;

34 (2) the transportation is authorized by the certificate or by regulation
35 or exemption of the Secretary of Transportation; and

36 (3) the air carrier is—

37 (A) available, if the transportation is between a place in the
38 United States and a place outside the United States; or

39 (B) reasonably available, if the transportation is between 2 places
40 outside the United States.

1 (b) *TRANSPORTATION BY FOREIGN AIR CARRIERS.*—This section does not
 2 preclude the transportation of passengers and property by a foreign air car-
 3 rier if the transportation is provided under a bilateral or multilateral air
 4 transportation agreement to which the Government and the government of a
 5 foreign country are parties if the agreement—

6 (1) is consistent with the goals for international aviation policy of sec-
 7 tion 40101(e) of this title; and

8 (2) provides for the exchange of rights or benefits of similar mag-
 9 nitude.

10 (c) *PROOF.*—The Comptroller General shall allow the expenditure of an ap-
 11 propriation for transportation in violation of this section only when satisfac-
 12 tory proof is presented showing the necessity for the transportation.

13 (d) *TRANSPORTATION BY FOREIGN AIR CARRIERS.*—Notwithstanding sub-
 14 sections (a) and (c) of this section, any amount appropriated to the Secretary
 15 of State, the Director of the United States Information Agency, the Director
 16 of the United States International Development Cooperation Agency, or the
 17 Director of the Arms Control and Disarmament Agency may be used to pay
 18 for the transportation of an officer or employee of the Department of State
 19 or one of those agencies, a dependent of the officer or employee, and accom-
 20 panying baggage, by a foreign air carrier when the transportation is between
 21 2 places outside the United States.

22 (e) *RELATIONSHIP TO OTHER LAWS.*—This section does not affect the ap-
 23 plication of the antidiscrimination provisions of this part.

24 **§40119. Security and research and development activities**

25 (a) *GENERAL REQUIREMENTS.*—The Administrator of the Federal Aviation
 26 Administration shall conduct research (including behavioral research) and de-
 27 velopment activities appropriate to develop, modify, test, and evaluate a sys-
 28 tem, procedure, facility, or device to protect passengers and property against
 29 acts of criminal violence and aircraft piracy.

30 (b) *DISCLOSURE.*—(1) Notwithstanding section 552 of title 5, the Adminis-
 31 trator shall prescribe regulations prohibiting disclosure of information ob-
 32 tained or developed in carrying out security or research and development ac-
 33 tivities under section 44501(a) or (c), 44502(a)(1) or (3), (b), or (c), 44504,
 34 44505, 44507, 44508, 44511, 44512, 44513, 44901, 44903(a), (b), (c), or (e),
 35 44905, 44912, 44935, 44936, or 44938(a) or (b) of this title if the Adminis-
 36 trator decides disclosing the information would—

37 (A) be an unwarranted invasion of personal privacy;

38 (B) reveal a trade secret or privileged or confidential commercial or
 39 financial information; or

40 (C) be detrimental to the safety of passengers in air transportation.

1 (2) Paragraph (1) of this subsection does not authorize information to be
2 withheld from a committee of Congress authorized to have the information.

3 (c) *TRANSFERS OF DUTIES AND POWERS PROHIBITED.*—Except as other-
4 wise provided by law, the Administrator may not transfer a duty or power
5 under this section to another department, agency, or instrumentality of the
6 United States Government.

7 **§ 40120. Relationship to other laws**

8 (a) *NONAPPLICATION.*—Except as provided in the International Naviga-
9 tional Rules Act of 1977 (33 U.S.C. 1601 et seq.), the navigation and ship-
10 ping laws of the United States and the rules for the prevention of collisions
11 do not apply to aircraft or to the navigation of vessels related to those air-
12 craft.

13 (b) *EXTENDING APPLICATION OUTSIDE UNITED STATES.*—The President
14 may extend (in the way and for periods the President considers necessary)
15 the application of this part to outside the United States when—

16 (1) an international arrangement gives the United States Government
17 authority to make the extension; and

18 (2) the President decides the extension is in the national interest.

19 (c) *ADDITIONAL REMEDIES.*—A remedy under this part is in addition to
20 any other remedies provided by law.

21 *SUBPART II—ECONOMIC REGULATION*

22 **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 certi-
cates.

41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates.

41112. Liability insurance and financial responsibility.

23 **§ 41101. Requirement for a certificate**

24 (a) *GENERAL.*—Except as provided in this chapter or another law—

25 (1) an air carrier may provide air transportation only if the air car-
26 rier holds a certificate issued under this chapter authorizing the air
27 transportation;

28 (2) a charter air carrier may provide charter air transportation only
29 if the charter air carrier holds a certificate issued under this chapter au-
30 thorizing the charter air transportation; and

1 (3) an air carrier may provide all-cargo air transportation only if the
2 air carrier holds a certificate issued under this chapter authorizing the
3 all-cargo air transportation.

4 (b) *THROUGH SERVICE AND JOINT TRANSPORTATION.*—A citizen of the
5 United States providing transportation in a State of passengers or property
6 as a common carrier for compensation with aircraft capable of carrying at
7 least 30 passengers, under authority granted by the appropriate State author-
8 ity—

9 (1) may provide transportation for passengers and property that in-
10 cludes through service by the citizen over its routes in the State and in
11 air transportation by an air carrier or foreign air carrier; and

12 (2) subject to sections 41309 and 42111 of this title, may make an
13 agreement with an air carrier or foreign air carrier to provide the joint
14 transportation.

15 (c) *PROPRIETARY OR EXCLUSIVE RIGHT NOT CONFERRED.*—A certificate
16 issued under this chapter does not confer a proprietary or exclusive right to
17 use airspace, an airway of the United States, or an air navigation facility.

18 **§41102. General, temporary, and charter air transportation**
19 **certificates of air carriers**

20 (a) *ISSUANCE.*—The Secretary of Transportation may issue a certificate of
21 public convenience and necessity to a citizen of the United States authorizing
22 the citizen to provide any part of the following air transportation the citizen
23 has applied for under section 41108 of this title:

24 (1) air transportation as an air carrier.

25 (2) temporary air transportation as an air carrier for a limited pe-
26 riod.

27 (3) charter air transportation as a charter air carrier.

28 (b) *FINDINGS REQUIRED FOR ISSUANCE.*—(1) Before issuing a certificate
29 under subsection (a) of this section, the Secretary must find that the citizen
30 is fit, willing, and able to provide the transportation to be authorized by the
31 certificate and to comply with this part and regulations of the Secretary.

32 (2) In addition to the findings under paragraph (1) of this subsection, the
33 Secretary, before issuing a certificate under subsection (a) of this section for
34 foreign air transportation, must find that the transportation is consistent
35 with the public convenience and necessity.

36 (c) *TEMPORARY CERTIFICATES.*—The Secretary may issue a certificate
37 under subsection (a) of this section for interstate air transportation (except
38 the transportation of passengers) or foreign air transportation for a tem-
39 porary period of time (whether the application is for permanent or temporary
40 authority) when the Secretary decides that a test period is desirable—

1 (1) to decide if the projected services, efficiencies, methods, and prices
2 and the projected results will materialize and remain for a sustained pe-
3 riod of time; or

4 (2) to evaluate the new transportation.

5 (d) *FOREIGN AIR TRANSPORTATION.*—The Secretary shall submit each de-
6 cision authorizing the provision of foreign air transportation to the President
7 under section 41307 of this title.

8 **§41103. All-cargo air transportation certificates of air car-**
9 **riers**

10 (a) *APPLICATIONS.*—A citizen of the United States may apply to the Sec-
11 retary of Transportation for a certificate authorizing the citizen to provide
12 all-property air transportation. The application must contain information
13 and be in the form the Secretary by regulation requires.

14 (b) *ISSUANCE.*—Not later than 180 days after an application for a certifi-
15 cate is filed under this section, the Secretary shall issue the certificate to a
16 citizen of the United States authorizing the citizen, as an air carrier, to pro-
17 vide any part of the all-cargo air transportation applied for unless the Sec-
18 retary finds that the citizen is not fit, willing, and able to provide the all-
19 cargo air transportation to be authorized by the certificate and to comply
20 with regulations of the Secretary.

21 (c) *TERMS.*—The Secretary may impose terms the Secretary considers nec-
22 essary when issuing a certificate under this section. However, the Secretary
23 may not impose terms that restrict the places served or prices charged by the
24 holder of the certificate.

25 (d) *EXEMPTIONS AND STATUS.*—A citizen issued a certificate under this
26 section—

27 (1) is exempt in providing the transportation under the certificate
28 from the requirements of—

29 (A) section 41101(a)(1) of this title and regulations or procedures
30 prescribed under section 41101(a)(1); and

31 (B) other provisions of this part and regulations or procedures
32 prescribed under those provisions when the Secretary finds under
33 regulations of the Secretary that the exemption is appropriate; and

34 (2) is an air carrier under this part except to the extent the carrier
35 is exempt under this section from a requirement of this part.

36 **§41104. Additional limitations and requirements of charter**
37 **air carriers**

38 (a) *RESTRICTIONS.*—The Secretary of Transportation may prescribe a reg-
39 ulation or issue an order restricting the marketability, flexibility, accessibil-
40 ity, or variety of charter air transportation provided under a certificate is-
41 sued under section 41102 of this title only to the extent required by the public

1 *interest. A regulation prescribed or order issued under this subsection may*
2 *not be more restrictive than a regulation related to charter air transportation*
3 *that was in effect on October 1, 1978.*

4 *(b) ALASKA.—An air carrier holding a certificate issued under section*
5 *41102 of this title may provide charter air transportation between places in*
6 *Alaska only to the extent the Secretary decides the transportation is required*
7 *by public convenience and necessity. The Secretary may make that decision*
8 *when issuing, amending, or modifying the certificate. This subsection does not*
9 *apply to a certificate issued under section 41102 to a citizen of the United*
10 *States who, before July 1, 1977—*

11 *(1) maintained a principal place of business in Alaska; and*

12 *(2) conducted air transport operations between places in Alaska with*
13 *aircraft with a certificate for gross takeoff weight of more than 40,000*
14 *pounds.*

15 *(c) SUSPENSIONS.—(1) The Secretary shall suspend for not more than 30*
16 *days any part of the certificate of a charter air carrier if the Secretary de-*
17 *cides that the failure of the carrier to comply with the requirements described*
18 *in sections 41110(e) and 41112 of this title, or a regulation or order of the*
19 *Secretary under section 41110(e) or 41112, requires immediate suspension in*
20 *the interest of the rights, welfare, or safety of the public. The Secretary may*
21 *act under this paragraph without notice or a hearing.*

22 *(2) The Secretary shall begin immediately a hearing to decide if the certifi-*
23 *cate referred to in paragraph (1) of this subsection should be amended, modi-*
24 *fied, suspended, or revoked. Until the hearing is completed, the Secretary may*
25 *suspend the certificate for additional periods totaling not more than 60 days.*
26 *If the Secretary decides that the carrier is complying with the requirements*
27 *described in sections 41110(e) and 41112 of this title and regulations and or-*
28 *ders under sections 41110(e) and 41112, the Secretary immediately may end*
29 *the suspension period and proceeding begun under this subsection. However,*
30 *the Secretary is not prevented from imposing a civil penalty on the carrier*
31 *for violating the requirements described in section 41110(e) or 41112 or a reg-*
32 *ulation or order under section 41110(e) or 41112.*

33 **§41105. Transfers of certificates**

34 *(a) GENERAL.—A certificate issued under section 41102 of this title may*
35 *be transferred only when the Secretary of Transportation approves the trans-*
36 *fer as being consistent with the public interest.*

37 *(b) CERTIFICATION TO CONGRESS.—When a certificate is transferred, the*
38 *Secretary shall certify to the Committee on Commerce, Science, and Transpor-*
39 *tation of the Senate and the Committee on Public Works and Transportation*
40 *of the House of Representatives that the transfer is consistent with the public*

1 *interest. The Secretary shall include with the certification a report analyzing*
2 *the effects of the transfer on—*

3 *(1) the viability of each carrier involved in the transfer;*

4 *(2) competition in the domestic airline industry; and*

5 *(3) the trade position of the United States in the international air*
6 *transportation market.*

7 **§41106. Airlift service**

8 *(a) GENERAL.—(1) Except as provided in subsection (b) of this section, the*
9 *transportation of passengers or property by transport category aircraft in*
10 *interstate air transportation obtained by the Secretary of Defense or the Sec-*
11 *retary of a military department through a contract of at least 31 days for*
12 *airlift service in the United States may be provided only by an air carrier*
13 *that—*

14 *(A) has aircraft in the civil reserve air fleet or offers to place the air-*
15 *craft in that fleet; and*

16 *(B) holds a certificate issued under section 41102 of this title.*

17 *(2) The Secretary of Transportation shall act as expeditiously as possible*
18 *on an application for a certificate under section 41102 of this title to provide*
19 *airlift service.*

20 *(b) EXCEPTION.—When the Secretary of Defense decides that no air carrier*
21 *holding a certificate under section 41102 is capable of providing, and willing*
22 *to provide, the airlift service, the Secretary of Defense may make a contract*
23 *to provide the service with an air carrier not having a certificate.*

24 **§41107. Transportation of mail**

25 *When the United States Postal Service finds that the needs of the Postal*
26 *Service require the transportation of mail by aircraft in foreign air transpor-*
27 *tation or between places in Alaska, in addition to the transportation of mail*
28 *authorized under certificates in effect, the Postal Service shall certify that*
29 *finding to the Secretary of Transportation with a statement about the addi-*
30 *tional transportation and facilities necessary to provide the additional trans-*
31 *portation. A copy of each certification and statement shall be posted for at*
32 *least 20 days in the office of the Secretary. After notice and an opportunity*
33 *for a hearing, the Secretary shall issue a new certificate under section 41102*
34 *of this title, or amend or modify an existing certificate under section*
35 *41110(a)(2)(A) of this title, to provide the additional transportation and fa-*
36 *ilities if the Secretary finds the additional transportation is required by the*
37 *public convenience and necessity.*

38 **§41108. Applications for certificates**

39 *(a) FORM, CONTENTS, AND PROOF OF SERVICE.—To be issued a certificate*
40 *of public convenience and necessity under section 41102 of this title, a citizen*

1 of the United States must apply to the Secretary of Transportation. The ap-
2 plication must—

3 (1) be in the form and contain information required by regulations
4 of the Secretary; and

5 (2) be accompanied by proof of service on interested persons as re-
6 quired by regulations of the Secretary and on each community that may
7 be affected by the issuance of the certificate.

8 (b) NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) When an
9 application is filed, the Secretary shall post a notice of the application in
10 the office of the Secretary and give notice of the application to other persons
11 as required by regulations of the Secretary. An interested person may file a
12 response with the Secretary opposing or supporting the issuance of the certifi-
13 cate. Not later than 90 days after the application is filed, the Secretary
14 shall—

15 (A) provide an opportunity for a public hearing on the application;

16 (B) begin the procedure under section 41111 of this title; or

17 (C) dismiss the application on its merits.

18 (2) An order of dismissal issued by the Secretary under paragraph (1)(C)
19 of this subsection is a final order and may be reviewed judicially under sec-
20 tion 46110 of this title.

21 (3) If the Secretary provides an opportunity for a hearing under para-
22 graph (1)(A) of this subsection, an initial or recommended decision shall be
23 issued not later than 150 days after the date the Secretary provides the oppor-
24 tunity. The Secretary shall issue a final order on the application not later
25 than 90 days after the decision is issued. However, if the Secretary does not
26 act within the 90-day period, the initial or recommended decision on an ap-
27 plication to provide—

28 (A) interstate air transportation is a final order and may be reviewed
29 judicially under section 46110 of this title; and

30 (B) foreign air transportation shall be submitted to the President
31 under section 41307 of this title.

32 (4) If the Secretary acts under paragraph (1)(B) of this subsection, the Sec-
33 retary shall issue a final order on the application not later than 180 days
34 after beginning the procedure on the application.

35 (5) If a citizen applying for a certificate does not meet the procedural
36 schedule adopted by the Secretary in a proceeding, the Secretary may extend
37 the period for acting under paragraphs (3) and (4) of this subsection by a
38 period equal to the period of delay caused by the citizen. In addition to an
39 extension under this paragraph, an initial or recommended decision under
40 paragraph (3) of this subsection may be delayed for not more than 30 days
41 in extraordinary circumstances.

1 (c) *PROOF REQUIREMENTS.*—(1) A citizen applying for a certificate must
2 prove that the citizen is fit, willing, and able to provide the transportation
3 referred to in section 41102 of this title and to comply with this part.

4 (2) A person opposing a citizen applying for a certificate must prove that
5 the transportation referred to in section 41102(b)(2) of this title is not consist-
6 ent with the public convenience and necessity. The transportation is deemed
7 to be consistent with the public convenience and necessity unless the Secretary
8 finds, by a preponderance of the evidence, that the transportation is not con-
9 sistent with the public convenience and necessity.

10 **§41109. Terms of certificates**

11 (a) *GENERAL.*—(1) Each certificate issued under section 41102 of this title
12 shall specify the type of transportation to be provided.

13 (2) *The Secretary of Transportation—*

14 (A) may prescribe terms for providing air transportation under the
15 certificate that the Secretary finds may be required in the public interest;
16 but

17 (B) may not prescribe a term preventing an air carrier from adding
18 or changing schedules, equipment, accommodations, and facilities for
19 providing the authorized transportation to satisfy business development
20 and public demand.

21 (3) A certificate issued under section 41102 of this title to provide foreign
22 air transportation shall specify the places between which the air carrier is
23 authorized to provide the transportation only to the extent the Secretary con-
24 siders practicable and otherwise only shall specify each general route to be
25 followed. The Secretary shall authorize an air carrier holding a certificate to
26 provide foreign air transportation to handle and transport mail of countries
27 other than the United States.

28 (4) A certificate issued under section 41102 of this title to provide foreign
29 charter air transportation shall specify the places between which the air car-
30 rier is authorized to provide the transportation only to the extent the Sec-
31 retary considers practicable and otherwise only shall specify each geographical
32 area in which, or between which, the transportation may be provided.

33 (b) *MODIFYING TERMS.*—(1) An air carrier may file with the Secretary an
34 application to modify any term of its certificate issued under section 41102
35 of this title to provide interstate or foreign air transportation. Not later than
36 60 days after an application is filed, the Secretary shall—

37 (A) provide the carrier an opportunity for an oral evidentiary hearing
38 on the record; or

39 (B) begin to consider the application under section 41111 of this title.

40 (2) The Secretary shall modify each term the Secretary finds to be incon-
41 sistent with the criteria under section 40101(a) and (b) of this title.

1 (3) An application under this subsection may not be dismissed under sec-
2 tion 41108(b)(1)(C) of this title.

3 **§41110. Effective periods and amendments, modifications,**
4 **suspensions, and revocations of certificates**

5 (a) GENERAL.—(1) Each certificate issued under section 41102 of this title
6 is effective from the date specified in it and remains in effect until—

7 (A) the Secretary of Transportation suspends or revokes the certificate
8 under this section;

9 (B) the end of the period the Secretary specifies for an air carrier hav-
10 ing a certificate of temporary authority issued under section 41102(a)(2)
11 of this title; or

12 (C) the Secretary certifies that transportation is no longer being pro-
13 vided under a certificate.

14 (2) On application or on the initiative of the Secretary and after notice
15 and an opportunity for a hearing or, except as provided in paragraph (4)
16 of this subsection, under section 41111 of this title, the Secretary may—

17 (A) amend, modify, or suspend any part of a certificate if the Sec-
18 retary finds the public convenience and necessity require amendment,
19 modification, or suspension; and

20 (B) revoke any part of a certificate if the Secretary finds that the
21 holder of the certificate intentionally does not comply with this chapter,
22 sections 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511,
23 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter
24 419, subchapter II of chapter 421, and section 46301(b) of this title, a
25 regulation or order of the Secretary under any of those provisions, or a
26 term of its certificate.

27 (3) The Secretary may revoke a certificate under paragraph (2)(B) of this
28 subsection only if the holder of the certificate does not comply, within a rea-
29 sonable time the Secretary specifies, with an order to the holder requiring
30 compliance.

31 (4) A certificate to provide foreign air transportation may not be amended,
32 modified, suspended, or revoked under section 41111 of this title if the holder
33 of the certificate requests an oral evidentiary hearing or the Secretary finds,
34 under all the facts and circumstances, that the hearing is required in the pub-
35 lic interest.

36 (b) ALL-CARGO AIR TRANSPORTATION.—The Secretary may order that a
37 certificate issued under section 41103 of this title authorizing all-cargo air
38 transportation is ineffective if, after notice and an opportunity for a hearing,
39 the Secretary finds that the transportation is not provided to the minimum
40 extent specified by the Secretary.

1 (c) *FOREIGN AIR TRANSPORTATION.*—(1) *Notwithstanding subsection*
2 *(a)(2)–(4) of this section, after notice and a reasonable opportunity for the*
3 *affected air carrier to present its views, but without a hearing, the Secretary*
4 *may suspend or revoke the authority of an air carrier to provide foreign air*
5 *transportation to a place under a certificate issued under section 41102 of*
6 *this title if the carrier—*

7 (A) *notifies the Secretary, under section 41734(a) of this title or a reg-*
8 *ulation of the Secretary, that it intends to suspend all transportation to*
9 *that place; or*

10 (B) *does not provide regularly scheduled transportation to the place*
11 *for 90 days immediately before the date the Secretary notifies the carrier*
12 *of the action the Secretary proposes.*

13 (2) *Paragraph (1)(B) of this subsection does not apply to a place provided*
14 *seasonal transportation comparable to the transportation provided during the*
15 *prior year.*

16 (d) *TEMPORARY CERTIFICATES.*—*On application or on the initiative of the*
17 *Secretary, the Secretary may—*

18 (1) *review the performance of an air carrier issued a certificate under*
19 *section 41102(c) of this title on the basis that the air carrier will provide*
20 *innovative or low-priced air transportation under the certificate; and*

21 (2) *amend, modify, suspend, or revoke the certificate or authority*
22 *under subsection (a)(2) or (c) of this section if the air carrier has not*
23 *provided, or is not providing, the transportation.*

24 (e) *CONTINUING REQUIREMENTS.*—*After notice and an opportunity for a*
25 *hearing, the Secretary shall amend, modify, suspend, or revoke any part of*
26 *a certificate issued under section 41102 of this title if the Secretary finds that*
27 *the air carrier—*

28 (1) *is not fit, willing, and able to continue to provide the transpor-*
29 *tation authorized by the certificate and to comply with this part and*
30 *regulations of the Secretary; or*

31 (2) *does not file reports necessary for the Secretary to decide if the*
32 *carrier is complying with the requirements of clause (1) of this sub-*
33 *section.*

34 (f) *ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.*—*The Sec-*
35 *retary—*

36 (1) *in consultation with appropriate departments, agencies, and in-*
37 *strumentalities of the United States Government, shall reexamine imme-*
38 *diately the fitness of an air carrier that—*

39 (A) *violates the laws and regulations of the United States related*
40 *to the illegal importation of a controlled substance; or*

1 (B) does not adopt available measures to prevent the illegal im-
2 portation of a controlled substance into the United States on its air-
3 craft; and

4 (2) when appropriate, shall amend, modify, suspend, or revoke the cer-
5 tificate of the carrier issued under this chapter.

6 (g) *RESPONSES*.—An interested person may file a response with the Sec-
7 retary opposing or supporting the amendment, modification, suspension, or
8 revocation of a certificate under subsection (a) of this section.

9 **§41111. Simplified procedure to apply for, amend, modify,**
10 **suspend, and transfer certificates**

11 (a) *GENERAL REQUIREMENTS*.—(1) The Secretary of Transportation shall
12 prescribe regulations that simplify the procedure for—

13 (A) acting on an application for a certificate to provide air transpor-
14 tation under section 41102 of this title; and

15 (B) amending, modifying, suspending, or transferring any part of that
16 certificate under section 41105 or 41110(a) or (c) of this title.

17 (2) Regulations under this section shall provide for notice and an oppor-
18 tunity for each interested person to file appropriate written evidence and ar-
19 gument. An oral evidentiary hearing is not required to be provided under this
20 section.

21 (b) *WHEN SIMPLIFIED PROCEDURE USED*.—The Secretary may use the
22 simplified procedure to act on an application for a certificate to provide air
23 transportation under section 41102 of this title, or to amend, modify, sus-
24 pend, or transfer any part of that certificate under section 41105 or 41110(a)
25 or (c) of this title, when the Secretary decides the use of the procedure is in
26 the public interest.

27 (c) *CONTENTS*.—(1) To the extent the Secretary finds practicable, regula-
28 tions under this section shall include each standard the Secretary will apply
29 when—

30 (A) deciding whether to use the simplified procedure; and

31 (B) making a decision on an action in which the procedure is used.

32 (2) The regulations may provide that written evidence and argument may
33 be filed under section 41108(b) of this title as a part of a response opposing
34 or supporting the issuance of a certificate.

35 **§41112. Liability insurance and financial responsibility**

36 (a) *LIABILITY INSURANCE*.—The Secretary of Transportation may issue a
37 certificate to a citizen of the United States to provide air transportation as
38 an air carrier under section 41102 of this title only if the citizen complies
39 with regulations and orders of the Secretary governing the filing of an insur-
40 ance policy or self-insurance plan approved by the Secretary. The policy or
41 plan must be sufficient to pay, not more than the amount of the insurance,

1 for bodily injury to, or death of, an individual or for loss of, or damage to,
 2 property of others, resulting from the operation or maintenance of the aircraft
 3 under the certificate. A certificate does not remain in effect unless the carrier
 4 complies with this subsection.

5 (b) *FINANCIAL RESPONSIBILITY.*—To protect passengers and shippers using
 6 an aircraft operated by an air carrier issued a certificate under section 41102
 7 of this title, the Secretary may require the carrier to file a performance bond
 8 or equivalent security in the amount and on terms the Secretary prescribes.
 9 The bond or security must be sufficient to ensure the carrier adequately will
 10 pay the passengers and shippers when the transportation the carrier agrees
 11 to provide is not provided. The Secretary shall prescribe the amounts to be
 12 paid under this subsection.

13 **CHAPTER 413—FOREIGN AIR TRANSPORTATION**

Sec.

41301. Requirement for a permit.

41302. Permits of foreign air carriers.

41303. Transfers of permits.

41304. Effective periods and amendments, modifications, suspensions, and revocations of permits.

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.

14 **§41301. Requirement for a permit**

15 A foreign air carrier may provide foreign air transportation only if the
 16 foreign air carrier holds a permit issued under this chapter authorizing the
 17 foreign air transportation.

18 **§41302. Permits of foreign air carriers**

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

22 (1) the person is fit, willing, and able to provide the foreign air trans-
 23 portation to be authorized by the permit and to comply with this part
 24 and regulations of the Secretary; and

25 (2)(A) the person is qualified, and has been designated by the govern-
 26 ment of its country, to provide the foreign air transportation under an
 27 agreement with the United States Government; or

28 (B) the foreign air transportation to be provided under the permit will
 29 be in the public interest.

30 **§41303. Transfers of permits**

31 A permit issued under section 41302 of this title may be transferred only
 32 when the Secretary of Transportation approves the transfer because the trans-
 33 fer is in the public interest.

1 **§41304. Effective periods and amendments, modifications,**
 2 **suspensions, and revocations of permits**

3 (a) *GENERAL.*—The Secretary of Transportation may prescribe the period
 4 during which a permit issued under section 41302 of this title is in effect.
 5 After notice and an opportunity for a hearing, the Secretary may amend,
 6 modify, suspend, or revoke the permit if the Secretary finds that action to
 7 be in the public interest.

8 (b) *SUSPENSIONS AND RESTRICTIONS.*—Without a hearing, but subject to
 9 the approval of the President, the Secretary—

10 (1) may suspend summarily the permits of foreign air carriers of a
 11 foreign country, or amend, modify, or limit the operations of the foreign
 12 air carriers under the permits, when the Secretary finds—

13 (A) the action is in the public interest; and

14 (B) the government, an aeronautical authority, or a foreign air
 15 carrier of the foreign country, over the objection of the United States
 16 Government, has—

17 (i) limited or denied the operating rights of an air carrier;

18 or

19 (ii) engaged in unfair, discriminatory, or restrictive prac-
 20 tices that have a substantial adverse competitive impact on an
 21 air carrier related to air transportation to, from, through, or
 22 over the territory of the foreign country; and

23 (2) to make this subsection effective, may restrict operations between
 24 the United States and the foreign country by a foreign air carrier of a
 25 third country.

26 (c) *ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.*—The Sec-
 27 retary—

28 (1) in consultation with appropriate departments, agencies, and in-
 29 strumentalities of the Government, shall reexamine immediately the fit-
 30 ness of a foreign air carrier that—

31 (A) violates the laws and regulations of the United States related
 32 to the illegal importation of a controlled substance; or

33 (B) does not adopt available measures to prevent the illegal im-
 34 portation of a controlled substance into the United States on its air-
 35 craft; and

36 (2) when appropriate, shall amend, modify, suspend, or revoke the per-
 37 mit of the carrier issued under this chapter.

38 (d) *RESPONSES.*—An interested person may file a response with the Sec-
 39 retary opposing or supporting the amendment, modification, suspension, or
 40 revocation of a permit under subsection (a) of this section.

1 **§41305. Applications for permits**

2 (a) *FORM, CONTENTS, NOTICE, RESPONSE, AND ACTIONS ON APPLICA-*
 3 *TIONS.—(1) A person must apply in writing to the Secretary of Transpor-*
 4 *tation to be issued a permit under section 41302 of this title. The Secretary*
 5 *shall prescribe regulations to require that the application be—*

6 (A) *verified;*

7 (B) *in a certain form and contain certain information;*

8 (C) *served on interested persons; and*

9 (D) *accompanied by proof of service on those persons.*

10 (2) *When an application is filed, the Secretary shall post a notice of the*
 11 *application in the office of the Secretary and give notice of the application*
 12 *to other persons as required by regulations of the Secretary. An interested per-*
 13 *son may file a response with the Secretary opposing or supporting the issu-*
 14 *ance of the permit. The Secretary shall act on an application as expeditiously*
 15 *as possible.*

16 (b) *TERMS.—The Secretary may impose terms for providing foreign air*
 17 *transportation under the permit that the Secretary finds may be required in*
 18 *the public interest.*

19 **§41306. Simplified procedure to apply for, amend, modify,**
 20 **and suspend permits**

21 (a) *REGULATIONS.—The Secretary of Transportation shall prescribe regula-*
 22 *tions that simplify the procedure for—*

23 (1) *acting on an application for a permit to provide foreign air trans-*
 24 *portation under section 41302 of this title; and*

25 (2) *amending, modifying, or suspending any part of that permit*
 26 *under section 41304(a) or (b) of this title.*

27 (b) *NOTICE AND OPPORTUNITY TO RESPOND.—Regulations under this sec-*
 28 *tion shall provide for notice and an opportunity for each interested person*
 29 *to file appropriate written evidence and argument. An oral evidentiary hear-*
 30 *ing is not required to be provided under this section.*

31 **§41307. Presidential review of actions about foreign air**
 32 **transportation**

33 *The Secretary of Transportation shall submit to the President for review*
 34 *each decision of the Secretary to issue, deny, amend, modify, suspend, revoke,*
 35 *or transfer a certificate issued under section 41102 of this title authorizing*
 36 *an air carrier, or a permit issued under section 41302 of this title authoriz-*
 37 *ing a foreign air carrier, to provide foreign air transportation. The President*
 38 *may disapprove the decision of the Secretary only if the reason for dis-*
 39 *approval is based on foreign relations or national defense considerations that*
 40 *are under the jurisdiction of the President. The President may not disapprove*

1 a decision of the Secretary if the reason is economic or related to carrier selec-
2 tion. A decision of the Secretary—

3 (1) is void if the President disapproves the decision and publishes the
4 reasons (to the extent allowed by national security) for disapproval not
5 later than 60 days after it is submitted to the President; or

6 (2)(A) takes effect as a decision of the Secretary if the President does
7 not disapprove the decision not later than 60 days after the decision is
8 submitted to the President; and

9 (B) when effective, may be reviewed judicially under section 46110 of
10 this title.

11 **§ 41308. Exemption from the antitrust laws**

12 (a) DEFINITION.—In this section, “antitrust laws” has the same meaning
13 given that term in the first section of the Clayton Act (15 U.S.C. 12).

14 (b) EXEMPTION AUTHORIZED.—When the Secretary of Transportation de-
15 cides it is required by the public interest, the Secretary, as part of an order
16 under section 41309 or 42111 of this title, may exempt a person affected by
17 the order from the antitrust laws to the extent necessary to allow the person
18 to proceed with the transaction specifically approved by the order and with
19 any transaction necessarily contemplated by the order.

20 (c) EXEMPTION REQUIRED.—In an order under section 41309 of this title
21 approving an agreement, request, modification, or cancellation, the Secretary,
22 on the basis of the findings required under section 41309(b)(1), shall exempt
23 a person affected by the order from the antitrust laws to the extent necessary
24 to allow the person to proceed with the transaction specifically approved by
25 the order and with any transaction necessarily contemplated by the order.

26 **§ 41309. Cooperative agreements and requests**

27 (a) FILING.—An air carrier or foreign air carrier may file with the Sec-
28 retary of Transportation a true copy of or, if oral, a true and complete memo-
29 randum of, an agreement (except an agreement related to interstate air trans-
30 portation), or a request for authority to discuss cooperative arrangements (ex-
31 cept arrangements related to interstate air transportation), and any modi-
32 fication or cancellation of an agreement, between the air carrier or foreign
33 air carrier and another air carrier, a foreign carrier, or another carrier.

34 (b) APPROVAL.—The Secretary of Transportation shall approve an agree-
35 ment, request, modification, or cancellation referred to in subsection (a) of
36 this section when the Secretary finds it is not adverse to the public interest
37 and is not in violation of this part. However, the Secretary shall dis-
38 approve—

39 (1) or, after periodic review, end approval of, an agreement, request,
40 modification, or cancellation, that substantially reduces or eliminates
41 competition unless the Secretary finds that—

1 (A) the agreement, request, modification, or cancellation is nec-
2 essary to meet a serious transportation need or to achieve important
3 public benefits (including international comity and foreign policy
4 considerations); and

5 (B) the transportation need cannot be met or those benefits can-
6 not be achieved by reasonably available alternatives that are materi-
7 ally less anticompetitive; or

8 (2) an agreement that—

9 (A) is between an air carrier not directly operating aircraft in
10 foreign air transportation and a common carrier subject to subtitle
11 IV of this title; and

12 (B) governs the compensation the common carrier may receive for
13 the transportation.

14 (c) NOTICE AND OPPORTUNITY TO RESPOND OR FOR HEARING.—(1) When
15 an agreement, request, modification, or cancellation is filed, the Secretary of
16 Transportation shall give the Attorney General and the Secretary of State
17 written notice of, and an opportunity to submit written comments about, the
18 filing. On the initiative of the Secretary of Transportation or on request of
19 the Attorney General or Secretary of State, the Secretary of Transportation
20 may conduct a hearing to decide whether an agreement, request, modification,
21 or cancellation is consistent with this part whether or not it was approved
22 previously.

23 (2) In a proceeding before the Secretary of Transportation applying stand-
24 ards under subsection (b)(1) of this section, a party opposing an agreement,
25 request, modification, or cancellation has the burden of proving that it sub-
26 stantially reduces or eliminates competition and that less anticompetitive al-
27 ternatives are available. The party defending the agreement, request, modi-
28 fication, or cancellation has the burden of proving the transportation need or
29 public benefits.

30 (3) The Secretary of Transportation shall include the findings required by
31 subsection (b)(1) of this section in an order of the Secretary approving or dis-
32 approving an agreement, request, modification, or cancellation.

33 **§41310. Discriminatory practices**

34 (a) PROHIBITION.—An air carrier or foreign air carrier may not subject
35 a person, place, port, or type of traffic in foreign air transportation to unrea-
36 sonable discrimination.

37 (b) REVIEW AND NEGOTIATION OF DISCRIMINATORY FOREIGN CHARGES.—

38 (1) The Secretary of Transportation shall survey charges imposed on an air
39 carrier by the government of a foreign country or another foreign entity for
40 the use of airport property or airway property in foreign air transportation.
41 If the Secretary of Transportation decides that a charge is discriminatory,

1 *the Secretary promptly shall report the decision to the Secretary of State. The*
2 *Secretaries of State and Transportation promptly shall begin negotiations*
3 *with the appropriate government to end the discrimination. If the discrimina-*
4 *tion is not ended in a reasonable time through negotiation, the Secretary of*
5 *Transportation shall establish a compensating charge equal to the discrimina-*
6 *tory charge. With the approval of the Secretary of State, the Secretary of the*
7 *Treasury shall impose the compensating charge on a foreign air carrier of*
8 *that country as a condition to accepting the general declaration of the aircraft*
9 *of the foreign air carrier when it lands or takes off.*

10 *(2) The Secretary of the Treasury shall maintain an account to credit*
11 *money collected under paragraph (1) of this subsection. An air carrier shall*
12 *be paid from the account an amount certified by the Secretary of Transporta-*
13 *tion to compensate the air carrier for the discriminatory charge paid to the*
14 *government.*

15 *(c) ACTIONS AGAINST DISCRIMINATORY ACTIVITY.—(1) The Secretary of*
16 *Transportation may take actions the Secretary considers are in the public in-*
17 *terest to eliminate an activity of a government of a foreign country or another*
18 *foreign entity, including a foreign air carrier, when the Secretary, on the ini-*
19 *tiative of the Secretary or on complaint, decides that the activity—*

20 *(A) is an unjustifiable or unreasonable discriminatory, predatory, or*
21 *anticompetitive practice against an air carrier; or*

22 *(B) imposes an unjustifiable or unreasonable restriction on access of*
23 *an air carrier to a foreign market.*

24 *(2) The Secretary of Transportation may deny, amend, modify, suspend,*
25 *revoke, or transfer under paragraph (1) of this subsection a foreign air carrier*
26 *permit or tariff under section 41302, 41303, 41304(a), 41504(c), 41507, or*
27 *41509 of this title.*

28 *(d) FILING OF, AND ACTING ON, COMPLAINTS.—(1) An air carrier or a de-*
29 *partment, agency, or instrumentality of the United States Government may*
30 *file a complaint under subsection (c) of this section with the Secretary of*
31 *Transportation. The Secretary shall approve, deny, or dismiss the complaint,*
32 *set the complaint for a hearing or investigation, or begin another proceeding*
33 *proposing remedial action not later than 60 days after receiving the com-*
34 *plaint. The Secretary may extend the period for acting for additional periods*
35 *totaling not more than 30 days if the Secretary decides that with additional*
36 *time it is likely that a complaint can be resolved satisfactorily through nego-*
37 *tiations with the government of the foreign country or foreign entity. The Sec-*
38 *retary must act not later than 90 days after receiving the complaint. How-*
39 *ever, the Secretary may extend this 90-day period for not more than an addi-*
40 *tional 90 days if, on the last day of the initial 90-day period, the Secretary*
41 *finds that—*

1 (A) negotiations with the government have progressed to a point that
2 a satisfactory resolution of the complaint appears imminent;

3 (B) an air carrier has not been subjected to economic injury by the
4 government or entity as a result of filing the complaint; and

5 (C) the public interest requires additional time before the Secretary
6 acts on the complaint.

7 (2) In carrying out paragraph (1) of this subsection and subsection (c) of
8 this section, the Secretary of Transportation shall—

9 (A) solicit the views of the Secretaries of Commerce and State and the
10 United States Trade Representative;

11 (B) give an affected air carrier or foreign air carrier reasonable notice
12 and an opportunity to submit written evidence and arguments within
13 the time limits of this subsection; and

14 (C) submit to the President under section 41307 or 41509(f) of this
15 title actions proposed by the Secretary of Transportation.

16 (e) REVIEW.—(1) The Secretaries of State, the Treasury, and Transpor-
17 tation and the heads of other departments, agencies, and instrumentalities of
18 the Government shall keep under review, to the extent of each of their jurisdic-
19 tions, each form of discrimination or unfair competitive practice to which an
20 air carrier is subject when providing foreign air transportation. Each Sec-
21 retary and head shall—

22 (A) take appropriate action to eliminate any discrimination or unfair
23 competitive practice found to exist; and

24 (B) request Congress to enact legislation when the authority to elimi-
25 nate the discrimination or unfair practice is inadequate.

26 (2) The Secretary of Transportation shall report to Congress annually on
27 each action taken under paragraph (1) of this subsection and on the continu-
28 ing program to eliminate discrimination and unfair competitive practices.
29 The Secretaries of State and the Treasury each shall give the Secretary of
30 Transportation information necessary to prepare the report.

31 (f) REPORTS.—Not later than 30 days after acting on a complaint under
32 this section, the Secretary of Transportation shall report to the Committee on
33 Public Works and Transportation of the House of Representatives and the
34 Committee on Commerce, Science, and Transportation of the Senate on action
35 taken under this section on the complaint.

36 **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.*

1 **§41501. Establishing reasonable prices, classifications,**
 2 **rules, practices, and divisions of joint prices for**
 3 **foreign air transportation**

4 *Every air carrier and foreign air carrier shall establish, comply with, and*
 5 *enforce—*

6 (1) *reasonable prices, classifications, rules, and practices related to for-*
 7 *ign air transportation; and*

8 (2) *for joint prices established for foreign air transportation, reason-*
 9 *able divisions of those prices among the participating air carriers or for-*
 10 *ign air carriers without unreasonably discriminating against any of*
 11 *those carriers.*

12 **§41502. Establishing joint prices for through routes with**
 13 **other common carriers**

14 (a) *JOINT PRICES.—An air carrier may establish reasonable joint prices*
 15 *and through service with another common carrier. However, an air carrier*
 16 *not directly operating aircraft in air transportation (except an air express*
 17 *company) may not establish under this section a joint price for the transpor-*
 18 *tation of property with a common carrier subject to subtitle IV of this title.*

19 (b) *PRICES, CLASSIFICATIONS, RULES, AND PRACTICES AND DIVISIONS OF*
 20 *JOINT PRICES.—For through service by an air carrier and a common carrier*
 21 *subject to subtitle IV of this title, the participating carriers shall establish—*

22 (1) *reasonable prices and reasonable classifications, rules, and prac-*
 23 *tices affecting those prices or the value of the transportation provided*
 24 *under those prices; and*

25 (2) *for joint prices established for the through service, reasonable divi-*
 26 *sions of those joint prices among the participating carriers.*

27 (c) *STATEMENTS INCLUDED IN TARIFFS.—An air carrier and a common*
 28 *carrier subject to subtitle IV of this title that are participating in through*
 29 *service and joint prices shall include in their tariffs, filed with the Secretary*
 30 *of Transportation, a statement showing the through service and joint prices.*

1 **§41503. Establishing joint prices for through routes provided**
 2 **by State authorized carriers**

3 *Subject to sections 41309 and 42111 of this title, a citizen of the United*
 4 *States providing transportation under section 41101(b) of this title may make*
 5 *an agreement with an air carrier or foreign air carrier for joint prices for*
 6 *that transportation. The joint prices agreed to must be the lowest of—*

7 (1) *the sum of the applicable prices for—*

8 (A) *the part of the transportation provided in the State and ap-*
 9 *proved by the appropriate State authority; and*

10 (B) *the part of the transportation provided by the air carrier or*
 11 *foreign air carrier;*

12 (2) *a joint price established and filed under section 41504 of this title;*

13 *or*

14 (3) *a joint price prescribed by the Secretary of Transportation under*
 15 *section 41507 of this title.*

16 **§41504. Tariffs for foreign air transportation**

17 (a) *FILING AND CONTENTS.—In the way prescribed by regulation by the*
 18 *Secretary of Transportation, every air carrier and foreign air carrier shall*
 19 *file with the Secretary, publish, and keep open to public inspection, tariffs*
 20 *showing the prices for the foreign air transportation provided between places*
 21 *served by the carrier and provided between places served by the carrier and*
 22 *places served by another air carrier or foreign air carrier with which through*
 23 *service and joint prices have been established. A tariff—*

24 (1) *shall contain—*

25 (A) *to the extent the Secretary requires by regulation, a descrip-*
 26 *tion of the classifications, rules, and practices related to the foreign*
 27 *air transportation;*

28 (B) *a statement of the prices in money of the United States; and*

29 (C) *other information the Secretary requires by regulation; and*

30 (2) *may contain—*

31 (A) *a statement of the prices in money that is not money of the*
 32 *United States; and*

33 (B) *information that is required under the laws of a foreign*
 34 *country in or to which the air carrier or foreign air carrier is au-*
 35 *thorized to operate.*

36 (b) *CHANGES.—(1) Except as provided in paragraph (2) of this subsection,*
 37 *an air carrier or foreign air carrier may change a price or a classification,*
 38 *rule, or practice affecting that price or the value of the transportation pro-*
 39 *vided under that price, specified in a tariff of the carrier for foreign air*
 40 *transportation only after 30 days after the carrier has filed, published, and*
 41 *posted notice of the proposed change in the same way as required for a tariff*

1 under subsection (a) of this section. However, the Secretary may prescribe an
 2 alternative notice requirement, of at least 25 days, to allow an air carrier
 3 or foreign air carrier to match a proposed change in a passenger fare or a
 4 charge of another air carrier or foreign air carrier. A notice under this para-
 5 graph must state plainly the change proposed and when the change will take
 6 effect.

7 (2) If the effect of a proposed change would be to begin a passenger fare
 8 that is outside of, or not covered by, the range of passenger fares specified
 9 under section 41509(e)(2) and (3) of this title, the proposed change may be
 10 put into effect only on the expiration of 60 days after the notice is filed under
 11 regulations prescribed by the Secretary.

12 (c) *REJECTION OF CHANGES.*—The Secretary may reject a tariff or tariff
 13 change that is not consistent with this section and regulations prescribed by
 14 the Secretary. A tariff or change that is rejected is void.

15 **§41505. Uniform methods for establishing joint prices, and**
 16 **divisions of joint prices, applicable to commuter**
 17 **air carriers**

18 (a) *DEFINITION.*—In this section, “commuter air carrier” means an air
 19 carrier providing transportation under section 40109(f) of this title that pro-
 20 vides at least 5 scheduled roundtrips a week between the same 2 places.

21 (b) *GENERAL.*—Except as provided in subsection (c) of this section, when
 22 the Secretary of Transportation prescribes under section 41508 or 41509 of
 23 this title a uniform method generally applicable to establishing joint prices
 24 and divisions of joint prices for and between air carriers holding certificates
 25 issued under section 41102 of this title, the Secretary shall make that uniform
 26 method apply to establishing joint prices and divisions of joint prices for and
 27 between air carriers and commuter air carriers.

28 (c) *NOTICE REQUIRED BEFORE MODIFYING, SUSPENDING, OR ENDING*
 29 *TRANSPORTATION.*—A commuter air carrier that has an agreement with an
 30 air carrier to provide transportation for passengers and property that in-
 31 cludes through service by the commuter air carrier over the commuter air car-
 32 rier’s routes and air transportation provided by the air carrier shall give the
 33 air carrier and the Secretary at least 90 days’ notice before modifying, sus-
 34 pending, or ending the transportation. If the commuter air carrier does not
 35 give that notice, the uniform method of establishing joint prices and divisions
 36 of joint prices referred to in subsection (b) of this section does not apply to
 37 the commuter air carrier.

38 **§41506. Price division filing requirements for foreign air**
 39 **transportation**

40 Every air carrier and foreign air carrier shall keep currently on file with
 41 the Secretary of Transportation, if the Secretary requires, the established divi-

1 sions of all joint prices for foreign air transportation in which the carrier
2 participates.

3 **§41507. Authority of the Secretary of Transportation to**
4 **change prices, classifications, rules, and practices**
5 **for foreign air transportation**

6 (a) *GENERAL.*—When the Secretary of Transportation decides that a price
7 charged or received by an air carrier or foreign air carrier for foreign air
8 transportation, or a classification, rule, or practice affecting that price or the
9 value of the transportation provided under that price, is or will be unreason-
10 ably discriminatory, the Secretary may—

11 (1) change the price, classification, rule, or practice as necessary to
12 correct the discrimination; and

13 (2) order the air carrier or foreign air carrier to stop charging or col-
14 lecting the discriminatory price or carrying out the discriminatory clas-
15 sification, rule, or practice.

16 (b) *WHEN SECRETARY MAY ACT.*—The Secretary may act under this sec-
17 tion on the Secretary's own initiative or on a complaint filed with the Sec-
18 retary and only after notice and an opportunity for a hearing.

19 **§41508. Authority of the Secretary of Transportation to ad-**
20 **just divisions of joint prices for foreign air trans-**
21 **portation**

22 (a) *GENERAL.*—When the Secretary of Transportation decides that a divi-
23 sion between air carriers, foreign air carriers, or both, of a joint price for
24 foreign air transportation is or will be unreasonable or unreasonably dis-
25 criminatory against any of those carriers, the Secretary shall prescribe a rea-
26 sonable division of the joint price among those carriers. The Secretary may
27 order the adjustment in the division of the joint price to be made retroactively
28 to the date the complaint was filed, the date the order for an investigation
29 was made, or a later date the Secretary decides is reasonable.

30 (b) *WHEN SECRETARY MAY ACT.*—The Secretary may act under this sec-
31 tion on the Secretary's own initiative or on a complaint filed with the Sec-
32 retary and only after notice and an opportunity for a hearing.

33 **§ 41509. Authority of the Secretary of Transportation to sus-**
34 **pend, cancel, and reject tariffs for foreign air**
35 **transportation**

36 (a) *CANCELLATION AND REJECTION.*—(1) On the initiative of the Secretary
37 of Transportation or on a complaint filed with the Secretary, the Secretary
38 may conduct a hearing to decide whether a price for foreign air transpor-
39 tation contained in an existing or newly filed tariff of an air carrier or for-
40 eign air carrier, a classification, rule, or practice affecting that price, or the
41 value of the transportation provided under that price, is lawful. The Sec-

1 *retary may begin the hearing at once and without an answer or another for-*
2 *mal pleading by the air carrier or foreign air carrier, but only after reason-*
3 *able notice. If, after the hearing, the Secretary decides that the price, classi-*
4 *fication, rule, or practice is or will be unreasonable or unreasonably discrimi-*
5 *natory, the Secretary may cancel or reject the tariff and prevent the use of*
6 *the price, classification, rule, or practice.*

7 *(2) With or without a hearing, the Secretary may cancel or reject an exist-*
8 *ing or newly filed tariff of a foreign air carrier and prevent the use of a*
9 *price, classification, rule, or practice when the Secretary decides that the can-*
10 *cellation or rejection is in the public interest.*

11 *(3) In deciding whether to cancel or reject a tariff of an air carrier or for-*
12 *foreign air carrier under this subsection, the Secretary shall consider—*

13 *(A) the effect of the price on the movement of traffic;*

14 *(B) the need in the public interest of adequate and efficient transpor-*
15 *tation by air carriers and foreign air carriers at the lowest cost consist-*
16 *ent with providing the transportation;*

17 *(C) the standards prescribed under law related to the character and*
18 *quality of transportation to be provided by air carriers and foreign air*
19 *carriers;*

20 *(D) the inherent advantages of transportation by aircraft;*

21 *(E) the need of the air carrier and foreign air carrier for revenue suf-*
22 *ficient to enable the air carrier and foreign air carrier, under honest,*
23 *economical, and efficient management, to provide adequate and efficient*
24 *air carrier and foreign air carrier transportation;*

25 *(F) whether the price will be predatory or tend to monopolize competi-*
26 *tion among air carriers and foreign air carriers in foreign air transpor-*
27 *tation;*

28 *(G) reasonably estimated or foreseeable future costs and revenues for*
29 *the air carrier or foreign air carrier for a reasonably limited future pe-*
30 *riod during which the price would be in effect; and*

31 *(H) other factors.*

32 *(b) SUSPENSION.—(1)(A) Pending a decision under subsection (a)(1) of*
33 *this section, the Secretary may suspend a tariff and the use of a price con-*
34 *tained in the tariff or a classification, rule, or practice affecting that price.*

35 *(B) The Secretary may suspend a tariff of a foreign air carrier and the*
36 *use of a price, classification, rule, or practice when the suspension is in the*
37 *public interest.*

38 *(2) A suspension becomes effective when the Secretary files with the tariff*
39 *and delivers to the air carrier or foreign air carrier affected by the suspension*
40 *a written statement of the reasons for the suspension. To suspend a tariff, rea-*
41 *sonable notice of the suspension must be given to the affected carrier.*

1 (3) *The suspension of a newly filed tariff may be for periods totaling not*
2 *more than 365 days after the date the tariff otherwise would go into effect.*
3 *The suspension of an existing tariff may be for periods totaling not more than*
4 *365 days after the effective date of the suspension. The Secretary may rescind*
5 *at any time the suspension of a newly filed tariff and allow the price, classi-*
6 *fication, rule, or practice to go into effect.*

7 (c) *EFFECTIVE TARIFFS AND PRICES WHEN TARIFF IS SUSPENDED, CAN-*
8 *CIELED, OR REJECTED.—(1) If a tariff is suspended pending the outcome of*
9 *a proceeding under subsection (a) of this section and the Secretary does not*
10 *take final action in the proceeding during the suspension period, the tariff*
11 *goes into effect at the end of that period subject to cancellation when the pro-*
12 *ceeding is concluded.*

13 (2)(A) *During the period of suspension, or after the cancellation or rejec-*
14 *tion, of a newly filed tariff (including a tariff that has gone into effect provi-*
15 *sionally), the affected air carrier or foreign air carrier shall maintain in ef-*
16 *fect and use—*

17 (i) *the corresponding seasonal prices, or the classifications, rules, and*
18 *practices affecting those prices or the value of transportation provided*
19 *under those prices, that were in effect for the carrier immediately before*
20 *the new tariff was filed; or*

21 (ii) *another price provided for under an applicable intergovernmental*
22 *agreement or understanding.*

23 (B) *If the suspended, canceled, or rejected tariff is the first tariff of the car-*
24 *rier for the covered transportation, the carrier, for the purpose of operations*
25 *during the period of suspension or pending effectiveness of a new tariff, may*
26 *file another tariff containing a price or another classification, rule, or prac-*
27 *tice affecting the price, or the value of the transportation provided under the*
28 *price, that is in effect (and not subject to a suspension order) for any air*
29 *carrier providing the same transportation.*

30 (3) *If an existing tariff is suspended or canceled, the affected air carrier*
31 *or foreign air carrier, for the purpose of operations during the period of sus-*
32 *pension or pending effectiveness of a new tariff, may file another tariff con-*
33 *taining a price or another classification, rule, or practice affecting the price,*
34 *or the value of the transportation provided under the price, that is in effect*
35 *(and not subject to a suspension order) for any air carrier providing the same*
36 *transportation.*

37 (d) *RESPONSE TO REFUSAL OF FOREIGN COUNTRY TO ALLOW AIR CAR-*
38 *RIER TO CHARGE A PRICE.—When the Secretary finds that the government*
39 *or an aeronautical authority of a foreign country has refused to allow an air*
40 *carrier to charge a price contained in a tariff filed and published under sec-*
41 *tion 41504 of this title for foreign air transportation to the foreign country—*

1 (1) *the Secretary, without a hearing—*

2 (A) *may suspend any existing tariff of a foreign air carrier pro-*
3 *viding transportation between the United States and the foreign*
4 *country for periods totaling not more than 365 days after the date*
5 *of the suspension; and*

6 (B) *may order the foreign air carrier to charge, during the sus-*
7 *pension periods, prices that are the same as those contained in a*
8 *tariff (designated by the Secretary) of an air carrier filed and pub-*
9 *lished under section 41504 of this title for foreign air transportation*
10 *to the foreign country; and*

11 (2) *a foreign air carrier may continue to provide foreign air transpor-*
12 *tation to the foreign country only if the government or aeronautical au-*
13 *thority of the foreign country allows an air carrier to start or continue*
14 *foreign air transportation to the foreign country at the prices designated*
15 *by the Secretary.*

16 (e) *STANDARD FOREIGN FARE LEVEL.—(1)(A) In this subsection, “stand-*
17 *ard foreign fare level” means—*

18 (i) *for a class of fares existing on October 1, 1979, the fare between*
19 *2 places (as adjusted under subparagraph (B) of this paragraph) filed*
20 *for and allowed by the Civil Aeronautics Board to go into effect after*
21 *September 30, 1979, and before August 13, 1980 (with seasonal fares ad-*
22 *justed by the percentage difference that prevailed between seasons in*
23 *1978), or the fare established under section 1002(j)(8) of the Federal*
24 *Aviation Act of 1958 (Public Law 85-726, 72 Stat. 731), as added by*
25 *section 24(a) of the International Air Transportation Competition Act*
26 *of 1979 (Public Law 96-192, 94 Stat. 46); or*

27 (ii) *for a class of fares established after October 1, 1979, the fare be-*
28 *tween 2 places in effect on the effective date of the establishment of the*
29 *new class.*

30 (B) *At least once every 60 days for fuel costs, and at least once every 180*
31 *days for other costs, the Secretary shall adjust the standard foreign fare level*
32 *for the particular foreign air transportation to which the standard foreign*
33 *fare level applies by increasing or decreasing that level by the percentage*
34 *change from the last previous period in the actual operating cost for each*
35 *available seat-mile. In adjusting a standard foreign fare level, the Secretary*
36 *may not make an adjustment to costs actually incurred. In establishing a*
37 *standard foreign fare level and making adjustments in the level under this*
38 *paragraph, the Secretary may use all relevant or appropriate information*
39 *reasonably available to the Secretary.*

40 (2) *The Secretary may not decide that a proposed fare for foreign air*
41 *transportation is unreasonable on the basis that the fare is too low or too high*

1 if the proposed fare is neither more than 5 percent higher nor 50 percent
 2 lower than the standard foreign fare level for the same or essentially similar
 3 class of transportation. The Secretary by regulation may increase the 50 per-
 4 cent specified in this paragraph.

5 (3) Paragraph (2) of this subsection does not apply to a proposed fare that
 6 is not more than—

7 (A) 5 percent higher than the standard foreign fare level when the Sec-
 8 retary decides that the proposed fare may be unreasonably discrimina-
 9 tory or that suspension of the fare is in the public interest because of
 10 an unreasonable regulatory action by the government of a foreign coun-
 11 try that is related to a fare proposal of an air carrier; or

12 (B) 50 percent lower than the standard foreign fare level when the Sec-
 13 retary decides that the proposed fare may be predatory or discriminatory
 14 or that suspension of the fare is required because of an unreasonable reg-
 15 ulatory action by the government of a foreign country that is related to
 16 a fare proposal of an air carrier.

17 (f) *SUBMISSION OF ORDERS TO PRESIDENT.*—The Secretary shall submit
 18 to the President an order made under this section suspending, canceling, or
 19 rejecting a price for foreign air transportation, and an order rescinding the
 20 effectiveness of such an order, before publishing the order. Not later than 10
 21 days after its submission, the President may disapprove the order on finding
 22 disapproval is necessary for United States foreign policy or national defense
 23 reasons.

24 (g) *COMPLIANCE AS CONDITION OF CERTIFICATE OR PERMIT.*—This section
 25 and compliance with an order of the Secretary under this section are condi-
 26 tions to any certificate or permit held by an air carrier or foreign air carrier.
 27 An air carrier or foreign air carrier may provide foreign air transportation
 28 only as long as the carrier maintains prices for that transportation that com-
 29 ply with this section and orders of the Secretary under this section.

30 **§41510. Required adherence to foreign air transportation**
 31 **tariffs**

32 (a) *PROHIBITED ACTIONS BY AIR CARRIERS, FOREIGN AIR CARRIERS, AND*
 33 *TICKET AGENTS.*—An air carrier, foreign air carrier, or ticket agent may
 34 not—

35 (1) charge or receive compensation for foreign air transportation that
 36 is different from the price specified in the tariff of the carrier that is
 37 in effect for that transportation;

38 (2) refund or remit any part of the price specified in the tariff; or

39 (3) extend to any person a privilege or facility, related to a matter
 40 required by the Secretary of Transportation to be specified in a tariff
 41 for foreign air transportation, except as specified in the tariff.

1 (b) *PROHIBITED ACTIONS BY ANY PERSON.*—A person may not know-
2 *ingly—*

3 (1) *pay compensation for foreign air transportation of property that*
4 *is different from the price specified in the tariff in effect for that trans-*
5 *portation; or*

6 (2) *solicit, accept, or receive—*

7 (A) *a refund or remittance of any part of the price specified in*
8 *the tariff; or*

9 (B) *a privilege or facility, related to a matter required by the*
10 *Secretary to be specified in a tariff for foreign air transportation*
11 *of property, except as specified in the tariff.*

12 **§41511. Special prices for foreign air transportation**

13 (a) *FREE AND REDUCED PRICING.*—This chapter does not prohibit an air
14 carrier or foreign air carrier, under terms the Secretary of Transportation
15 prescribes, from issuing or interchanging tickets or passes for free or reduced-
16 price foreign air transportation to or for the following:

17 (1) *a director, officer, or employee of the carrier (including a retired*
18 *director, officer, or employee who is receiving retirement benefits from an*
19 *air carrier or foreign air carrier).*

20 (2) *a parent or the immediate family of such an officer or employee*
21 *or the immediate family of such a director.*

22 (3) *a widow, widower, or minor child of an employee of the carrier*
23 *who died as a direct result of a personal injury sustained when perform-*
24 *ing a duty in the service of the carrier.*

25 (4) *a witness or attorney attending a legal investigation in which the*
26 *air carrier is interested.*

27 (5) *an individual injured in an aircraft accident and a physician or*
28 *nurse attending the individual.*

29 (6) *a parent or the immediate family of an individual injured or*
30 *killed in an aircraft accident when the transportation is related to the*
31 *accident.*

32 (7) *an individual or property to provide relief in a general epidemic,*
33 *pestilence, or other emergency.*

34 (8) *other individuals under other circumstances the Secretary pre-*
35 *scribes by regulation.*

36 (b) *SPACE-AVAILABLE BASIS.*—Under terms the Secretary prescribes, an
37 air carrier or foreign air carrier may grant reduced-price foreign air trans-
38 portation on a space-available basis to the following:

39 (1) *a minister of religion.*

40 (2) *an individual who is at least 60 years of age and no longer gain-*
41 *fully employed.*

- 1 (3) *an individual who is at least 65 years of age.*
- 2 (4) *an individual who has severely impaired vision or hearing or an-*
- 3 *other physical or mental handicap and an accompanying attendant*
- 4 *needed by that individual.*

CHAPTER 417—OPERATIONS OF CARRIERS

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SUBCHAPTER I—REQUIREMENTS

§41701. Classification of air carriers

The Secretary of Transportation may establish—

- 8 (1) *reasonable classifications for air carriers when required because of*
- 9 *the nature of the transportation provided by them; and*
- 10 (2) *reasonable requirements for each class when the Secretary decides*
- 11 *those requirements are necessary in the public interest.*

§41702. Interstate air transportation

An air carrier shall provide safe and adequate interstate air transportation.

§41703. Navigation of foreign civil aircraft

(a) PERMITTED NAVIGATION.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States only—

- 18 (1) *if the country of registry grants a similar privilege to aircraft of*
- 19 *the United States;*
- 20 (2) *by an airman holding a certificate or license issued or made valid*
- 21 *by the United States Government or the country of registry;*

1 (3) if the Secretary of Transportation authorizes the navigation; and
2 (4) if the navigation is consistent with terms the Secretary may pre-
3 scribe.

4 (b) *REQUIREMENTS FOR AUTHORIZING NAVIGATION.*—The Secretary may
5 authorize navigation under this section only if the Secretary decides the au-
6 thorization is—

7 (1) in the public interest; and
8 (2) consistent with any agreement between the Government and the
9 government of a foreign country.

10 (c) *PROVIDING AIR COMMERCE.*—The Secretary may authorize an aircraft
11 permitted to navigate in the United States under this section to provide air
12 commerce in the United States. However, the aircraft may take on for com-
13 pensation, at a place in the United States, passengers or cargo destined for
14 another place in the United States only if—

15 (1) specifically authorized under section 40109(g) of this title; or
16 (2) under regulations the Secretary prescribes authorizing air carriers
17 to provide otherwise authorized air transportation with foreign registered
18 aircraft under lease or charter to them without crew.

19 (d) *PERMIT REQUIREMENTS NOT AFFECTED.*—This section does not affect
20 section 41301 or 41302 of this title. However, a foreign air carrier holding
21 a permit under section 41302 does not need to obtain additional authoriza-
22 tion under this section for an operation authorized by the permit.

23 **§ 41704. Transporting property not to be transported in air-**
24 **craft cabins**

25 Under regulations or orders of the Secretary of Transportation, an air car-
26 rier shall transport as baggage the property of a passenger traveling in air
27 transportation that may not be carried in an aircraft cabin because of a law
28 or regulation of the United States. The carrier is liable to pay an amount
29 not more than the amount declared to the carrier by that passenger for actual
30 loss of, or damage to, the property caused by the carrier. The carrier may
31 impose reasonable charges and conditions for its liability.

32 **§ 41705. Discrimination against handicapped individuals**

33 In providing air transportation, an air carrier may not discriminate
34 against an otherwise qualified individual on the following grounds:

35 (1) the individual has a physical or mental impairment that substan-
36 tially limits one or more major life activities.
37 (2) the individual has a record of such an impairment.
38 (3) the individual is regarded as having such an impairment.

1 **§41706. Prohibitions against smoking on scheduled flights**

2 (a) *GENERAL.*—An individual may not smoke in the passenger cabin or
3 lavatory of an aircraft on a scheduled airline flight segment in air transpor-
4 tation or intrastate air transportation that is—

5 (1) between places in a State of the United States, the District of Co-
6 lumbia, Puerto Rico, or the Virgin Islands;

7 (2) between a place in any jurisdiction referred to in clause (1) of this
8 subsection (except Alaska and Hawaii) and a place in any other of those
9 jurisdictions; or

10 (3)(A) scheduled for not more than 6 hours' duration; and

11 (B)(i) between a place referred to in clause (1) of this subsection (ex-
12 cept Alaska and Hawaii) and Alaska or Hawaii; or

13 (ii) between Alaska and Hawaii.

14 (b) *REGULATIONS.*—The Secretary of Transportation shall prescribe regula-
15 tions necessary to carry out this section.

16 **§41707. Incorporating contract terms into written instru-**
17 **ment**

18 To the extent the Secretary of Transportation prescribes by regulation, an
19 air carrier may incorporate by reference in a ticket or written instrument
20 any term of the contract for providing interstate air transportation.

21 **§41708. Reports**

22 (a) *APPLICATION.*—To the extent the Secretary of Transportation finds nec-
23 essary to carry out this subpart, this section and section 41709 of this title
24 apply to a person controlling an air carrier or affiliated (within the meaning
25 of section 11343(c) of this title) with a carrier.

26 (b) *REQUIREMENTS.*—The Secretary may require an air carrier or foreign
27 air carrier—

28 (1)(A) to file annual, monthly, periodical, and special reports with the
29 Secretary in the form and way prescribed by the Secretary; and

30 (B) to file the reports under oath;

31 (2) to provide specific answers to questions on which the Secretary
32 considers information to be necessary; and

33 (3) to file with the Secretary a copy of each agreement, arrangement,
34 contract, or understanding between the carrier and another carrier or
35 person related to transportation affected by this subpart.

36 **§41709. Records of air carriers**

37 (a) *REQUIREMENTS.*—The Secretary of Transportation shall prescribe the
38 form of records to be kept by an air carrier, including records on the move-
39 ment of traffic, receipts and expenditures of money, and the time period dur-
40 ing which the records shall be kept. A carrier may keep only records pre-
41 scribed or approved by the Secretary. However, a carrier may keep additional

1 records if the additional records do not impair the integrity of the records
2 prescribed or approved by the Secretary and are not an unreasonable finan-
3 cial burden on the carrier.

4 (b) *INSPECTION.*—(1) The Secretary at any time may—

5 (A) inspect the land, buildings, and equipment of an air carrier or
6 foreign air carrier when necessary to decide under subchapter II of this
7 chapter or section 41102, 41103, or 41302 of this title whether a carrier
8 is fit, willing, and able; and

9 (B) inspect records kept or required to be kept by an air carrier, for-
10 eign air carrier, or ticket agent.

11 (2) The Secretary may employ special agents or auditors to carry out this
12 subsection.

13 **§41710. Time requirements**

14 When a matter requiring action of the Secretary of Transportation is sub-
15 mitted under section 40109(a) or (c)–(h), 41309, or 42111 of this title and
16 an evidentiary hearing—

17 (1) is ordered, the Secretary shall make a final decision on the matter
18 not later than the last day of the 12th month that begins after the date
19 the matter is submitted; or

20 (2) is not ordered, the Secretary shall make a final decision on the
21 matter not later than the last day of the 6th month that begins after the
22 date the matter is submitted.

23 **§41711. Air carrier management inquiry and cooperation**
24 **with other authorities**

25 In carrying out this subpart, the Secretary of Transportation may—

26 (1) inquire into the management of the business of an air carrier and
27 obtain from the air carrier, and a person controlling, controlled by, or
28 under common control with the carrier, information the Secretary de-
29 cides reasonably is necessary to carry out the inquiry;

30 (2) confer and hold a joint hearing with a State authority; and

31 (3) exchange information related to aeronautics with a government of
32 a foreign country through appropriate departments, agencies, and in-
33 strumentalities of the United States Government.

34 **§41712. Unfair and deceptive practices and unfair methods**
35 **of competition**

36 On the initiative of the Secretary of Transportation or the complaint of
37 an air carrier, foreign air carrier, or ticket agent, and if the Secretary con-
38 siders it is in the public interest, the Secretary may investigate and decide
39 whether an air carrier, foreign air carrier, or ticket agent has been or is en-
40 gaged in an unfair or deceptive practice or an unfair method of competition
41 in air transportation or the sale of air transportation. If the Secretary, after

1 notice and an opportunity for a hearing, finds that an air carrier, foreign
 2 air carrier, or ticket agent is engaged in an unfair or deceptive practice or
 3 unfair method of competition, the Secretary shall order the air carrier, foreign
 4 air carrier, or ticket agent to stop the practice or method.

5 **§41713. Preemption of authority over prices, routes, and**
 6 **service**

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

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

14 (2) Paragraph (1) of this subsection does not apply to air transportation
 15 provided entirely in Alaska unless the transportation is air transportation
 16 (except charter air transportation) provided under a certificate issued under
 17 section 41102 of this title.

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

22 **SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE**

23 **§41731. Definitions**

24 (a) *GENERAL.*—In this subchapter—

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

26 (A) was an eligible point under section 419 of the Federal Avia-
 27 tion Act of 1958 before October 1, 1988;

28 (B) received scheduled air transportation at any time after Janu-
 29 ary 1, 1990; and

30 (C) is not listed in Department of Transportation Orders 89–9–
 31 37 and 89–12–52 as a place ineligible for compensation under this
 32 subchapter.

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

36 (3) “hub airport” means an airport that each year has at least .25
 37 percent of the total annual boardings in the United States.

38 (4) “nonhub airport” means an airport that each year has less than
 39 .05 percent of the total annual boardings in the United States.

1 (5) “small hub airport” means an airport that each year has at least
2 .05 percent, but less than .25 percent, of the total annual boardings in
3 the United States.

4 (b) *LIMITATION ON AUTHORITY TO DECIDE A PLACE NOT AN ELIGIBLE*
5 *PLACE.*—The Secretary of Transportation may not decide that a place de-
6 scribed in subsection (a)(1) of this section is not an eligible place on the basis
7 of a passenger subsidy at that place or on another basis that is not specifi-
8 cally stated in this subchapter.

9 **§41732. Basic essential air service**

10 (a) *GENERAL.*—Basic essential air service provided under section 41733 of
11 this title is scheduled air transportation of passengers and cargo—

12 (1) to a hub airport that has convenient connecting or single-plane air
13 service to a substantial number of destinations beyond that airport; or

14 (2) to a small hub or nonhub airport, when in Alaska or when the
15 nearest hub airport is more than 400 miles from an eligible place.

16 (b) *MINIMUM REQUIREMENTS.*—Basic essential air service shall include at
17 least the following:

18 (1)(A) for a place not in Alaska, 2 daily round trips 6 days a week,
19 with not more than one intermediate stop on each flight; or

20 (B) for a place in Alaska, a level of service at least equal to that pro-
21 vided in 1976 or 2 round trips a week, whichever is greater, except that
22 the Secretary of Transportation and the appropriate State authority of
23 Alaska may agree to a different level of service after consulting with the
24 affected community.

25 (2) flights at reasonable times considering the needs of passengers with
26 connecting flights at the airport and at prices that are not excessive com-
27 pared to the generally prevailing prices of other air carriers for like serv-
28 ice between similar places.

29 (3) for a place not in Alaska, service provided in an aircraft with an
30 effective capacity of at least 15 passengers if the average daily boardings
31 at the place in any calendar year from 1976-1986 were more than 11
32 passengers unless—

33 (A) that level-of-service requirement would require paying com-
34 pensation in a fiscal year under section 41733(d) or 41734(d) or
35 (e) of this title for the place when compensation otherwise would not
36 have been paid for that place in that year; or

37 (B) the affected community agrees with the Secretary in writing
38 to the use of smaller aircraft to provide service to the place.

39 (4) service accommodating the estimated passenger and property traf-
40 fic at an average load factor, for each class of traffic considering seasonal
41 demands for the service, of not more than—

- 1 (A) 50 percent; or
2 (B) 60 percent when service is provided by aircraft with more
3 than 14 passenger seats.
4 (5) service provided in aircraft with at least 2 engines and using 2
5 pilots, unless scheduled air transportation has not been provided to the
6 place in aircraft with at least 2 engines and using 2 pilots for at least
7 60 consecutive operating days at any time since October 31, 1978.
8 (6) service provided by pressurized aircraft when the service is pro-
9 vided by aircraft that regularly fly above 8,000 feet in altitude.

10 **§41733. Level of basic essential air service**

11 (a) DECISIONS MADE BEFORE OCTOBER 1, 1988.—For each eligible place
12 for which a decision was made before October 1, 1988, under section 419 of
13 the Federal Aviation Act of 1958, establishing the level of essential air trans-
14 portation, the level of basic essential air service for that place shall be the
15 level established by the Secretary of Transportation for that place by not later
16 than December 29, 1988.

17 (b) DECISIONS NOT MADE BEFORE OCTOBER 1, 1988.—(1) The Secretary
18 shall decide on the level of basic essential air service for each eligible place
19 for which a decision was not made before October 1, 1988, establishing the
20 level of essential air transportation, when the Secretary receives notice that
21 service to that place will be provided by only one air carrier. The Secretary
22 shall make the decision by the last day of the 6-month period beginning on
23 the date the Secretary receives the notice. The Secretary may impose notice
24 requirements necessary to carry out this subsection. Before making a decision,
25 the Secretary shall consider the views of any interested community and the
26 appropriate State authority of the State in which the community is located.

27 (2) Until the Secretary has made a decision on a level of basic essential
28 air service for an eligible place under this subsection, the Secretary, on peti-
29 tion by an appropriate representative of the place, shall prohibit an air car-
30 rier from ending, suspending, or reducing air transportation to that place
31 that appears to deprive the place of basic essential air service.

32 (c) AVAILABILITY OF COMPENSATION.—(1) If the Secretary decides that
33 basic essential air service will not be provided to an eligible place without
34 compensation, the Secretary shall provide notice that an air carrier may
35 apply to provide basic essential air service to the place for compensation
36 under this section. In selecting an applicant, the Secretary shall consider,
37 among other factors—

- 38 (A) the demonstrated reliability of the applicant in providing sched-
39 uled air service;
40 (B) the contractual and marketing arrangements the applicant has
41 made with a larger carrier to ensure service beyond the hub airport;

1 (C) the interline arrangements that the applicant has made with a
2 larger carrier to allow passengers and cargo of the applicant at the hub
3 airport to be transported by the larger carrier through one reservation,
4 ticket, and baggage check-in;

5 (D) the preferences of the actual and potential users of air transpor-
6 tation at the eligible place, giving substantial weight to the views of the
7 elected officials representing the users; and

8 (E) for an eligible place in Alaska, the experience of the applicant in
9 providing, in Alaska, scheduled air service, or significant patterns of
10 non-scheduled air service under an exemption granted under section
11 40109(a) and (c)–(h) of this title.

12 (2) Under guidelines prescribed under section 41737(a) of this title, the
13 Secretary shall pay the rate of compensation for providing basic essential air
14 service under this section and section 41734 of this title.

15 (d) *COMPENSATION PAYMENTS.*—The Secretary shall pay compensation
16 under this section at times and in the way the Secretary decides is appro-
17 priate. The Secretary shall end payment of compensation to an air carrier
18 for providing basic essential air service to an eligible place when the Sec-
19 retary decides the compensation is no longer necessary to maintain basic es-
20 sential air service to the place.

21 (e) *REVIEW.*—The Secretary shall review periodically the level of basic es-
22 sential air service for each eligible place. Based on the review and consulta-
23 tions with an interested community and the appropriate State authority of
24 the State in which the community is located, the Secretary may make appro-
25 priate adjustments in the level of service.

26 **§41734. Ending, suspending, and reducing basic essential**
27 **air service**

28 (a) *NOTICE REQUIRED.*—An air carrier may end, suspend, or reduce air
29 transportation to an eligible place below the level of basic essential air service
30 established for that place under section 41733 of this title only after giving
31 the Secretary of Transportation, the appropriate State authority, and the af-
32 fected communities at least 90 days' notice before ending, suspending, or re-
33 ducing that transportation.

34 (b) *CONTINUATION OF SERVICE FOR 30 DAYS AFTER NOTICE PERIOD.*—
35 If at the end of the notice period under subsection (a) of this section the Sec-
36 retary has not found another air carrier to provide basic essential air service
37 to the eligible place, the Secretary shall require the carrier providing notice
38 to continue to provide basic essential air service to the place for an additional
39 30-day period or until another carrier begins to provide basic essential air
40 service to the place, whichever occurs first.

1 (c) *CONTINUATION OF SERVICE FOR ADDITIONAL 30-DAY PERIODS.*—If at
2 the end of the 30-day period under subsection (b) of this section the Secretary
3 decides another air carrier will not provide basic essential air service to the
4 place on a continuing basis, the Secretary shall require the carrier providing
5 service to continue to provide service for additional 30-day periods until an-
6 other carrier begins providing service on a continuing basis. At the end of
7 each 30-day period, the Secretary shall decide if another carrier will provide
8 service on a continuing basis.

9 (d) *CONTINUATION OF COMPENSATION AFTER NOTICE PERIOD.*—If an air
10 carrier receiving compensation under section 41733 of this title for providing
11 basic essential air service to an eligible place is required to continue to pro-
12 vide service to the place under this section after the 90-day notice period
13 under subsection (a) of this section, the Secretary shall continue to pay that
14 compensation after the last day of that period. The Secretary shall pay the
15 compensation until the Secretary finds another carrier to provide the service
16 to the place or the 90th day after the end of that notice period, whichever
17 is earlier. If, after the 90th day after the end of the 90-day notice period,
18 the Secretary has not found another carrier to provide the service, the carrier
19 required to continue to provide that service shall receive compensation suffi-
20 cient—

21 (1) to pay for the fully allocated actual cost to the carrier of perform-
22 ing the basic essential air service that was being provided when the 90-
23 day notice was given under subsection (a) of this section plus a reason-
24 able return on investment that is at least 5 percent of operating costs;
25 and

26 (2) to provide the carrier an additional return that recognizes the
27 demonstrated additional lost profits from opportunities foregone and the
28 likelihood that those lost profits increase as the period during which the
29 carrier is required to provide the service continues.

30 (e) *COMPENSATION TO AIR CARRIERS ORIGINALLY PROVIDING SERVICE*
31 *WITHOUT COMPENSATION.*—If the Secretary requires an air carrier providing
32 basic essential air service to an eligible place without compensation under sec-
33 tion 41733 of this title to continue providing that service after the 90-day
34 notice period required by subsection (a) of this section, the Secretary shall
35 provide the carrier with compensation after the end of the 90-day notice pe-
36 riod that is sufficient—

37 (1) to pay for the fully allocated actual cost to the carrier of perform-
38 ing the basic essential air service that was being provided when the 90-
39 day notice was given under subsection (a) of this section plus a reason-
40 able return on investment that is at least 5 percent of operating costs;
41 and

1 (2) to provide the carrier an additional return that recognizes the
2 demonstrated additional lost profits from opportunities foregone and the
3 likelihood that those lost profits increase as the period during which the
4 carrier is required to provide the service continues.

5 (f) *FINDING REPLACEMENT CARRIERS.*—When the Secretary requires an
6 air carrier to continue to provide basic essential air service to an eligible
7 place, the Secretary shall continue to make every effort to find another carrier
8 to provide at least that basic essential air service to the place on a continuing
9 basis.

10 (g) *TRANSFER OF AUTHORITY.*—If an air carrier, providing basic essential
11 air service under section 41733 of this title between an eligible place and an
12 airport at which the Administrator of the Federal Aviation Administration
13 limits the number of instrument flight rule takeoffs and landings of aircraft,
14 provides notice under subsection (a) of this section of an intention to end,
15 suspend, or reduce that service and another carrier is found to provide the
16 service, the Secretary shall require the carrier providing notice to transfer any
17 operational authority the carrier has to land or take off at that airport relat-
18 ed to the service to the eligible place to the carrier that will provide the serv-
19 ice, if—

20 (1) the carrier that will provide the service needs the authority; and

21 (2) the authority to be transferred is being used only to provide air
22 service to the eligible place.

23 **§41735. Enhanced essential air service**

24 (a) *PROPOSALS.*—(1) A State or local government may submit a proposal
25 to the Secretary of Transportation for enhanced essential air service to an eli-
26 gible place for which basic essential air service is being provided under section
27 41733 of this title. The proposal shall—

28 (A) specify the level and type of enhanced essential air service the
29 State or local government considers appropriate; and

30 (B) include an agreement related to compensation required for the
31 proposed service.

32 (2) The agreement submitted under paragraph (1)(B) of this subsection
33 shall provide that—

34 (A) the State or local government or a person pay 50 percent of the
35 compensation required for the proposed service and the United States
36 Government pay the remaining 50 percent; or

37 (B)(i) the Government pay 100 percent of the compensation; and

38 (ii) if the proposed service is not successful for at least a 2-year period
39 under the criteria prescribed by the Secretary under paragraph (3) of
40 this subsection, the eligible place is not eligible for air service or air

1 *transportation for which compensation is paid by the Secretary under*
2 *this subchapter.*

3 (3) *The Secretary shall prescribe by regulation objective criteria for decid-*
4 *ing whether enhanced essential air service to an eligible place under this sec-*
5 *tion is successful in terms of—*

6 (A) *increasing passenger usage of the airport facilities at the place;*
7 *and*

8 (B) *reducing the amount of compensation provided by the Secretary*
9 *under this subchapter for that service.*

10 (b) *DECISIONS.—Not later than 90 days after receiving a proposal under*
11 *subsection (a) of this section, the Secretary shall—*

12 (1) *approve the proposal if the Secretary decides the proposal is rea-*
13 *sonable; or*

14 (2) *if the Secretary decides the proposal is not reasonable, disapprove*
15 *the proposal and notify the State or local government of the disapproval*
16 *and the reasons for the disapproval.*

17 (c) *COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation*
18 *under this section when and in the way the Secretary decides is appropriate.*
19 *Compensation for enhanced essential air service under this section may be*
20 *paid only for the costs incurred in providing air service to an eligible place*
21 *that are in addition to the costs incurred in providing basic essential air*
22 *service to the place under section 41733 of this title. The Secretary shall con-*
23 *tinue to pay compensation under this section only as long as—*

24 (A) *the air carrier maintains the level of enhanced essential air serv-*
25 *ice;*

26 (B) *the State or local government or person agreeing to pay compensa-*
27 *tion under this section continues to pay the compensation; and*

28 (C) *the Secretary decides the compensation is necessary to maintain*
29 *the service to the place.*

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

33 (d) *REVIEW.—(1) The Secretary shall review periodically the enhanced es-*
34 *sential air service provided to each eligible place under this section.*

35 (2) *For service for which the Government pays 50 percent of the compensa-*
36 *tion, based on the review and consultation with the affected community and*
37 *the State or local government or person paying the remaining 50 percent of*
38 *the compensation, the Secretary shall make appropriate adjustments in the*
39 *type and level of service to the place.*

40 (3) *For service for which the Government pays 100 percent of the com-*
41 *penetration, based on the review and consultation with the State or local gov-*

1 ernment submitting the proposal, the Secretary shall decide whether the serv-
 2 ice has succeeded for at least a 2-year period under the criteria prescribed
 3 under subsection (a)(3) of this section. If unsuccessful, the place is not eligible
 4 for air service or air transportation for which compensation is paid by the
 5 Secretary under this subchapter.

6 (e) *ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.*—An air
 7 carrier may end, suspend, or reduce air transportation to an eligible place
 8 below the level of enhanced essential air service established for that place by
 9 the Secretary under this section only after giving the Secretary, the affected
 10 community, and the State or local government or person paying compensa-
 11 tion for that service at least 30 days' notice before ending, suspending, or re-
 12 ducing the service. This subsection does not relieve the carrier of an obligation
 13 under section 41734 of this title.

14 **§ 41736. Air transportation to noneligible places**

15 (a) *PROPOSALS AND DECISIONS.*—(1) A State or local government may
 16 propose to the Secretary of Transportation that the Secretary provide com-
 17 pensation to an air carrier to provide air transportation to a place that is
 18 not an eligible place under this subchapter. Not later than 90 days after re-
 19 ceiving a proposal under this section, the Secretary shall—

20 (A) decide whether to designate the place as eligible to receive com-
 21 pensation under this section; and

22 (B)(i) approve the proposal if the State or local government or a per-
 23 son is willing and able to pay 50 percent of the compensation for provid-
 24 ing the transportation, and notify the State or local government of the
 25 approval; or

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

30 (2) In deciding whether a proposal is reasonable, the Secretary shall con-
 31 sider, among other factors—

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

33 (B) the cost to the United States Government of providing the pro-
 34 posed transportation; and

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

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

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

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

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

7 (4) the State or local government submitting the proposal or a person
8 is willing and able to pay 25 percent of the cost of providing the com-
9 pensated transportation.

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

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

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

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

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

31 (A) the air carrier maintains the level of air transportation estab-
32 lished by the Secretary under subsection (c)(1) of this section;

33 (B) the State or local government or person agreeing to pay compensa-
34 tion for transportation under this section continues to pay that com-
35 pensation; and

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

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

1 (e) *REVIEW.*—The Secretary shall review periodically the level of air trans-
 2 portation provided under this section. Based on the review and consultation
 3 with any interested community, the appropriate State authority of the State
 4 in which the community is located, and the State or local government or per-
 5 son paying compensation under this section, the Secretary may make appro-
 6 priate adjustments in the level of transportation.

7 (f) *WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.*—After providing notice
 8 and an opportunity for interested persons to comment, the Secretary may
 9 withdraw the designation of a place under subsection (a)(1) of this section
 10 as eligible to receive compensation under this section if the place has received
 11 air transportation under this section for at least 2 years and the Secretary
 12 decides the withdrawal would be in the public interest. The Secretary by regu-
 13 lation shall prescribe standards for deciding whether the withdrawal of a des-
 14 ignation under this subsection is in the public interest. The standards shall
 15 include the factors listed in subsection (a)(2) of this section.

16 (g) *ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.*—An air
 17 carrier providing air transportation for compensation under this section may
 18 end, suspend, or reduce that transportation below the level of transportation
 19 established by the Secretary under this section only after giving the Secretary,
 20 the affected community, and the State or local government or person paying
 21 compensation under this section at least 30 days' notice before ending, sus-
 22 pending, or reducing the transportation.

23 **§41737. Compensation guidelines, limitations, and claims**

24 (a) *COMPENSATION GUIDELINES.*—(1) The Secretary of Transportation
 25 shall prescribe guidelines governing the rate of compensation payable under
 26 this subchapter. The guidelines shall be used to determine the reasonable
 27 amount of compensation required to ensure the continuation of air service or
 28 air transportation under this subchapter. The guidelines shall—

29 (A) provide for a reduction in compensation when an air carrier does
 30 not provide service or transportation agreed to be provided;

31 (B) consider amounts needed by an air carrier to promote public use
 32 of the service or transportation for which compensation is being paid;
 33 and

34 (C) include expense elements based on representative costs of air car-
 35 riers providing scheduled air transportation of passengers, property, and
 36 mail on aircraft of the type the Secretary decides is appropriate for pro-
 37 viding the service or transportation for which compensation is being pro-
 38 vided.

39 (2) Promotional amounts described in paragraph (1)(B) of this subsection
 40 shall be a special, segregated element of the compensation provided to a car-
 41 rier under this subchapter.

1 (b) *REQUIRED FINDING.*—The Secretary may pay compensation to an air
2 carrier for providing air service or air transportation under this subchapter
3 only if the Secretary finds the carrier is able to provide the service or trans-
4 portation in a reliable way.

5 (c) *CLAIMS.*—Not later than 15 days after receiving a written claim from
6 an air carrier for compensation under this subchapter, the Secretary shall—

7 (1) pay or deny the United States Government's share of a claim; and

8 (2) if denying the claim, notify the carrier of the denial and the rea-
9 sons for the denial.

10 (d) *AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.*—(1)
11 The Secretary may make agreements and incur obligations from the Airport
12 and Airway Trust Fund established under section 9502 of the Internal Reve-
13 nue Code of 1986 (26 U.S.C. 9502) to pay compensation under this sub-
14 chapter. An agreement by the Secretary under this subsection is a contractual
15 obligation of the Government to pay the Government's share of the compensa-
16 tion.

17 (2) Not more than \$38,600,000 is available to the Secretary out of the Fund
18 for each of the fiscal years ending September 30, 1993–1998, to incur obliga-
19 tions under this section. Amounts made available under this section remain
20 available until expended.

21 **§41738. Fitness of air carriers**

22 Notwithstanding section 40109(a) and (c)–(h) of this title, an air carrier
23 may provide air service to an eligible place or air transportation to a place
24 designated under section 41736 of this title only when the Secretary of Trans-
25 portation decides that—

26 (1) the carrier is fit, willing, and able to perform the service or trans-
27 portation; and

28 (2) aircraft used to provide the service or transportation, and oper-
29 ations related to the service or transportation, conform to the safety
30 standards prescribed by the Administrator of the Federal Aviation Ad-
31 ministration.

32 **§41739. Air carrier obligations**

33 If at least 2 air carriers make an agreement to operate under or use a sin-
34 gle carrier designator code to provide air transportation, the carrier whose
35 code is being used shares responsibility with the other carriers for the quality
36 of transportation provided the public under the code by the other carriers.

37 **§41740. Joint proposals**

38 The Secretary of Transportation shall encourage the submission of joint
39 proposals by 2 or more air carriers for providing air service or air transpor-
40 tation under this subchapter through arrangements that maximize the service
41 or transportation to and from major destinations beyond the hub.

1 **§41741. Insurance**

2 *The Secretary of Transportation may pay an air carrier compensation*
 3 *under this subchapter only when the carrier files with the Secretary an insur-*
 4 *ance policy or self-insurance plan approved by the Secretary. The policy or*
 5 *plan must be sufficient to pay for bodily injury to, or death of, an individual,*
 6 *or for loss of or damage to property of others, resulting from the operation*
 7 *of aircraft, but not more than the amount of the policy or plan limits.*

8 **§41742. Ending effective date**

9 *This subchapter is not effective after September 30, 1998.*

10 **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.*

41906. *Emergency mail transportation.*

41907. *Prices for foreign transportation of mail.*

41908. *Prices for transporting mail of foreign countries.*

41909. *Duty to oppose unreasonable prices under the Universal Postal Union Convention.*

41910. *Weighing mail.*

41911. *Evidence of providing mail service.*

41912. *Effect on foreign postal arrangements.*

11 **§41901. General authority**

12 (a) *TITLE 39.—The United States Postal Service may provide for the*
 13 *transportation of mail by aircraft in interstate air transportation under sec-*
 14 *tion 5402(d) and (f) of title 39.*

15 (b) *AUTHORITY TO PRESCRIBE PRICES.—Except as provided in section*
 16 *5402 of title 39, on the initiative of the Secretary of Transportation or on*
 17 *petition by the Postal Service or an air carrier, the Secretary shall prescribe*
 18 *and publish—*

19 (1) *after notice and an opportunity for a hearing on the record, rea-*
 20 *sonable prices to be paid by the Postal Service for the transportation of*
 21 *mail by aircraft in foreign air transportation or between places in Alas-*
 22 *ka, the facilities used in and useful for the transportation of mail, and*
 23 *the services related to the transportation of mail for each carrier holding*
 24 *a certificate that authorizes that transportation;*

25 (2) *the methods used, whether by aircraft-mile, pound-mile, weight,*
 26 *space, or a combination of those or other methods, to determine the prices*
 27 *for each air carrier or class of air carriers; and*

28 (3) *the effective date of the prices.*

29 (c) *OTHER TRANSPORTATION.—In prescribing prices under subsection (b)*
 30 *of this section, the Secretary may include transportation other than by air-*
 31 *craft that is incidental to transportation of mail by aircraft or necessary be-*
 32 *cause of emergency conditions related to aircraft operations.*

1 (d) *AUTHORITY TO PRESCRIBE DIFFERENT PRICES.*—Considering condi-
 2 tions peculiar to transportation by aircraft and to particular air carriers or
 3 classes of air carriers, the Secretary may prescribe different prices under this
 4 section for different air carriers or classes of air carriers and for different
 5 classes of service. In prescribing a price for a carrier under this section, the
 6 Secretary shall consider, among other factors, the following:

7 (1) the condition that the carrier may hold and operate under a cer-
 8 tificate authorizing the transportation of mail only by providing nec-
 9 essary and adequate facilities and service for the transportation of mail.

10 (2) standards related to the character and quality of service to be pro-
 11 vided that are prescribed by or under law.

12 (e) *STATEMENTS ON PRICES.*—A petition for prescribing a reasonable price
 13 under this section must include a statement of the price the petitioner believes
 14 is reasonable.

15 (f) *STATEMENTS ON REQUIRED SERVICES.*—The Postal Service shall intro-
 16 duce as part of the record in every proceeding under this section a compre-
 17 hensive statement of the services to be required of the air carrier and other infor-
 18 mation the Postal Service has that the Secretary considers material to the
 19 proceeding.

20 (g) *EXPIRATION DATE.*—The authority of the Secretary under this part
 21 and section 5402 of title 39 providing for the transportation of mail by air-
 22 craft between places in Alaska expires on the date specified in section 5402(f)
 23 of title 39.

24 **§41902. Schedules for certain transportation of mail**

25 (a) *REQUIREMENT.*—Except as provided in section 41906 of this title and
 26 section 5402 of title 39, an air carrier may transport mail by aircraft in
 27 foreign air transportation or between places in Alaska only under a schedule
 28 designated or required to be established under subsection (c) of this section
 29 for the transportation of mail.

30 (b) *STATEMENTS ON PLACES AND SCHEDULES.*—Every air carrier shall
 31 file with the Secretary of Transportation and the United States Postal Service
 32 a statement showing—

33 (1) the places between which the carrier is authorized to provide for-
 34 eign air transportation;

35 (2) the places between which the carrier is authorized to transport
 36 mail in Alaska;

37 (3) every schedule of aircraft regularly operated by the carrier between
 38 places described in clauses (1) and (2) of this subsection and every
 39 change in each schedule; and

40 (4) for each schedule, the places served by the carrier and the time of
 41 arrival at, and departure from, each place.

1 (c) *DESIGNATING AND ADDITIONAL SCHEDULES.*—The Postal Service
2 may—

3 (1) *designate any schedule of an air carrier filed under subsection*
4 *(b)(3) of this section for the transportation of mail between the places*
5 *between which the carrier is authorized by its certificate to transport*
6 *mail; and*

7 (2) *require the carrier to establish additional schedules for the trans-*
8 *portation of mail between those places.*

9 (d) *CHANGING SCHEDULES.*—A schedule designated or required to be estab-
10 lished for the transportation of mail under subsection (c) of this section may
11 be changed only after 10 days' notice of the change is filed as provided in
12 subsection (b)(3) of this section. The Postal Service may disapprove a pro-
13 posed change in a schedule or amend or modify the schedule or proposed
14 change.

15 (e) *ORDERS.*—An order of the Postal Service under this section may become
16 effective only after 10 days after the order is issued. A person adversely af-
17 fected by the order may appeal the order to the Secretary before the end of
18 the 10-day period under regulations the Secretary prescribes. If the public
19 convenience and necessity require, the Secretary may amend, modify, suspend,
20 or cancel the order. Pending a decision about the order, the Secretary may
21 postpone the effective date of the order.

22 (f) *PROCEEDINGS PREFERENCES.*—The Secretary shall give preference to a
23 proceeding under this section over all other proceedings before the Secretary
24 under this subpart.

25 **§ 41903. Duty to provide certain transportation of mail**

26 (a) *AIR CARRIERS.*—Subject to subsection (b) of this section, an air carrier
27 authorized by its certificate to transport mail by aircraft in foreign air trans-
28 portation or between places in Alaska shall—

29 (1) *provide facilities and services necessary and adequate to provide*
30 *that transportation; and*

31 (2) *transport mail between the places authorized in the certificate for*
32 *transportation of mail when required, and under regulations prescribed,*
33 *by the United States Postal Service.*

34 (b) *MAXIMUM MAIL LOAD.*—The Secretary of Transportation may prescribe
35 the maximum mail load for a schedule or for an aircraft or type of aircraft
36 for the transportation of mail by aircraft in foreign air transportation or be-
37 tween places in Alaska. If the Postal Service tenders to an air carrier mail
38 exceeding the maximum load for transportation by the carrier under a sched-
39 ular designated or required to be established for the transportation of mail
40 under section 41902(c) of this title, the carrier, as nearly in accordance with
41 the schedule as the Secretary decides is possible, shall—

- 1 (1) provide facilities sufficient to transport the mail to the extent the
2 Secretary decides the carrier reasonably is able to do so; and
3 (2) transport that mail.

4 **§41904. Noncitizens transporting mail to or in foreign coun-**
5 **tries**

6 When the United States Postal Service decides that it may be necessary to
7 have a person not a citizen of the United States transport mail by aircraft
8 to or in a foreign country, the Postal Service may make an arrangement with
9 the person, without advertising, to provide the transportation.

10 **§41905. Regulating air carrier transportation of foreign**
11 **mail**

12 An air carrier holding a certificate that authorizes foreign air transpor-
13 tation and transporting mail of a foreign country shall transport that mail
14 under the control of, and subject to regulation by, the United States Govern-
15 ment.

16 **§41906. Emergency mail transportation**

17 (a) *CONTRACT AUTHORITY.*—In an emergency caused by a flood, fire, or
18 other disaster, the United States Postal Service may make a contract without
19 advertising to transport mail by aircraft to or from a locality affected by the
20 emergency when the available facilities of persons authorized to transport
21 mail to or from the locality are inadequate to meet the requirements of the
22 Postal Service during the emergency. The contract may be only for periods
23 necessary to maintain mail service because of the inadequacy of the facilities.
24 Payment for transportation provided under the contract shall be made at
25 prices provided in the contract.

26 (b) *TRANSPORTATION NOT AIR TRANSPORTATION.*—Transportation pro-
27 vided under a contract made under subsection (a) of this section is not air
28 transportation within the meaning of this part.

29 **§41907. Prices for foreign transportation of mail**

30 (a) *LIMITATIONS.*—When air transportation is provided between the United
31 States and a foreign country both by aircraft owned or operated by an air
32 carrier holding a certificate under chapter 411 of this title and by aircraft
33 owned or operated by a foreign air carrier, the United States Postal Service
34 may not pay to or for the account of the foreign air carrier a price for trans-
35 porting mail by aircraft between the United States and the foreign country
36 that the Postal Service believes will result (over a reasonable period deter-
37 mined by the Postal Service considering exchange fluctuations and other fac-
38 tors) in the foreign air carrier receiving a price for transporting the mail that
39 is higher than the price—

1 (1) the government of a foreign country or foreign postal administra-
2 tion pays to air carriers for transporting mail of the foreign country by
3 aircraft between the foreign country and the United States; or

4 (2) determined by the Postal Service to be comparable to the price the
5 government of a foreign country or foreign postal administration pays
6 to air carriers for transporting mail of the foreign country by aircraft
7 between the foreign country and an intermediate country on the route
8 of the air carrier between the foreign country and the United States.

9 (b) *CHANGES.*—The Secretary of Transportation shall act expeditiously on
10 proposed changes in prices for transporting mail by aircraft in foreign air
11 transportation. When prescribing those prices, the Secretary shall consider—

12 (1) the prices paid for transportation of mail under the Universal
13 Postal Union Convention as ratified by the United States Government;

14 (2) the price-making elements used by the Universal Postal Union in
15 prescribing its airmail prices; and

16 (3) the competitive disadvantage to United States flag air carriers re-
17 sulting from foreign air carriers receiving Universal Postal Union prices
18 for transporting United States mail and national origin mail of their
19 own countries.

20 **§ 41908. Prices for transporting mail of foreign countries**

21 (a) *PRICE DETERMINATIONS.*—The United States Postal Service shall de-
22 termine the prices that an air carrier holding a certificate that authorizes for-
23 eign air transportation must charge a government of a foreign country or for-
24 eign postal administration for transporting mail of the foreign country. The
25 Postal Service shall put those prices into effect under the postal convention
26 regulating postal relations between the United States and the foreign country
27 or as provided under this section.

28 (b) *CHANGES.*—The Postal Service may authorize an air carrier holding
29 a certificate that authorizes foreign air transportation, under limitations the
30 Postal Service prescribes, to change the prices the carrier charges a govern-
31 ment of a foreign country or foreign postal administration for transporting
32 mail of the foreign country in the foreign country or between the foreign coun-
33 try and another foreign country.

34 (c) *COLLECTING COMPENSATION.*—(1) When an air carrier holding a cer-
35 tificate that authorizes foreign air transportation transports mail of a foreign
36 country—

37 (A) under an arrangement with a government of a foreign country or
38 foreign postal administration made or approved under this section, the
39 carrier must collect its compensation for the transportation from the for-
40 eign country under the arrangement; and

1 (B) without having an arrangement with a government of a foreign
2 country or foreign postal administration consistent with this section, the
3 compensation collected by the United States Government for the trans-
4 portation shall be for the account of the air carrier.

5 (2) An air carrier holding a certificate that authorizes foreign air transpor-
6 tation is not entitled to receive compensation from both a government of a
7 foreign country or foreign postal administration and the United States Gov-
8 ernment for transporting the same mail of the foreign country.

9 **§41909. Duty to oppose unreasonable prices under the Uni-**
10 **versal Postal Union Convention**

11 *The Secretary of State and the United States Postal Service shall—*

12 (1) take appropriate action to ensure that the prices paid for trans-
13 porting mail under the Universal Postal Union Convention are not high-
14 er than reasonable prices for transporting mail; and

15 (2) oppose any existing or proposed Universal Postal Union price that
16 is higher than a reasonable price for transporting mail.

17 **§41910. Weighing mail**

18 *The United States Postal Service may weigh mail transported by aircraft*
19 *and make statistical and administrative computations necessary in the inter-*
20 *est of mail service. When the Secretary of Transportation decides that addi-*
21 *tional or more frequent weighings of mail are advisable or necessary to carry*
22 *out this part, the Postal Service shall provide the weighings, but it is not re-*
23 *quired to provide them for continuous periods of more than 30 days.*

24 **§41911. Evidence of providing mail service**

25 *When and in the form required by the United States Postal Service, an*
26 *air carrier transporting or handling—*

27 (1) United States mail shall submit evidence, signed by an authorized
28 official, that the transportation or handling has been provided; and

29 (2) mail of a foreign country shall submit evidence, signed by an au-
30 thorized official, of the amount of mail transported or handled and the
31 compensation payable and received for that transportation or handling.

32 **§41912. Effect on foreign postal arrangements**

33 *This part does not—*

34 (1) affect an arrangement made by the United States Government
35 with the postal administration of a foreign country related to the trans-
36 portation of mail by aircraft; or

37 (2) impair the authority of the United States Postal Service to make
38 such an arrangement.

39 **CHAPTER 421—LABOR-MANAGEMENT PROVISIONS**

 SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM

Sec.

42101. Definitions.
 42102. Payments to eligible protected employees.
 42103. Duty to hire protected employees.
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 42105. Airline Employees Protective Account.
 42106. Ending effective date.

SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR REQUIREMENTS OF AIR CARRIERS

42111. Mutual aid agreements.
 42112. Labor requirements of air carriers.

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, except for employees deprived of employment because of a strike or whose employment is ended for cause.

(3) “protected employee” means an individual who on October 24, 1978, was employed for at least 4 years by an air carrier that held a certificate under section 401 of the Federal Aviation Act of 1958, but does not include a director or officer of a corporation.

(4) “qualifying dislocation” means a bankruptcy or major contraction of an air carrier holding a certificate under section 41102 of this title when the Secretary of Transportation finds the bankruptcy or contraction occurred after December 31, 1978, and before January 1, 1989, the major cause of which was the change in regulatory structure provided by the Airline Deregulation Act of 1978.

(b) MAJOR CONTRACTION.—The Secretary may find a reduction of less than 7.5 percent of the number of full-time employees is part of a major contraction if the Secretary decides another reduction is likely to occur within the 12-month period in which the first reduction occurs that, when included with the first reduction, will result in a total reduction of more than 7.5 percent.

§ 42102. Payments to eligible protected employees

(a) AUTHORITY TO PAY AND APPLICATIONS FOR PAYMENTS.—Subject to amounts provided in an appropriation law, the Secretary of Labor shall make monthly assistance payments, moving expense payments, and reimbursement payments as provided under this section to an eligible protected employee whose employment is not ended for cause. The employee must apply to receive the payments and cooperate with the Secretary in finding other employment.

1 (b) *NUMBER AND AMOUNT OF PAYMENTS.*—(1) *Subject to amounts pro-*
 2 *vided in an appropriation law, an eligible protected employee shall receive*
 3 *72 monthly assistance payments. However, an eligible protected employee de-*
 4 *prived of employment may not receive a payment after obtaining other em-*
 5 *ployment. For each class or craft of protected employees, the Secretary of*
 6 *Labor, after consulting with the Secretary of Transportation, shall prescribe*
 7 *by regulation guidelines for computing the amount of each monthly assistance*
 8 *payment to be made to a member of the class or craft and what percentage*
 9 *of salary that payment represents.*

10 (2) *The amount of a monthly payment payable under paragraph (1) of this*
 11 *subsection to an eligible protected employee shall be reduced—*

12 (A) *by unemployment compensation the employee receives; or*

13 (B) *if the employee does not accept reasonably comparable employ-*
 14 *ment, to an amount the employee would be entitled to receive if the em-*
 15 *ployee had accepted the employment.*

16 (3) *If accepting comparable employment to avoid a reduction in the month-*
 17 *ly assistance payment under paragraph (2) of this subsection would force an*
 18 *eligible protected employee to relocate, the employee may decide not to relo-*
 19 *cate. Instead of the payments provided under this section, the employee may*
 20 *receive the lesser of 3 payments or the maximum number of payments that*
 21 *remain to be paid under paragraph (1) of this subsection.*

22 (c) *MOVING EXPENSES AND REIMBURSEMENTS.*—(1) *Subject to amounts*
 23 *provided in an appropriation law, an eligible protected employee who relo-*
 24 *cates shall receive—*

25 (A) *reasonable moving expense payments to move the employee and the*
 26 *employee's immediate family; and*

27 (B) *reimbursement payments for a loss incurred in selling the employ-*
 28 *ee's principal place of residence for less than fair market value or in can-*
 29 *celling a lease on, or contract to buy, the residence.*

30 (2) *The Secretary of Labor shall decide on the amount of the moving ex-*
 31 *penses and the fair market value of the residence.*

32 **§ 42103. Duty to hire protected employees**

33 (a) *REHIRING PROTECTED EMPLOYEES.*—*A protected employee of an air*
 34 *carrier regulated by the Secretary of Transportation who was furloughed or*
 35 *whose employment was ended by the carrier (except for cause) before October*
 36 *23, 1988, is entitled to be the first employed in the occupational specialty of*
 37 *the employee, regardless of the employee's age, by any other air carrier hold-*
 38 *ing a certificate under section 41102 of this title before October 24, 1978.*
 39 *However, the air carrier may recall its furloughed employees before hiring a*
 40 *protected employee of another air carrier regulated by the Secretary who was*
 41 *furloughed or whose employment was ended by the other carrier (except for*

1 cause) before October 23, 1988. An employee hired by an air carrier under
 2 this section retains seniority and recall rights with the air carrier that fur-
 3 loughed or ended the employment of the employee.

4 (b) *DUTIES OF SECRETARY OF LABOR.*—The Secretary of Labor—

5 (1) shall establish and publish periodically a list of jobs available with
 6 an air carrier holding a certificate under section 41102 of this title that
 7 includes necessary information and detail;

8 (2) shall assist eligible protected employees to find other employment;

9 (3) shall encourage negotiations between air carriers and representa-
 10 tives of employees on rehiring practices and seniority; and

11 (4) may require an air carrier to file with the Secretary information
 12 necessary to carry out this section.

13 **§ 42104. Congressional review of regulations**

14 (a) *DEFINITION.*—In this section, “legislative day” means a calendar day
 15 on which both Houses of Congress are in session.

16 (b) *SUBMISSION TO CONGRESS.*—The Secretary of Labor may not prescribe
 17 a regulation under this subchapter until 30 legislative days after the regula-
 18 tion is submitted to the Committee on Commerce, Science, and Transporta-
 19 tion of the Senate and the Committee on Public Works and Transportation
 20 of the House of Representatives.

21 (c) *EFFECTIVENESS OF REGULATIONS.*—A proposed regulation under this
 22 subchapter shall be submitted to Congress and becomes effective only if, during
 23 the period of 60 legislative days after the regulation is submitted to Congress,
 24 either House does not pass a resolution disapproving the regulation. However,
 25 if Congress adopts a resolution approving the regulation during the 60-day
 26 period, the regulation is effective on that date.

27 **§ 42105. Airline Employees Protective Account**

28 The Department of Labor has an Airline Employees Protective Account
 29 consisting of amounts appropriated to it. An amount necessary to carry out
 30 this subchapter, including administrative expenses, may be appropriated to
 31 the Account annually.

32 **§ 42106. Ending effective date**

33 This subchapter is not effective after the last day the Secretary of Labor
 34 must make a payment under this subchapter.

35 SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR
 36 REQUIREMENTS OF AIR CARRIERS

37 **§ 42111. Mutual aid agreements**

38 An air carrier that will receive payments from another air carrier under
 39 an agreement between the air carriers for the time the one air carrier is not
 40 providing foreign air transportation, or is providing reduced levels of foreign
 41 air transportation, because of a labor strike must file a true copy of the agree-

1 *ment with the Secretary of Transportation and have it approved by the Sec-*
2 *retary under section 41309 of this title. Notwithstanding section 41309, the*
3 *Secretary shall approve the agreement only if it provides that—*

4 *(1) the air carrier will receive payments of not more than 60 percent*
5 *of direct operating expenses, including interest expenses, but not depre-*
6 *ciation or amortization expenses;*

7 *(2) benefits may be paid for not more than 8 weeks, and may not be*
8 *for losses incurred during the first 30 days of a strike; and*

9 *(3) on request of the striking employees, the dispute will be submitted*
10 *to binding arbitration under the Railway Labor Act (45 U.S.C. 151 et*
11 *seq.).*

12 **§42112. Labor requirements of air carriers**

13 (a) *DEFINITIONS.—In this section—*

14 *(1) “copilot” means an employee whose duties include assisting or re-*
15 *lieving the pilot in manipulating an aircraft and who is qualified to*
16 *serve as, and has in effect an airman certificate authorizing the employee*
17 *to serve as, a copilot.*

18 *(2) “pilot” means an employee who is—*

19 *(A) responsible for manipulating or who manipulates the flight*
20 *controls of an aircraft when under way, including the landing and*
21 *takeoff of an aircraft; and*

22 *(B) qualified to serve as, and has in effect an airman certificate*
23 *authorizing the employee to serve as, a pilot.*

24 (b) *DUTIES OF AIR CARRIERS.—An air carrier shall—*

25 *(1) maintain rates of compensation, maximum hours, and other work-*
26 *ing conditions and relations for its pilots and copilots who are providing*
27 *interstate air transportation in the 48 contiguous States and the District*
28 *of Columbia to conform with decision number 83, May 10, 1934, Na-*
29 *tional Labor Board, notwithstanding any limitation in that decision on*
30 *the period of its effectiveness;*

31 *(2) maintain rates of compensation for its pilots and copilots who are*
32 *providing foreign air transportation or air transportation only in one*
33 *territory or possession of the United States; and*

34 *(3) comply with title II of the Railway Labor Act (45 U.S.C. 181 et*
35 *seq.) as long as it holds its certificate.*

36 (c) *MINIMUM ANNUAL RATE OF COMPENSATION.—A minimum annual rate*
37 *under subsection (b)(2) of this section may not be less than the annual rate*
38 *required to be paid for comparable service to a pilot or copilot under sub-*
39 *section (b)(1) of this section.*

1 (d) *COLLECTIVE BARGAINING.*—This section does not prevent pilots or copi-
 2 lots of an air carrier from obtaining by collective bargaining higher rates of
 3 compensation or more favorable working conditions or relations.

4 *SUBPART III—SAFETY*

5 **CHAPTER 441—REGISTRATION AND RECORDATION OF**
 6 **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.

7 **§44101. Operation of aircraft**

8 (a) *REGISTRATION REQUIREMENT.*—Except as provided in subsection (b)
 9 of this section, a person may operate an aircraft only when the aircraft is
 10 registered under section 44103 of this title.

11 (b) *EXCEPTIONS.*—A person may operate an aircraft in the United States
 12 that is not registered—

13 (1) when authorized under section 40103(d) or 41703 of this title;

14 (2) when it is an aircraft of the national defense forces of the United
 15 States and is identified in a way satisfactory to the Administrator of
 16 the Federal Aviation Administration; and

17 (3) for a reasonable period of time after a transfer of ownership, under
 18 regulations prescribed by the Administrator.

19 **§44102. Registration requirements**

20 (a) *ELIGIBILITY.*—An aircraft may be registered under section 44103 of
 21 this title only when the aircraft is—

22 (1) not registered under the laws of a foreign country and is owned
 23 by—

24 (A) a citizen of the United States;

25 (B) an individual citizen of a foreign country lawfully admitted
 26 for permanent residence in the United States; or

27 (C) a corporation not a citizen of the United States when the cor-
 28 poration is organized and doing business under the laws of the
 29 United States or a State, and the aircraft is based and primarily
 30 used in the United States; or

31 (2) an aircraft of—

1 (A) the United States Government; or
2 (B) a State, the District of Columbia, a territory or possession
3 of the United States, or a political subdivision of a State, territory,
4 or possession.

5 (b) *DUTY TO DEFINE CERTAIN TERM.*—In carrying out subsection
6 (a)(1)(C) of this section, the Secretary of Transportation shall define “based
7 and primarily used in the United States”.

8 **§ 44103. Registration of aircraft**

9 (a) *GENERAL.*—(1) On application of the owner of an aircraft that meets
10 the requirements of section 44102 of this title, the Administrator of the Fed-
11 eral Aviation Administration shall—

12 (A) register the aircraft; and
13 (B) issue a certificate of registration to its owner.

14 (2) The Administrator may prescribe the extent to which an aircraft owned
15 by the holder of a dealer’s certificate of registration issued under section
16 44104(2) of this title also is registered under this section.

17 (b) *CONTROLLED SUBSTANCE VIOLATIONS.*—(1) The Administrator may
18 not issue an owner’s certificate of registration under subsection (a)(1) of this
19 section to a person whose certificate is revoked under section 44106 of this
20 title during the 5-year period beginning on the date of the revocation, ex-
21 cept—

22 (A) as provided in section 44106(e)(2) of this title; or
23 (B) that the Administrator may issue the certificate to the person after
24 the one-year period beginning on the date of the revocation if the Admin-
25 istrator decides that the aircraft otherwise meets the requirements of sec-
26 tion 44102 of this title and that denial of a certificate for the 5-year pe-
27 riod—

28 (i) would be excessive considering the nature of the offense or the
29 act committed and the burden the denial places on the person; or
30 (ii) would not be in the public interest.

31 (2) A decision of the Administrator under paragraph (1)(B)(i) or (ii) of
32 this subsection is within the discretion of the Administrator. That decision
33 or failure to make a decision is not subject to administrative or judicial re-
34 view.

35 (c) *CERTIFICATES AS EVIDENCE.*—A certificate of registration issued under
36 this section is—

37 (1) conclusive evidence of the nationality of an aircraft for inter-
38 national purposes, but not conclusive evidence in a proceeding under the
39 laws of the United States; and

40 (2) not evidence of ownership of an aircraft in a proceeding in which
41 ownership is or may be in issue.

1 (d) *CERTIFICATES AVAILABLE FOR INSPECTION.*—An operator of an air-
2 craft shall make available for inspection a certificate of registration for the
3 aircraft when requested by a United States Government, State, or local law
4 enforcement officer.

5 **§44104. Registration of aircraft components and dealers’**
6 **certificates of registration**

7 The Administrator of the Federal Aviation Administration may prescribe
8 regulations—

9 (1) in the interest of safety for registering and identifying an aircraft
10 engine, propeller, or appliance; and

11 (2) in the public interest for issuing, suspending, and revoking a deal-
12 er’s certificate of registration under this chapter and for its use by a per-
13 son manufacturing, distributing, or selling aircraft.

14 **§44105. Suspension and revocation of aircraft certificates**

15 The Administrator of the Federal Aviation Administration may suspend or
16 revoke a certificate of registration issued under section 44103 of this title
17 when the aircraft no longer meets the requirements of section 44102 of this
18 title.

19 **§44106. Revocation of aircraft certificates for controlled sub-**
20 **stance violations**

21 (a) *DEFINITION.*—In this section, “controlled substance” has the same
22 meaning given that term in section 102 of the Comprehensive Drug Abuse
23 Prevention and Control Act of 1970 (21 U.S.C. 802).

24 (b) *REVOCATIONS.*—(1) The Administrator of the Federal Aviation Admin-
25 istration shall issue an order revoking the certificate of registration for an
26 aircraft issued to an owner under section 44103 of this title and any other
27 certificate of registration that the owner of the aircraft holds under section
28 44103, if the Administrator finds that—

29 (A) the aircraft was used to carry out, or facilitate, an activity that
30 is punishable by death or imprisonment for more than one year under
31 a law of the United States or a State related to a controlled substance
32 (except a law related to simple possession of a controlled substance); and

33 (B) the owner of the aircraft permitted the use of the aircraft knowing
34 that the aircraft was to be used for the activity described in clause (A)
35 of this paragraph.

36 (2) An aircraft owner that is not an individual is deemed to have per-
37 mitted the use of the aircraft knowing that the aircraft was to be used for
38 the activity described in paragraph (1)(A) of this subsection only if a major-
39 ity of the individuals who control the owner of the aircraft or who are in-
40 volved in forming the major policy of the owner permitted the use of the air-

1 craft knowing that the aircraft was to be used for the activity described in
2 paragraph (1)(A).

3 (c) *ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.*—Before the Ad-
4 ministrator revokes a certificate under subsection (b) of this section, the Ad-
5 ministrator shall—

6 (1) advise the holder of the certificate of the charges or reasons on
7 which the Administrator bases the proposed action; and

8 (2) provide the holder of the certificate an opportunity to answer the
9 charges and state why the certificate should not be revoked.

10 (d) *APPEALS.*—(1) A person whose certificate is revoked by the Adminis-
11 trator under subsection (b) of this section may appeal the revocation order
12 to the National Transportation Safety Board. The Board shall affirm or re-
13 verse the order after providing notice and a hearing on the record. In conduct-
14 ing the hearing, the Board is not bound by the findings of fact of the Admin-
15 istrator.

16 (2) When a person files an appeal with the Board under this subsection,
17 the order of the Administrator revoking the certificate is stayed. However, if
18 the Administrator advises the Board that safety in air transportation or air
19 commerce requires the immediate effectiveness of the order—

20 (A) the order remains effective; and

21 (B) the Board shall dispose of the appeal not later than 60 days after
22 notification by the Administrator under this paragraph.

23 (3) A person substantially affected by an order of the Board under this sub-
24 section may seek judicial review of the order under section 46110 of this title.
25 The Administrator shall be made a party to that judicial proceeding.

26 (e) *ACQUITTAL.*—(1) The Administrator may not revoke, and the Board
27 may not affirm a revocation of, a certificate of registration under this section
28 on the basis of an activity described in subsection (b)(1)(A) of this section
29 if the holder of the certificate is acquitted of all charges related to a controlled
30 substance in an indictment or information arising from the activity.

31 (2) If the Administrator has revoked a certificate of registration of a person
32 under this section because of an activity described in subsection (b)(1)(A) of
33 this section, the Administrator shall reissue a certificate to the person if the
34 person—

35 (A) subsequently is acquitted of all charges related to a controlled sub-
36 stance in an indictment or information arising from the activity; and

37 (B) otherwise meets the requirements of section 44102 of this title.

38 **§ 44107. Recordation of conveyances, leases, and security in-**
39 **struments**

40 (a) *ESTABLISHMENT OF SYSTEM.*—The Administrator of the Federal Avia-
41 tion Administration shall establish a system for recording—

1 (1) conveyances that affect an interest in civil aircraft of the United
2 States;

3 (2) leases and instruments executed for security purposes, including
4 conditional sales contracts, assignments, and amendments, that affect an
5 interest in—

6 (A) a specifically identified aircraft engine having at least 750
7 rated takeoff horsepower or its equivalent;

8 (B) a specifically identified aircraft propeller capable of absorb-
9 ing at least 750 rated takeoff shaft horsepower;

10 (C) an aircraft engine, propeller, or appliance maintained for in-
11 stallation or use in an aircraft, aircraft engine, or propeller, by or
12 for an air carrier holding a certificate issued under section 44705
13 of this title; and

14 (D) spare parts maintained by or for an air carrier holding a
15 certificate issued under section 44705 of this title; and

16 (3) releases, cancellations, discharges, and satisfactions related to a
17 conveyance, lease, or instrument recorded under clause (1) or (2) of this
18 subsection.

19 (b) *GENERAL DESCRIPTION REQUIRED.*—A lease or instrument recorded
20 under subsection (a)(2)(C) or (D) of this section only has to describe generally
21 the engine, propeller, appliance, or spare part by type and designate its loca-
22 tion.

23 (c) *ACKNOWLEDGMENT.*—Except as the Administrator otherwise may pro-
24 vide, a conveyance, lease, or instrument may be recorded under subsection (a)
25 of this section only after it has been acknowledged before—

26 (1) a notary public; or

27 (2) another officer authorized under the laws of the United States, a
28 State, the District of Columbia, or a territory or possession of the United
29 States to acknowledge deeds.

30 (d) *RECORDS AND INDEXES.*—The Administrator shall—

31 (1) keep a record of the time and date that each conveyance, lease, and
32 instrument is filed and recorded with the Administrator; and

33 (2) record each conveyance, lease, and instrument filed with the Ad-
34 ministrator, in the order of their receipt, and index them by—

35 (A) the identifying description of the aircraft, aircraft engine, or
36 propeller, or location specified in a lease or instrument recorded
37 under subsection (a)(2)(C) or (D) of this section; and

38 (B) the names of the parties to each conveyance, lease, and in-
39 strument.

1 **§44108. Validity of conveyances, leases, and security instru-**
 2 **ments**

3 (a) *VALIDITY BEFORE FILING.*—Until a conveyance, lease, or instrument
 4 executed for security purposes that may be recorded under section 44107(a)(1)
 5 or (2) of this title is filed for recording, the conveyance, lease, or instrument
 6 is valid only against—

7 (1) the person making the conveyance, lease, or instrument;

8 (2) that person's heirs and devisees; and

9 (3) a person having actual notice of the conveyance, lease, or instru-
 10 ment.

11 (b) *PERIOD OF VALIDITY.*—When a conveyance, lease, or instrument is re-
 12 corded under section 44107 of this title, the conveyance, lease, or instrument
 13 is valid from the date of filing against all persons, without other recordation,
 14 except that—

15 (1) a lease or instrument recorded under section 44107(a)(2)(A) or (B)
 16 of this title is valid for a specifically identified engine or propeller with-
 17 out regard to a lease or instrument previously or subsequently recorded
 18 under section 44107(a)(2)(C) or (D); and

19 (2) a lease or instrument recorded under section 44107(a)(2)(C) or (D)
 20 of this title is valid only for items at the location designated in the lease
 21 or instrument.

22 (c) *APPLICABLE LAWS.*—(1) The validity of a conveyance, lease, or instru-
 23 ment that may be recorded under section 44107 of this title is subject to the
 24 laws of the State, the District of Columbia, or the territory or possession of
 25 the United States at which the conveyance, lease, or instrument is delivered,
 26 regardless of the place at which the subject of the conveyance, lease, or instru-
 27 ment is located or delivered. If the conveyance, lease, or instrument specifies
 28 the place at which delivery is intended, it is presumed that the conveyance,
 29 lease, or instrument was delivered at the specified place.

30 (2) This subsection does not take precedence over the Convention on the
 31 International Recognition of Rights in Aircraft (4 U.S.T. 1830).

32 (d) *NONAPPLICATION.*—This section does not apply to—

33 (1) a conveyance described in section 44107(a)(1) of this title that was
 34 made before August 22, 1938; or

35 (2) a lease or instrument described in section 44107(a)(2) of this title
 36 that was made before June 20, 1948.

37 **§44109. Reporting transfer of ownership**

38 (a) *FILING NOTICES.*—A person having an ownership interest in an air-
 39 craft for which a certificate of registration was issued under section 44103
 40 of this title shall file a notice with the Secretary of the Treasury that the Sec-

1 *retary requires by regulation, not later than 15 days after a sale, conditional*
2 *sale, transfer, or conveyance of the interest.*

3 (b) *EXEMPTIONS.—The Secretary—*

4 (1) *shall prescribe regulations that establish guidelines for exempting*
5 *a person or class from subsection (a) of this section; and*

6 (2) *may exempt a person or class under the regulations.*

7 ***§44110. Information about aircraft ownership and rights***

8 *The Administrator of the Federal Aviation Administration may provide by*
9 *regulation for—*

10 (1) *endorsing information on each certificate of registration issued*
11 *under section 44103 of this title and each certificate issued under section*
12 *44704 of this title about ownership of the aircraft for which each certifi-*
13 *cate is issued; and*

14 (2) *recording transactions affecting an interest in, and for other*
15 *records, proceedings, and details necessary to decide the rights of a party*
16 *related to, a civil aircraft of the United States, aircraft engine, propeller,*
17 *appliance, or spare part.*

18 ***§44111. Modifications in registration and recordation sys-***
19 ***tem for aircraft not providing air transportation***

20 (a) *APPLICATION.—This section applies only to aircraft not used to provide*
21 *air transportation.*

22 (b) *AUTHORITY TO MAKE MODIFICATIONS.—The Administrator of the Fed-*
23 *eral Aviation Administration shall make modifications in the system for reg-*
24 *istering and recording aircraft necessary to make the system more effective*
25 *in serving the needs of—*

26 (1) *buyers and sellers of aircraft;*

27 (2) *officials responsible for enforcing laws related to the regulation of*
28 *controlled substances (as defined in section 102 of the Comprehensive*
29 *Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)); and*

30 (3) *other users of the system.*

31 (c) *NATURE OF MODIFICATIONS.—Modifications made under subsection (b)*
32 *of this section—*

33 (1) *may include a system of titling aircraft or registering all aircraft,*
34 *even aircraft not operated;*

35 (2) *shall ensure positive, verifiable, and timely identification of the*
36 *true owner; and*

37 (3) *shall address at least each of the following deficiencies in and*
38 *abuses of the existing system:*

39 (A) *the registration of aircraft to fictitious persons.*

40 (B) *the use of false or nonexistent addresses by persons registering*
41 *aircraft.*

1 (C) the use by a person registering an aircraft of a post office
2 box or “mail drop” as a return address to evade identification of
3 the person’s address.

4 (D) the registration of aircraft to entities established to facilitate
5 unlawful activities.

6 (E) the submission of names of individuals on applications for
7 registration of aircraft that are not identifiable.

8 (F) the ability to make frequent legal changes in the registration
9 markings assigned to aircraft.

10 (G) the use of false registration markings on aircraft.

11 (H) the illegal use of “reserved” registration markings on air-
12 craft.

13 (I) the large number of aircraft classified as being in “self-re-
14 ported status”.

15 (J) the lack of a system to ensure timely and adequate notice of
16 the transfer of ownership of aircraft.

17 (K) the practice of allowing temporary operation and navigation
18 of aircraft without the issuance of a certificate of registration.

19 (d) REGULATIONS.—(1) The Administrator of the Federal Aviation Admin-
20 istration shall prescribe regulations to carry out this section and provide a
21 written explanation of how the regulations address each of the deficiencies and
22 abuses described in subsection (c) of this section. In prescribing the regula-
23 tions, the Administrator of the Federal Aviation Administration shall consult
24 with the Administrator of Drug Enforcement, the Commissioner of Customs,
25 other law enforcement officials of the United States Government, representa-
26 tives of State and local law enforcement officials, representatives of the general
27 aviation aircraft industry, representatives of users of general aviation air-
28 craft, and other interested persons.

29 (2) Regulations prescribed under this subsection shall require that—

30 (A) each individual listed in an application for registration of an air-
31 craft provide with the application the individual’s driver’s license num-
32 ber; and

33 (B) each person (not an individual) listed in an application for reg-
34 istration of an aircraft provide with the application the person’s tax-
35 payer identifying number.

36 **§44112. Limitation of liability**

37 (a) DEFINITIONS.—In this section—

38 (1) “lessor” means a person leasing for at least 30 days a civil air-
39 craft, aircraft engine, or propeller.

40 (2) “owner” means a person that owns a civil aircraft, aircraft en-
41 gine, or propeller.

1 (3) “secured party” means a person having a security interest in, or
2 security title to, a civil aircraft, aircraft engine, or propeller under a
3 conditional sales contract, equipment trust contract, chattel or corporate
4 mortgage, or similar instrument.

5 (b) *LIABILITY*.—A lessor, owner, or secured party is liable for personal in-
6 jury, death, or property loss or damage on land or water only when a civil
7 aircraft, aircraft engine, or propeller is in the actual possession or control of
8 the lessor, owner, or secured party, and the personal injury, death, or prop-
9 erty loss or damage occurs because of—

10 (1) the aircraft, engine, or propeller; or

11 (2) the flight of, or an object falling from, the aircraft, engine, or pro-
12 peller.

13

CHAPTER 443—INSURANCE

Sec.

44301. Definitions.

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44305. Insuring United States Government property.

44306. Premiums and limitations on coverage and claims.

44307. Revolving fund.

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14 **§ 44301. Definitions**

15 In this chapter—

16 (1) “American aircraft” means—

17 (A) a civil aircraft of the United States; and

18 (B) an aircraft owned or chartered by, or made available to—

19 (i) the United States Government; or

20 (ii) a State, the District of Columbia, a territory or posses-
21 sion of the United States, or a political subdivision of the
22 State, territory, or possession.

23 (2) “insurance carrier” means a person authorized to do aviation in-
24 surance business in a State, including a mutual or stock insurance com-
25 pany and a reciprocal insurance association.

26 **§ 44302. General authority**

27 (a) *INSURANCE AND REINSURANCE*.—(1) Subject to subsection (b) of this
28 section and section 44305(a) of this title, the Secretary of Transportation may
29 provide insurance and reinsurance against loss or damage arising out of any
30 risk from the operation of an American aircraft or foreign-flag aircraft—

31 (A) in foreign air commerce; or

32 (B) between at least 2 places, all of which are outside the United
33 States.

1 (2) An aircraft may be insured or reinsured for not more than its reason-
2 able value as determined by the Secretary. Insurance or reinsurance may be
3 provided only when the Secretary decides that the insurance cannot be ob-
4 tained on reasonable terms from an insurance carrier.

5 (b) *PRESIDENTIAL APPROVAL.*—The Secretary may provide insurance or
6 reinsurance under subsection (a) of this section only with the approval of the
7 President. The President may approve the insurance or reinsurance only after
8 deciding that the continued operation of the American aircraft or foreign-flag
9 aircraft to be insured or reinsured is necessary to carry out the foreign policy
10 of the United States Government.

11 (c) *CONSULTATION.*—The President may require the Secretary to consult
12 with interested departments, agencies, and instrumentalities of the Govern-
13 ment before providing insurance or reinsurance under this chapter.

14 (d) *ADDITIONAL INSURANCE.*—With the approval of the Secretary, a person
15 having an insurable interest in an aircraft may insure with other under-
16 writers in an amount that is more than the amount insured with the Sec-
17 retary. However, the Secretary may not benefit from the additional insurance.
18 This subsection does not prevent the Secretary from making contracts of coin-
19 surance.

20 **§ 44303. Coverage**

21 The Secretary of Transportation may provide insurance and reinsurance
22 authorized under section 44302 of this title for the following:

23 (1) an American aircraft or foreign-flag aircraft engaged in aircraft
24 operations the President decides are necessary to carry out the foreign
25 policy of the United States Government.

26 (2) property transported or to be transported on aircraft referred to
27 in clause (1) of this section, including—

28 (A) shipments by express or registered mail;

29 (B) property owned by citizens or residents of the United States;

30 (C) property—

31 (i) imported to, or exported from, the United States; and

32 (ii) bought or sold by a citizen or resident of the United
33 States under a contract putting the risk of loss or obligation
34 to provide insurance against risk of loss on the citizen or resi-
35 dent; and

36 (D) property transported between—

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

39 (ii) a place in a territory or possession of the United States
40 and a place in another territory or possession of the United
41 States; or

1 (iii) 2 places in the same territory or possession of the Unit-
2 ed States.

3 (3) the personal effects and baggage of officers and members of the
4 crew of an aircraft referred to in clause (1) of this section and of other
5 individuals employed or transported on that aircraft.

6 (4) officers and members of the crew of an aircraft referred to in clause
7 (1) of this section and other individuals employed or transported on that
8 aircraft against loss of life, injury, or detention.

9 (5) statutory or contractual obligations or other liabilities, customarily
10 covered by insurance, of an aircraft referred to in clause (1) of this sec-
11 tion or of the owner or operator of that aircraft.

12 **§44304. Reinsurance**

13 (a) *GENERAL AUTHORITY.*—To the extent the Secretary of Transportation
14 is authorized to provide insurance under this chapter, the Secretary may re-
15 insure any part of the insurance provided by an insurance carrier. The Sec-
16 retary may reinsure with, transfer to, or transfer back to, the carrier any in-
17 surance or reinsurance provided by the Secretary under this chapter.

18 (b) *PREMIUM LEVELS.*—The Secretary may provide reinsurance at pre-
19 miums not less than, or obtain reinsurance at premiums not higher than, the
20 premiums the Secretary establishes on similar risks or the premiums the in-
21 surance carrier charges for the insurance to be reinsured by the Secretary,
22 whichever is most advantageous to the Secretary. However, the Secretary may
23 make allowances to the insurance carrier for expenses incurred in providing
24 services and facilities that the Secretary considers good business practice, ex-
25 cept for payments by the carrier for the stimulation or solicitation of insur-
26 ance business.

27 **§44305. Insuring United States Government property**

28 (a) *GENERAL.*—With the approval of the President, a department, agency,
29 or instrumentality of the United States Government may obtain—

30 (1) insurance under this chapter, including insurance for risks from
31 operating an aircraft in intrastate or interstate air commerce, but not
32 including insurance on valuables subject to sections 1 and 2 of the Gov-
33 ernment Losses in Shipment Act (40 U.S.C. 721, 722); and

34 (2) insurance for risks arising from providing goods or services di-
35 rectly related to and necessary for operating an aircraft covered by in-
36 surance obtained under clause (1) of this subsection if the aircraft is op-
37 erated—

38 (A) in carrying out a contract of the department, agency, or in-
39 strumentality; or

1 (B) to transport military forces or materiel on behalf of the Unit-
2 ed States under an agreement between the Government and the gov-
3 ernment of a foreign country.

4 (b) *PREMIUM WAIVERS AND INDEMNIFICATION.*—With the approval re-
5 quired under subsection (a) of this section, the Secretary of Transportation
6 may provide the insurance without premium at the request of the Secretary
7 of Defense or the head of a department, agency, or instrumentality designated
8 by the President when the Secretary of Defense or the designated head agrees
9 to indemnify the Secretary of Transportation against all losses covered by the
10 insurance. The Secretary of Defense and any designated head may make in-
11 demnity agreements with the Secretary of Transportation under this section.

12 **§ 44306. Premiums and limitations on coverage and claims**

13 (a) *PREMIUMS BASED ON RISK.*—To the extent practical, the premium
14 charged for insurance or reinsurance under this chapter shall be based on con-
15 sideration of the risk involved.

16 (b) *TIME LIMITS.*—The Secretary of Transportation may provide insurance
17 and reinsurance under this chapter for a period of not more than 60 days.
18 The period may be extended for additional periods of not more than 60 days
19 each only if the President decides, before each additional period, that the con-
20 tinued operation of the aircraft to be insured or reinsured is necessary to
21 carry out the foreign policy of the United States Government.

22 (c) *MAXIMUM INSURED AMOUNT.*—The insurance policy on an aircraft in-
23 sured or reinsured under this chapter shall specify a stated amount that is
24 not more than the value of the aircraft, as determined by the Secretary. A
25 claim under the policy may not be paid for more than that stated amount.

26 **§ 44307. Revolving fund**

27 (a) *EXISTENCE, DISBURSEMENTS, APPROPRIATIONS, AND DEPOSITS.*—(1)
28 There is a revolving fund in the Treasury. The Secretary of the Treasury shall
29 disburse from the fund payments to carry out this chapter.

30 (2) Necessary amounts to carry out this chapter may be appropriated to
31 the fund. The amounts appropriated and other amounts received in carrying
32 out this chapter shall be deposited in the fund.

33 (b) *INVESTMENT.*—On request of the Secretary of Transportation, the Sec-
34 retary of the Treasury may invest any part of the amounts in the revolving
35 fund in interest-bearing securities of the United States Government. The in-
36 terest on, and the proceeds from the sale or redemption of, the securities shall
37 be deposited in the fund.

38 (c) *EXCESS AMOUNTS.*—The balance in the revolving fund in excess of an
39 amount the Secretary of Transportation determines is necessary for the re-
40 quirements of the fund and for reasonable reserves to maintain the solvency

1 of the fund shall be deposited at least annually in the Treasury as miscellane-
2 ous receipts.

3 (d) *EXPENSES.*—The Secretary of Transportation shall deposit annually an
4 amount in the Treasury as miscellaneous receipts to cover the expenses the
5 Government incurs when the Secretary of Transportation uses appropriated
6 amounts in carrying out this chapter. The deposited amount shall equal an
7 amount determined by multiplying the average monthly balance of appro-
8 priated amounts retained in the revolving fund by a percentage that is at
9 least the current average rate payable on marketable obligations of the Gov-
10 ernment. The Secretary of the Treasury shall determine annually in advance
11 the percentage applied.

12 **§44308. Administrative**

13 (a) *COMMERCIAL PRACTICES.*—The Secretary of Transportation may carry
14 out this chapter consistent with commercial practices of the aviation insur-
15 ance business.

16 (b) *ISSUANCE OF POLICIES AND DISPOSITION OF CLAIMS.*—(1) The Sec-
17 retary may issue insurance policies to carry out this chapter. The Secretary
18 may prescribe the forms, amounts insured under the policies, and premiums
19 charged. The Secretary may change an amount of insurance or a premium
20 for an existing policy only with the consent of the insured.

21 (2) For a claim under insurance authorized by this chapter, the Secretary
22 may—

23 (A) settle and pay the claim made for or against the United States
24 Government; and

25 (B) pay the amount of a judgment entered against the Government.

26 (c) *UNDERWRITING AGENT.*—(1) The Secretary may, and when practical
27 shall, employ an insurance carrier or group of insurance carriers to act as
28 an underwriting agent. The Secretary may use the agent to adjust claims
29 under this chapter, but claims may be paid only when approved by the Sec-
30 retary.

31 (2) The Secretary may pay reasonable compensation to an underwriting
32 agent for servicing insurance the agent writes for the Secretary. Compensation
33 may include payment for reasonable expenses incurred by the agent but may
34 not include a payment by the agent for stimulation or solicitation of insur-
35 ance business.

36 (3) Except as provided by this subsection, the Secretary may not pay an
37 insurance broker or other person acting in a similar capacity any consider-
38 ation for arranging insurance when the Secretary directly insures any part
39 of the risk.

1 (d) *BUDGET.*—The Secretary shall submit annually a budget program for
2 carrying out this chapter as provided for wholly owned Government corpora-
3 tions under chapter 91 of title 31.

4 (e) *ACCOUNTS.*—The Secretary shall maintain a set of accounts. The Comptroller General shall audit those accounts under chapter 35 of title 31. Notwithstanding chapter 35, the Comptroller General shall allow credit for expenditures under this chapter made consistent with commercial practices in the aviation insurance business when shown to be necessary because of the business activities authorized by this chapter.

10 **§44309. Civil actions**

11 (a) *DISPUTED LOSSES.*—A person may bring a civil action in a district court of the United States against the United States Government when a loss insured under this chapter is in dispute. A civil action involving the same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the Government carrying out this chapter. To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28 applies to an action under this subsection.

18 (b) *VENUE AND JOINDER.*—(1) A civil action under subsection (a) of this section may be brought in the judicial district for the District of Columbia or in the judicial district in which the plaintiff or the agent of the plaintiff resides if the plaintiff resides in the United States. If the plaintiff does not reside in the United States, the action may be brought in the judicial district for the District of Columbia or in the judicial district in which the Attorney General agrees to accept service.

25 (2) An interested person may be joined as a party to a civil action brought under subsection (a) of this section initially or on motion of either party to the action.

32 (c) *TIME REQUIREMENTS.*—When an insurance claim is made under this chapter, the period during which, under section 2401 of title 28, a civil action must be brought under subsection (a) of this section is suspended until 60 days after the Secretary of Transportation denies the claim. The claim is deemed to be administratively denied if the Secretary does not act on the claim not later than 6 months after filing, unless the Secretary makes a different agreement with the claimant when there is good cause for an agreement.

36 (d) *INTERPLEADER.*—(1) If the Secretary admits the Government owes money under an insurance claim under this chapter and there is a dispute about the person that is entitled to payment, the Government may bring a civil action of interpleader in a district court of the United States against the persons that may be entitled to payment. The action may be brought in

1 the judicial district for the District of Columbia or in the judicial district
2 in which any party resides.

3 (2) The district court may order a party not residing or found in the judi-
4 cial district in which the action is brought to appear in a civil action under
5 this subsection. The order shall be served in a reasonable manner decided by
6 the district court. If the court decides an unknown person might assert a
7 claim under the insurance that is the subject of the action, the court may
8 order service on that person by publication in the Federal Register.

9 (3) Judgment in a civil action under this subsection discharges the Govern-
10 ment from further liability to the parties to the action and to all other per-
11 sons served by publication under paragraph (2) of this subsection.

12 **§44310. Ending effective date**

13 The authority of the Secretary of Transportation to provide insurance and
14 reinsurance under this chapter is not effective after September 30, 1997.

15 **CHAPTER 445—FACILITIES, PERSONNEL, AND**
16 **RESEARCH**

Sec.

44501. Plans and policy.

44502. General facilities and personnel authority.

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17 **§44501. Plans and policy**

18 (a) *LONG RANGE PLANS AND POLICY REQUIREMENTS.*—The Administrator
19 of the Federal Aviation Administration shall make long range plans and pol-
20 icy for the orderly development and use of the navigable airspace, and the
21 orderly development and location of air navigation facilities, that will best
22 meet the needs of, and serve the interests of, civil aeronautics and the national
23 defense, except for needs of the armed forces that are peculiar to air warfare
24 and primarily of military concern.

25 (b) *AIRWAY CAPITAL INVESTMENT PLAN.*—The Administrator of the Fed-
26 eral Aviation Administration shall review, revise, and publish a national air-
27 ways system plan, known as the Airway Capital Investment Plan, before the
28 beginning of each fiscal year. The plan shall set forth—

29 (1) for a 10-year period, the research, engineering, and development
30 programs and the facilities and equipment that the Administrator con-

1 *siders necessary for a system of airways, air traffic services, and naviga-*
2 *tion aids that will—*

3 *(A) meet the forecasted needs of civil aeronautics;*

4 *(B) meet the requirements that the Secretary of Defense estab-*
5 *lishes for the support of the national defense; and*

6 *(C) provide the highest degree of safety in air commerce;*

7 *(2) for the first and 2d years of the plan, detailed annual estimates*
8 *of—*

9 *(A) the number, type, location, and cost of acquiring, operating,*
10 *and maintaining required facilities and services;*

11 *(B) the cost of research, engineering, and development required to*
12 *improve safety, system capacity, and efficiency; and*

13 *(C) personnel levels required for the activities described in*
14 *subclauses (A) and (B) of this clause;*

15 *(3) for the 3d, 4th, and 5th years of the plan, estimates of the total*
16 *cost of each major program for the 3-year period, and additional major*
17 *research programs, acquisition of systems and facilities, and changes in*
18 *personnel levels that may be required to meet long range objectives and*
19 *that may have significant impact on future funding requirements; and*

20 *(4) a 10-year investment plan that considers long range objectives that*
21 *the Administrator considers necessary to—*

22 *(A) ensure that safety is given the highest priority in providing*
23 *for a safe and efficient airway system; and*

24 *(B) meet the current and projected growth of aviation and the re-*
25 *quirements of interstate commerce, the United States Postal Service,*
26 *and the national defense.*

27 *(c) NATIONAL AVIATION RESEARCH PLAN.—(1) The Administrator of the*
28 *Federal Aviation Administration shall prepare and publish annually a na-*
29 *tional aviation research plan and submit the plan to the Committee on Com-*
30 *merce, Science, and Transportation of the Senate and the Committee on*
31 *Science, Space, and Technology of the House of Representatives. The plan*
32 *shall be submitted not later than the date of submission of the President's*
33 *budget to Congress.*

34 *(2)(A) The plan shall describe, for a 15-year period, the research, engineer-*
35 *ing, and development that the Administrator of the Federal Aviation Admin-*
36 *istration considers necessary—*

37 *(i) to ensure the continued capacity, safety, and efficiency of aviation*
38 *in the United States, considering emerging technologies and forecasted*
39 *needs of civil aeronautics; and*

40 *(ii) to provide the highest degree of safety in air travel.*

1 (B) *The plan shall cover all research conducted under sections 40119,*
2 *44504, 44505, 44507, 44511–44513, and 44912 of this title and shall identify*
3 *complementary and coordinated research efforts that the Administrator of the*
4 *National Aeronautics and Space Administration conducts with amounts spe-*
5 *cifically appropriated to the Administration. For projects for which the Ad-*
6 *ministrator of the Federal Aviation Administration anticipates requesting an*
7 *appropriation, the plan shall include—*

8 (i) *for the first 2 years of the plan, detailed annual estimates of the*
9 *schedule, cost, and work-force levels for each research project, including*
10 *a description of the scope and content of each major contract, grant, or*
11 *interagency agreement;*

12 (ii) *for the 3d, 4th, and 5th years of the plan, estimates of the total*
13 *cost of each major project and any additional major research projects*
14 *that may be required to meet long-term objectives and that may have sig-*
15 *nificant impact on future appropriations requirements;*

16 (iii) *for the 6th and subsequent years of the plan, the long-term objec-*
17 *tives the Administrator of the Federal Aviation Administration considers*
18 *necessary to ensure that aviation safety will be given the highest priority;*
19 *and*

20 (iv) *details of a program to disseminate to the private sector the re-*
21 *sults of aviation research conducted by the Administrator of the Federal*
22 *Aviation Administration, including any new technologies developed.*

23 (3) *Subject to section 40119(b) of this title and regulations prescribed under*
24 *section 40119(b), the Administrator of the Federal Aviation Administration*
25 *shall submit to the committees named in paragraph (1) of this subsection an*
26 *annual report on the accomplishments of the research completed during the*
27 *prior fiscal year. The report shall be submitted with the plan required under*
28 *paragraph (1) and be organized to allow comparison with the plan in effect*
29 *for the prior fiscal year.*

30 **§44502. General facilities and personnel authority**

31 (a) *GENERAL AUTHORITY.—(1) The Administrator of the Federal Aviation*
32 *Administration may—*

33 (A) *acquire, establish, improve, operate, and maintain air navigation*
34 *facilities; and*

35 (B) *provide facilities and personnel to regulate and protect air traffic.*

36 (2) *The cost of site preparation work associated with acquiring, establish-*
37 *ing, or improving an air navigation facility under paragraph (1)(A) of this*
38 *subsection shall be charged to amounts available for that purpose appro-*
39 *priated under section 48101(a) of this title. The Secretary of Transportation*
40 *may make an agreement with an airport owner or sponsor (as defined in sec-*

1 tion 47102 of this title) so that the owner or sponsor will provide the work
2 and be paid or reimbursed by the Secretary from the appropriated 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 department,
6 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, operated,
14 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 Ad-
21 ministration is given reasonable prior notice so that the Administrator of the
22 Federal Aviation Administration may advise the appropriate committees of
23 Congress and interested departments, agencies, and instrumentalities of the
24 Government on the effect of the acquisition, establishment, construction, or al-
25 teration on the use of airspace by aircraft. A disagreement between the Ad-
26 ministrator of the Federal Aviation Administration and the Secretary of De-
27 fense or the Administrator of the National Aeronautics and Space Adminis-
28 tration may be appealed to the President for a final decision.

29 (2) To ensure conformity, an airport or landing area not involving the ex-
30 penditure of Government money may be established or constructed, or a run-
31 way may be altered substantially, only if the Administrator of the Federal
32 Aviation Administration is given reasonable prior notice so that the Adminis-
33 trator may provide advice on the effects of the establishment, construction, or
34 alteration on the use of airspace by aircraft.

35 (d) *PUBLIC USE AND EMERGENCY ASSISTANCE.*—(1) The head of a depart-
36 ment, agency, or instrumentality of the Government having jurisdiction over
37 an air navigation facility owned or operated by the Government may provide,
38 under regulations the head of the department, agency, or instrumentality pre-
39 scribes, 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 the
 3 sale of fuel, oil, equipment, and supplies, to an aircraft, but only when nec-
 4 essary, because of an emergency, to allow the aircraft to continue to the near-
 5 est airport operated by private enterprise. The head of the department, agen-
 6 cy, or instrumentality shall provide for the assistance and sale at the prevail-
 7 ing local fair market value as determined by the head of the department,
 8 agency, or instrumentality. An amount that the head decides is equal to the
 9 cost of the assistance provided and the fuel, oil, equipment, and supplies sold
 10 shall be credited to the appropriation from which the cost was paid. The bal-
 11 ance 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 State
 14 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 Adminis-
 23 trator.

24 **§44503. Reducing nonessential expenditures**

25 The Secretary of Transportation shall attempt to reduce the capital, operat-
 26 ing, maintenance, and administrative costs of the national airport and air-
 27 way system to the maximum extent practicable consistent with the highest de-
 28 gree of aviation safety. At least annually, the Secretary shall consult with and
 29 consider the recommendations of users of the system on ways to reduce non-
 30 essential expenditures of the United States Government for aviation. The Sec-
 31 retary shall give particular attention to a recommendation that may reduce,
 32 with no adverse effect on safety, future personnel requirements and costs to
 33 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 of
 37 the Federal Aviation Administration may conduct or supervise developmental
 38 work and service testing to improve aircraft, aircraft engines, propellers, and
 39 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 tech-
13 nologies that will contain aircraft fuels to minimize post-crash fire haz-
14 ards; and

15 (7) to develop technologies and methods to assess the risk of and pre-
16 vent defects, failures, and malfunctions of products, parts, processes, and
17 articles manufactured for use in aircraft, aircraft engines, propellers,
18 and appliances that could result in a catastrophic failure of an aircraft.

19 (c) *AUTHORITY TO BUY ITEMS OFFERING SPECIAL ADVANTAGES.*—In carry-
20 ing out this section, the Administrator, by negotiation or otherwise, may
21 buy or exchange experimental aircraft, aircraft engines, propellers, and appli-
22 ances that the Administrator decides may offer special advantages to aero-
23 nautics.

24 **§44505. Systems, procedures, facilities, and devices**

25 (a) *GENERAL REQUIREMENTS.*—(1) The Administrator of the Federal
26 Aviation Administration shall—

27 (A) develop, alter, test, and evaluate systems, procedures, facilities,
28 and devices, and define their performance characteristics, to meet the
29 needs for safe and efficient navigation and traffic control of civil and
30 military aviation, except for needs of the armed forces that are peculiar
31 to air warfare and primarily of military concern; and

32 (B) select systems, procedures, facilities, and devices that will best
33 serve those needs and promote maximum coordination of air traffic con-
34 trol and air defense systems.

35 (2) The Administrator may make contracts to carry out this subsection
36 without regard to section 3324(a) and (b) of title 31.

37 (3) When a substantial question exists under paragraph (1) of this sub-
38 section about whether a matter is of primary concern to the armed forces, the
39 Administrator shall decide whether the Administrator or the Secretary of the
40 appropriate military department has responsibility. The Administrator shall
41 be given technical information related to each research and development

1 *project of the armed forces that potentially applies to, or potentially conflicts*
2 *with, the common system to ensure that potential application to the common*
3 *system is considered properly and that potential conflicts with the system are*
4 *eliminated.*

5 *(b) RESEARCH ON HUMAN FACTORS AND SIMULATION MODELS.—The Ad-*
6 *ministrator shall conduct or supervise research—*

7 *(1) to develop a better understanding of the relationship between*
8 *human factors and aviation accidents and between human factors and*
9 *air safety;*

10 *(2) to enhance air traffic controller, mechanic, and flight crew per-*
11 *formance;*

12 *(3) to develop a human-factor analysis of the hazards associated with*
13 *new technologies to be used by air traffic controllers, mechanics, and*
14 *flight crews;*

15 *(4) to identify innovative and effective corrective measures for human*
16 *errors that adversely affect air safety; and*

17 *(5) to develop dynamic simulation models of the air traffic control sys-*
18 *tem and airport design and operating procedures that will provide ana-*
19 *lytical technology—*

20 *(A) to predict airport and air traffic control safety and capacity*
21 *problems;*

22 *(B) to evaluate planned research projects; and*

23 *(C) to test proposed revisions in airport and air traffic control*
24 *operations programs.*

25 *(c) RESEARCH ON DEVELOPING AND MAINTAINING A SAFE AND EFFICIENT*
26 *SYSTEM.—The Administrator shall conduct or supervise research on—*

27 *(1) airspace and airport planning and design;*

28 *(2) airport capacity enhancement techniques;*

29 *(3) human performance in the air transportation environment;*

30 *(4) aviation safety and security;*

31 *(5) the supply of trained air transportation personnel, including pilots*
32 *and mechanics; and*

33 *(6) other aviation issues related to developing and maintaining a safe*
34 *and efficient air transportation system.*

35 **§ 44506. Air traffic controllers**

36 *(a) RESEARCH ON EFFECT OF AUTOMATION ON PERFORMANCE.—To de-*
37 *velop the means necessary to establish appropriate selection criteria and*
38 *training methodologies for the next generation of air traffic controllers, the*
39 *Administrator of the Federal Aviation Administration shall conduct research*
40 *to study the effect of automation on the performance of the next generation*

1 of air traffic controllers and the air traffic control system. The research shall
2 include investigating—

3 (1) methods for improving and accelerating future air traffic control-
4 ler training through the application of advanced training techniques, in-
5 cluding the use of simulation technology;

6 (2) the role of automation in the air traffic control system and its
7 physical and psychological effects on air traffic controllers;

8 (3) the attributes and aptitudes needed to function well in a highly
9 automated air traffic control system and the development of appropriate
10 testing methods for identifying individuals with those attributes and ap-
11 titudes;

12 (4) innovative methods for training potential air traffic controllers to
13 enhance the benefits of automation and maximize the effectiveness of the
14 air traffic control system; and

15 (5) new technologies and procedures for exploiting automated commu-
16 nication systems, including Mode S Transponders, to improve informa-
17 tion transfers between air traffic controllers and aircraft pilots.

18 (b) *RESEARCH ON HUMAN FACTOR ASPECTS OF AUTOMATION.*—The Ad-
19 ministrators of the Federal Aviation Administration and National Aero-
20 nautics and Space Administration may make an agreement for the use of the
21 National Aeronautics and Space Administration's unique human factor fa-
22 cilities and expertise in conducting research activities to study the human fac-
23 tor aspects of the highly automated environment for the next generation of
24 air traffic controllers. The research activities shall include investigating—

25 (1) human perceptual capabilities and the effect of computer-aided de-
26 cision making on the workload and performance of air traffic controllers;

27 (2) information management techniques for advanced air traffic con-
28 trol display systems; and

29 (3) air traffic controller workload and performance measures, includ-
30 ing the development of predictive models.

31 (c) *COLLEGIATE TRAINING INITIATIVE.*—(1) The Administrator of the Fed-
32 eral Aviation Administration may maintain the Collegiate Training Initia-
33 tive program by making new agreements and continuing existing agreements
34 with institutions of higher education (as defined by the Administrator) under
35 which the institutions prepare students for the position of air traffic controller
36 with the Department of Transportation (as defined in section 2109 of title
37 5). The Administrator may establish standards for the entry of institutions
38 into the program and for their continued participation.

39 (2)(A) The Administrator of the Federal Aviation Administration may ap-
40 point an individual who has successfully completed a course of training in
41 a program described in paragraph (1) of this subsection to the position of air

1 traffic controller noncompetitively in the excepted service (as defined in sec-
2 tion 2103 of title 5). An individual appointed under this paragraph serves
3 at the pleasure of the Administrator, subject to section 7511 of title 5. How-
4 ever, an appointment under this paragraph may be converted from one in
5 the excepted service to a career conditional or career appointment in the com-
6 petitive civil service (as defined in section 2102 of title 5) when the individual
7 achieves full performance level air traffic controller status, as decided by the
8 Administrator.

9 (B) The authority under subparagraph (A) of this paragraph to make ap-
10 pointments in the excepted service expires on October 6, 1997, except that the
11 Administrator of the Federal Aviation Administration may extend the author-
12 ity for one or more successive one-year periods.

13 (d) *STAFFING REPORT.*—The Administrator of the Federal Aviation Ad-
14 ministration shall submit annually to the Committee on Public Works and
15 Transportation of the House of Representatives and the Committee on Com-
16 merce, Science, and Transportation of the Senate a report containing—

17 (1) the staffing standards used to determine the number of air traffic
18 controllers needed to operate the air traffic control system of the United
19 States;

20 (2) a 3-year projection of the number of controllers needed to be em-
21 ployed to operate the system to meet the standards; and

22 (3) a detailed plan for employing the controllers, including projected
23 budget requests.

24 **§44507. Civil aeromedical research**

25 The Civil Aeromedical Institute established by section 106(j) of this title
26 may—

27 (1) conduct civil aeromedical research, including research related to—

28 (A) the protection and survival of aircraft occupants;

29 (B) medical accident investigation and airman medical certifi-
30 cation;

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

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

33 (E) vision and its relationship to human performance and equip-
34 ment design;

35 (F) human factors of flight crews, air traffic controllers, mechan-
36 ics, inspectors, airway facility technicians, and other individuals
37 involved in operating and maintaining aircraft and air traffic con-
38 trol equipment; and

39 (G) agency work force optimization, including training, equip-
40 ment design, reduction of errors, and identification of candidate
41 tasks for automation;

1 (2) make comments to the Administrator of the Federal Aviation Ad-
2 ministration on human factors aspects of proposed air safety regulations;

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

6 (4) advise, assist, and represent the Federal Aviation Administration
7 in the human factors aspects of joint projects between the Administration
8 and the National Aeronautics and Space Administration, other depart-
9 ments, agencies, and instrumentalities of the United States Government,
10 industry, and governments of foreign countries; and

11 (5) provide medical consultation services to the Administrator about
12 medical certification of airmen.

13 **§ 44508. Research advisory committee**

14 (a) *ESTABLISHMENT AND DUTIES.*—(1) There is a research advisory com-
15 mittee in the Federal Aviation Administration. The committee shall—

16 (A) provide advice and recommendations to the Administrator of the
17 Federal Aviation Administration about needs, objectives, plans, ap-
18 proaches, content, and accomplishments of the aviation research program
19 carried out under sections 40119, 44504, 44505, 44507, 44511–44513,
20 and 44912 of this title;

21 (B) assist in ensuring that the research is coordinated with similar
22 research being conducted outside the Administration; and

23 (C) review the operations of the regional centers of air transportation
24 excellence established under section 44513 of this title.

25 (2) The Administrator may establish subordinate committees to provide ad-
26 vice on specific areas of research conducted under sections 40119, 44504,
27 44505, 44507, 44511–44513, and 44912 of this title.

28 (b) *MEMBERS, CHAIRMAN, PAY, AND EXPENSES.*—(1) The committee is
29 composed of not more than 30 members appointed by the Administrator from
30 among individuals who are not employees of the Administration and who are
31 specially qualified to serve on the committee because of their education, train-
32 ing, or experience. In appointing members of the committee, the Adminis-
33 trator shall ensure that the regional centers of air transportation excellence,
34 universities, corporations, associations, consumers, and other departments,
35 agencies, and instrumentalities of the United States Government are rep-
36 resented.

37 (2) The Administrator shall designate the chairman of the committee.

38 (3) A member of the committee serves without pay. However, the Adminis-
39 trator may allow a member, when attending meetings of the committee or a
40 subordinate committee, expenses as authorized under section 5703 of title 5.

1 (c) *SUPPORT STAFF, INFORMATION, AND SERVICES.*—The Administrator
2 shall provide support staff for the committee. On request of the committee, the
3 Administrator shall provide information, administrative services, and sup-
4 plies that the Administrator considers necessary for the committee to carry
5 out its duties and powers.

6 (d) *NONAPPLICATION.*—Section 14 of the Federal Advisory Committee Act
7 (5 App. U.S.C.) does not apply to the committee.

8 (e) *USE AND LIMITATION OF AMOUNTS.*—(1) Not more than .1 percent of
9 the amounts made available to conduct research under sections 40119, 44504,
10 44505, 44507, 44511–44513, and 44912 of this title may be used by the Ad-
11 ministrator to carry out this section.

12 (2) A limitation on amounts available for obligation by or for the commit-
13 tee does not apply to amounts made available to carry out this section.

14 **§ 44509. Demonstration projects**

15 The Secretary of Transportation may carry out under this chapter dem-
16 onstration projects that the Secretary considers necessary for research and de-
17 velopment activities under this chapter.

18 **§ 44510. Airway science curriculum grants**

19 (a) *GENERAL AUTHORITY.*—The Administrator of the Federal Aviation Ad-
20 ministration may make competitive grant agreements with institutions of
21 higher education having airway science curricula for the United States Gov-
22 ernment's share of the allowable direct costs of the following categories of
23 items to the extent that the items are in support of airway science curricula:

24 (1) the construction, purchase, or lease with an option to purchase, of
25 buildings and associated facilities.

26 (2) instructional material and equipment.

27 (b) *COST GUIDELINES.*—The Administrator shall establish guidelines to de-
28 termine the direct costs allowable under a grant to be made under this section.
29 The Government's share of the allowable cost of a project assisted by a grant
30 under this section may not be more than 65 percent.

31 **§ 44511. Aviation research grants**

32 (a) *GENERAL AUTHORITY.*—The Administrator of the Federal Aviation Ad-
33 ministration may make grants to institutions of higher education and non-
34 profit research organizations to conduct aviation research in areas the Ad-
35 ministrator considers necessary for the long-term growth of civil aviation.

36 (b) *APPLICATIONS.*—An institution of higher education or nonprofit re-
37 search organization interested in receiving a grant under this section may
38 submit an application to the Administrator. The application must be in the
39 form and contain the information the Administrator requires.

1 (c) *SOLICITATION, REVIEW, AND EVALUATION PROCESS.*—The Adminis-
2 trator shall establish a solicitation, review, and evaluation process that en-
3 sures—

4 (1) providing grants under this section for proposals having adequate
5 merit and relevancy to the mission of the Administration;

6 (2) a fair geographical distribution of grants under this section; and

7 (3) the inclusion of historically black institutions of higher education
8 and other minority nonprofit research organizations for grant consider-
9 ation under this section.

10 (d) *RECORDS.*—Each person receiving a grant under this section shall
11 maintain records that the Administrator requires as being necessary to facili-
12 tate an effective audit and evaluation of the use of money provided under the
13 grant.

14 (e) *ANNUAL REPORT.*—The Administrator shall submit an annual report
15 to the Committee on Science, Space, and Technology of the House of Rep-
16 resentatives and the Committee on Commerce, Science, and Transportation of
17 the Senate on carrying out this section.

18 **§44512. Catastrophic failure prevention research grants**

19 (a) *GENERAL AUTHORITY.*—The Administrator of the Federal Aviation Ad-
20 ministration may make grants to institutions of higher education and non-
21 profit research organizations—

22 (1) to conduct aviation research related to the development of tech-
23 nologies and methods to assess the risk of, and prevent, defects, failures,
24 and malfunctions of products, parts, processes, and articles manufac-
25 tured for use in aircraft, aircraft engines, propellers, and appliances that
26 could result in a catastrophic failure of an aircraft; and

27 (2) to establish centers of excellence for continuing the research.

28 (b) *SOLICITATION, APPLICATION, REVIEW, AND EVALUATION PROCESS.*—
29 The Administrator shall establish a solicitation, application, review, and eval-
30 uation process that ensures providing grants under this section for proposals
31 having adequate merit and relevancy to the research described in subsection
32 (a) of this section.

33 **§44513. Regional centers of air transportation excellence**

34 (a) *GENERAL AUTHORITY.*—The Administrator of the Federal Aviation Ad-
35 ministration may make grants to institutions of higher education to establish
36 and operate regional centers of air transportation excellence. The locations
37 shall be distributed in a geographically fair way.

38 (b) *RESPONSIBILITIES.*—(1) The responsibilities of each center established
39 under this section shall include—

40 (A) conducting research on—

41 (i) airspace and airport planning and design;

- 1 (ii) airport capacity enhancement techniques;
2 (iii) human performance in the air transportation environment;
3 (iv) aviation safety and security;
4 (v) the supply of trained air transportation personnel, including
5 pilots and mechanics; and
6 (vi) other aviation issues related to developing and maintaining
7 a safe and efficient air transportation system; and
8 (B) interpreting, publishing, and disseminating the results of the re-
9 search.

10 (2) In conducting research described in paragraph (1)(A) of this subsection,
11 each center may make contracts with nonprofit research organizations and
12 other appropriate persons.

13 (c) *APPLICATIONS.*—An institution of higher education interested in receiv-
14 ing a grant under this section may submit an application to the Adminis-
15 trator. The application must be in the form and contain the information that
16 the Administrator requires by regulation.

17 (d) *SELECTION CRITERIA.*—The Administrator shall select recipients of
18 grants under this section on the basis of the following criteria:

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

22 (2) the demonstrated research and extension resources available to the
23 applicant to carry out this section.

24 (3) the ability of the applicant to provide leadership in making na-
25 tional and regional contributions to the solution of both long-range and
26 immediate air transportation problems.

27 (4) the extent to which the applicant has an established air transpor-
28 tation program.

29 (5) the demonstrated ability of the applicant to disseminate results of
30 air transportation research and educational programs through a state-
31 wide or regionwide continuing education program.

32 (6) the projects the applicant proposes to carry out under the grant.

33 (e) *EXPENDITURE AGREEMENTS.*—A grant may be made under this section
34 in a fiscal year only if the recipient makes an agreement with the Adminis-
35 trator that the Administrator requires to ensure that the recipient will main-
36 tain its total expenditures from all other sources for establishing and operat-
37 ing the center and related research activities at a level at least equal to the
38 average level of those expenditures in the 2 fiscal years of the recipient occur-
39 ring immediately before November 5, 1990.

40 (f) *GOVERNMENT'S SHARE OF COSTS.*—The United States Government's
41 share of a grant under this section is 50 percent of the costs of establishing

1 and operating the center and related research activities that the grant recipi-
2 ent carries out.

3 (g) *ALLOCATING AMOUNTS.*—The Administrator shall allocate amounts
4 made available to carry out this section in a geographically fair way.

5 **§44514. Flight service stations**

6 (a) *HOURS OF OPERATION.*—(1) The Secretary of Transportation may
7 close, or reduce the hours of operation of, a flight service station in an area
8 only if the service provided in the area after the closing or during the hours
9 the station is not in operation is provided by an automated flight service sta-
10 tion with at least model 1 equipment.

11 (2) The Secretary shall reopen a flight service station closed after March
12 24, 1987, but before July 15, 1987, as soon as practicable if the service in
13 the area in which the station is located has not been provided since the closing
14 by an automatic flight service station with at least model 1 equipment. The
15 hours of operation for the reopened station shall be the same as were the hours
16 of operation for the station on March 25, 1987. After reopening the station,
17 the Secretary may close, or reduce the hours of operation of, the station only
18 as provided in paragraph (1) of this subsection.

19 (b) *MANNED AUXILIARY STATIONS.*—The Secretary and the Administrator
20 of the Federal Aviation Administration shall establish a system of manned
21 auxiliary flight service stations. The manned auxiliary flight service stations
22 shall supplement the services of the planned consolidation to 61 automated
23 flight service stations under the flight service station modernization program.
24 A manned auxiliary flight service station shall be located in an area of
25 unique weather or operational conditions that are critical to the safety of
26 flight.

27 **§44515. Advanced training facilities for maintenance techni-**
28 **cians for air carrier aircraft**

29 (a) *GENERAL AUTHORITY.*—The Administrator of the Federal Aviation Ad-
30 ministration may make grants to not more than 4 vocational technical edu-
31 cational institutions to acquire or construct facilities to be used for the ad-
32 vanced training of maintenance technicians for air carrier aircraft.

33 (b) *ELIGIBILITY.*—The Administrator may make a grant under this section
34 to a vocational technical educational institution only if the institution has
35 a training curriculum that prepares aircraft maintenance technicians who
36 hold airframe and power plant certificates under subpart D of part 65 of title
37 14, Code of Federal Regulations, to maintain, without direct supervision, air
38 carrier aircraft.

39 (c) *LIMITATION.*—A vocational technical educational institution may not
40 receive more than a total of \$5,000,000 in grants under this section.

1

CHAPTER 447—SAFETY REGULATION

Sec.

- 44701. *General requirements.*
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- 44720. *Meteorological services.*
- 44721. *Aeronautical maps and charts.*
- 44722. *Aircraft operations in winter conditions.*
- 44723. *Annual report.*

2 **§ 44701. General requirements**

3 (a) *PROMOTING SAFETY.*—*The Administrator of the Federal Aviation Ad-*
4 *ministration shall promote safe flight of civil aircraft in air commerce by pre-*
5 *scribing—*

6 (1) *minimum standards required in the interest of safety for appli-*
7 *ances and for the design, material, construction, quality of work, and*
8 *performance of aircraft, aircraft engines, and propellers;*

9 (2) *regulations and minimum standards in the interest of safety for—*

10 (A) *inspecting, servicing, and overhauling aircraft, aircraft en-*
11 *gines, propellers, and appliances;*

12 (B) *equipment and facilities for, and the timing and manner of,*
13 *the inspecting, servicing, and overhauling; and*

14 (C) *a qualified private person, instead of an officer or employee*
15 *of the Administration, to examine and report on the inspecting,*
16 *servicing, and overhauling;*

17 (3) *regulations required in the interest of safety for the reserve supply*
18 *of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and*
19 *oil, including the reserve supply of fuel and oil carried in flight;*

20 (4) *regulations in the interest of safety for the maximum hours or pe-*
21 *riods of service of airmen and other employees of air carriers; and*

22 (5) *regulations and minimum standards for other practices, methods,*
23 *and procedure the Administrator finds necessary for safety in air com-*
24 *merce and national security.*

1 (b) *PRESCRIBING MINIMUM SAFETY STANDARDS.*—The Administrator may
2 prescribe minimum safety standards for—

3 (1) *an air carrier to whom a certificate is issued under section 44705*
4 *of this title; and*

5 (2) *operating an airport serving any passenger operation of air car-*
6 *rier aircraft designed for at least 31 passenger seats.*

7 (c) *REDUCING AND ELIMINATING ACCIDENTS.*—The Administrator shall
8 carry out this chapter in a way that best tends to reduce or eliminate the
9 possibility or recurrence of accidents in air transportation. However, the Ad-
10 ministrators is not required to give preference either to air transportation or
11 to other air commerce in carrying out this chapter.

12 (d) *CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND STAND-*
13 *ARDS.*—When prescribing a regulation or standard under subsection (a) or
14 (b) of this section or section 44702–44716 of this title, the Administrator
15 shall—

16 (1) *consider—*

17 (A) *the duty of an air carrier to provide service with the highest*
18 *possible degree of safety in the public interest; and*

19 (B) *differences between air transportation and other air com-*
20 *merce; and*

21 (2) *classify a regulation or standard appropriate to the differences be-*
22 *tween air transportation and other air commerce.*

23 (e) *EXEMPTIONS.*—The Administrator may grant an exemption from a re-
24 quirement of a regulation prescribed under subsection (a) or (b) of this section
25 or section 44702–44716 of this title if the Administrator finds the exemption
26 is in the public interest.

27 **§44702. Issuance of certificates**

28 (a) *GENERAL AUTHORITY AND APPLICATIONS.*—The Administrator of the
29 Federal Aviation Administration may issue airman certificates, type certifi-
30 cates, production certificates, airworthiness certificates, air carrier operating
31 certificates, airport operating certificates, air agency certificates, and air
32 navigation facility certificates under this chapter. An application for a cer-
33 tificate must—

34 (1) *be under oath when the Administrator requires; and*

35 (2) *be in the form, contain information, and be filed and served in*
36 *the way the Administrator prescribes.*

37 (b) *CONSIDERATIONS.*—When issuing a certificate under this chapter, the
38 Administrator shall—

39 (1) *consider—*

40 (A) *the duty of an air carrier to provide service with the highest*
41 *possible degree of safety in the public interest; and*

1 (B) differences between air transportation and other air com-
2 merce; and

3 (2) classify a certificate according to the differences between air trans-
4 portation and other air commerce.

5 (c) *PRIOR CERTIFICATION.*—The Administrator may authorize an aircraft,
6 aircraft engine, propeller, or appliance for which a certificate has been issued
7 authorizing the use of the aircraft, aircraft engine, propeller, or appliance in
8 air transportation to be used in air commerce without another certificate
9 being issued.

10 (d) *DELEGATION.*—(1) Subject to regulations, supervision, and review the
11 Administrator may prescribe, the Administrator may delegate to a qualified
12 private person, or to an employee under the supervision of that person, a mat-
13 ter related to—

14 (A) the examination, testing, and inspection necessary to issue a cer-
15 tificate under this chapter; and

16 (B) issuing the certificate.

17 (2) The Administrator may rescind a delegation under this subsection at
18 any time for any reason the Administrator considers appropriate.

19 (3) A person affected by an action of a private person under this subsection
20 may apply for reconsideration of the action by the Administrator. On the Ad-
21 ministrator's own initiative, the Administrator may reconsider the action of
22 a private person at any time. If the Administrator decides on reconsideration
23 that the action is unreasonable or unwarranted, the Administrator shall
24 change, modify, or reverse the action. If the Administrator decides the action
25 is warranted, the Administrator shall affirm the action.

26 **§ 44703. Airman certificates**

27 (a) *GENERAL.*—The Administrator of the Federal Aviation Administration
28 shall issue an airman certificate to an individual when the Administrator
29 finds, after investigation, that the individual is qualified for, and physically
30 able to perform the duties related to, the position to be authorized by the cer-
31 tificate.

32 (b) *CONTENTS.*—(1) An airman certificate shall—

33 (A) be numbered and recorded by the Administrator of the Federal
34 Aviation Administration;

35 (B) contain the name, address, and description of the individual to
36 whom the certificate is issued;

37 (C) contain terms the Administrator decides are necessary to ensure
38 safety in air commerce, including terms on the duration of the certifi-
39 cate, periodic or special examinations, and tests of physical fitness;

40 (D) specify the capacity in which the holder of the certificate may
41 serve as an airman with respect to an aircraft; and

1 (E) designate the class the certificate covers.

2 (2) A certificate issued to a pilot serving in scheduled air transportation
3 shall have the designation "airline transport pilot" of the appropriate class.

4 (c) APPEALS.—(1) An individual whose application for the issuance or re-
5 newal of an airman certificate has been denied may appeal the denial to the
6 National Transportation Safety Board, except if the individual holds a cer-
7 tificate that—

8 (A) is suspended at the time of denial; or

9 (B) was revoked within one year from the date of the denial.

10 (2) The Board shall conduct a hearing on the appeal at a place convenient
11 to the place of residence or employment of the applicant. The Board is not
12 bound by findings of fact of the Administrator of the Federal Aviation Ad-
13 ministration but is bound by all validly adopted interpretations of laws and
14 regulations the Administrator carries out unless the Board finds an interpre-
15 tation is arbitrary, capricious, or otherwise not according to law. At the end
16 of the hearing, the Board shall decide whether the individual meets the appli-
17 cable regulations and standards. The Administrator is bound by that decision.

18 (d) RESTRICTIONS AND PROHIBITIONS.—The Administrator of the Federal
19 Aviation Administration may—

20 (1) restrict or prohibit issuing an airman certificate to an alien; or

21 (2) make issuing the certificate to an alien dependent on a reciprocal
22 agreement with the government of a foreign country.

23 (e) CONTROLLED SUBSTANCE VIOLATIONS.—The Administrator of the Fed-
24 eral Aviation Administration may not issue an airman certificate to an indi-
25 vidual whose certificate is revoked under section 44710 of this title except—

26 (1) when the Administrator decides that issuing the certificate will fa-
27 cilitate law enforcement efforts; and

28 (2) as provided in section 44710(e)(2) of this title.

29 (f) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal
30 Aviation Administration shall make modifications in the system for issuing
31 airman certificates necessary to make the system more effective in serving the
32 needs of pilots and officials responsible for enforcing laws related to the regu-
33 lation of controlled substances (as defined in section 102 of the Comprehensive
34 Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modi-
35 fications shall ensure positive and verifiable identification of each individual
36 applying for or holding a certificate and shall address at least each of the
37 following deficiencies in, and abuses of, the existing system:

38 (A) the use of fictitious names and addresses by applicants for those
39 certificates.

40 (B) the use of stolen or fraudulent identification in applying for those
41 certificates.

1 (C) the use by an applicant of a post office box or “mail drop” as
2 a return address to evade identification of the applicant’s address.

3 (D) the use of counterfeit and stolen airman certificates by pilots.

4 (E) the absence of information about physical characteristics of holders
5 of those certificates.

6 (2) The Administrator of the Federal Aviation Administration shall pre-
7 scribe regulations to carry out paragraph (1) of this subsection and provide
8 a written explanation of how the regulations address each of the deficiencies
9 and abuses described in paragraph (1). In prescribing the regulations, the Ad-
10 ministrator of the Federal Aviation Administration shall consult with the Ad-
11 ministrator of Drug Enforcement, the Commissioner of Customs, other law en-
12 forcement officials of the United States Government, representatives of State
13 and local law enforcement officials, representatives of the general aviation air-
14 craft industry, representatives of users of general aviation aircraft, and other
15 interested persons.

16 **§44704. Type certificates, production certificates, and air-**
17 **worthiness certificates**

18 (a) *TYPE CERTIFICATES.*—(1) The Administrator of the Federal Aviation
19 Administration shall issue a type certificate for an aircraft, aircraft engine,
20 or propeller, or for an appliance specified under paragraph (2)(A) of this sub-
21 section when the Administrator finds that the aircraft, aircraft engine, pro-
22 peller, or appliance is properly designed and manufactured, performs prop-
23 erly, and meets the regulations and minimum standards prescribed under sec-
24 tion 44701(a) of this title. On receiving an application for a type certificate,
25 the Administrator shall investigate the application and may conduct a hear-
26 ing. The Administrator shall make, or require the applicant to make, tests
27 the Administrator considers necessary in the interest of safety.

28 (2) The Administrator may—

29 (A) specify in regulations those appliances that reasonably require a
30 type certificate in the interest of safety;

31 (B) include in a type certificate terms required in the interest of safe-
32 ty; and

33 (C) record on the certificate a numerical specification of the essential
34 factors related to the performance of the aircraft, aircraft engine, or pro-
35 peller for which the certificate is issued.

36 (b) *PRODUCTION CERTIFICATES.*—The Administrator shall issue a produc-
37 tion certificate authorizing the production of a duplicate of an aircraft, air-
38 craft engine, propeller, or appliance for which a type certificate has been is-
39 sued when the Administrator finds the duplicate will conform to the certifi-
40 cate. On receiving an application, the Administrator shall inspect, and may
41 require testing of, a duplicate to ensure that it conforms to the requirements

1 of the certificate. The Administrator may include in a production certificate
2 terms required in the interest of safety.

3 (c) AIRWORTHINESS CERTIFICATES.—(1) The registered owner of an air-
4 craft may apply to the Administrator for an airworthiness certificate for the
5 aircraft. The Administrator shall issue an airworthiness certificate when the
6 Administrator finds that the aircraft conforms to its type certificate and,
7 after inspection, is in condition for safe operation. The Administrator shall
8 register each airworthiness certificate and may include appropriate informa-
9 tion in the certificate. The certificate number or other individual designation
10 the Administrator requires shall be displayed on the aircraft. The Adminis-
11 trator may include in an airworthiness certificate terms required in the inter-
12 est of safety.

13 (2) A person applying for the issuance or renewal of an airworthiness cer-
14 tificate for an aircraft for which ownership has not been recorded under sec-
15 tion 44107 or 44110 of this title must submit with the application informa-
16 tion related to the ownership of the aircraft the Administrator decides is nec-
17 essary to identify each person having a property interest in the aircraft and
18 the kind and extent of the interest.

19 **§ 44705. Air carrier operating certificates**

20 The Administrator of the Federal Aviation Administration shall issue an
21 air carrier operating certificate to a person desiring to operate as an air car-
22 rier when the Administrator finds, after investigation, that the person prop-
23 erly and adequately is equipped and able to operate safely under this part
24 and regulations and standards prescribed under this part. An air carrier op-
25 erating certificate shall—

26 (1) contain terms necessary to ensure safety in air transportation; and

27 (2) specify the places to and from which, and the airways of the Unit-
28 ed States over which, a person may operate as an air carrier.

29 **§ 44706. Airport operating certificates**

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

33 (1) that serves an air carrier operating aircraft designed for at least
34 31 passenger seats;

35 (2) that the Administrator requires to have a certificate; and

36 (3) when the Administrator finds, after investigation, that the person
37 properly and adequately is equipped and able to operate safely under
38 this part and regulations and standards prescribed under this part.

39 (b) TERMS.—An airport operating certificate issued under this section shall
40 contain terms necessary to ensure safety in air transportation. Unless the Ad-

1 *ministrator decides that it is not in the public interest, the terms shall include*
 2 *conditions related to—*

3 *(1) operating and maintaining adequate safety equipment, including*
 4 *firefighting and rescue equipment capable of rapid access to any part of*
 5 *the airport used for landing, takeoff, or surface maneuvering of an air-*
 6 *craft; and*

7 *(2) friction treatment for primary and secondary runways that the*
 8 *Secretary of Transportation decides is necessary.*

9 *(c) EXEMPTIONS.—The Administrator may exempt from the requirements*
 10 *of this section, related to firefighting and rescue equipment, an operator of*
 11 *an airport described in subsection (a) of this section having less than .25 per-*
 12 *cent of the total number of passenger boardings each year at all airports de-*
 13 *scribed in subsection (a) when the Administrator decides that the require-*
 14 *ments are or would be unreasonably costly, burdensome, or impractical.*

15 **§44707. Examining and rating air agencies**

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

18 *(1) civilian schools giving instruction in flying or repairing, altering,*
 19 *and maintaining aircraft, aircraft engines, propellers, and appliances,*
 20 *on the adequacy of instruction, the suitability and airworthiness of*
 21 *equipment, and the competency of instructors.*

22 *(2) repair stations and shops that repair, alter, and maintain air-*
 23 *craft, aircraft engines, propellers, and appliances, on the adequacy and*
 24 *suitability of the equipment, facilities, and materials for, and methods*
 25 *of, repair and overhaul, and the competency of the individuals doing the*
 26 *work or giving instruction in the work.*

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

29 **§44708. Inspecting and rating air navigation facilities**

30 *The Administrator of the Federal Aviation Administration may inspect,*
 31 *classify, and rate an air navigation facility available for the use of civil air-*
 32 *craft on the suitability of the facility for that use.*

33 **§44709. Amendments, modifications, suspensions, and rev-**
 34 **ocations of certificates**

35 *(a) REINSPECTION AND REEXAMINATION.—The Administrator of the Fed-*
 36 *eral Aviation Administration may reinspect at any time a civil aircraft, air-*
 37 *craft engine, propeller, appliance, air navigation facility, or air agency, or*
 38 *reexamine an airman holding a certificate issued under section 44703 of this*
 39 *title.*

40 *(b) ACTIONS OF THE ADMINISTRATOR.—The Administrator may issue an*
 41 *order amending, modifying, suspending, or revoking—*

1 (1) any part of a certificate issued under this chapter if—

2 (A) the Administrator decides after conducting a reinspection, re-
3 examination, or other investigation that safety in air commerce or
4 air transportation and the public interest require that action; or

5 (B) the holder of the certificate has violated an aircraft noise or
6 sonic boom standard or regulation prescribed under section
7 44715(a) of this title; and

8 (2) an airman certificate when the holder of the certificate is convicted
9 of violating section 13(a) of the Fish and Wildlife Act of 1956 (16 U.S.C.
10 742j-1(a)).

11 (c) *ADVICE TO CERTIFICATE HOLDERS AND OPPORTUNITY TO ANSWER.*—
12 Before acting under subsection (b) of this section, the Administrator shall ad-
13 vise the holder of the certificate of the charges or other reasons on which the
14 Administrator relies for the proposed action. Except in an emergency, the Ad-
15 ministrators shall provide the holder an opportunity to answer the charges and
16 be heard why the certificate should not be amended, modified, suspended, or
17 revoked.

18 (d) *APPEALS.*—(1) A person adversely affected by an order of the Adminis-
19 trator under this section may appeal the order to the National Transportation
20 Safety Board. After notice and an opportunity for a hearing, the Board may
21 amend, modify, or reverse the order when the Board finds—

22 (A) if the order was issued under subsection (b)(1)(A) of this section,
23 that safety in air commerce or air transportation and the public interest
24 do not require affirmation of the order; or

25 (B) if the order was issued under subsection (b)(1)(B) of this section—

26 (i) that control or abatement of aircraft noise or sonic boom and
27 the public health and welfare do not require affirmation of the
28 order; or

29 (ii) the order, as it is related to a violation of aircraft noise or
30 sonic boom standards and regulations, is not consistent with safety
31 in air commerce or air transportation.

32 (2) The Board may modify a suspension or revocation of a certificate to
33 imposition of a civil penalty.

34 (3) When conducting a hearing under this subsection, the Board is not
35 bound by findings of fact of the Administrator but is bound by all validly
36 adopted interpretations of laws and regulations the Administrator carries out
37 and of written agency policy guidance available to the public related to sanc-
38 tions to be imposed under this section unless the Board finds an interpreta-
39 tion is arbitrary, capricious, or otherwise not according to law.

40 (e) *EFFECTIVENESS OF ORDERS PENDING APPEAL.*—When a person files
41 an appeal with the Board under subsection (d) of the section, the order of

1 the Administrator is stayed. However, if the Administrator advises the Board
2 that an emergency exists and safety in air commerce or air transportation
3 requires the order to be effective immediately—

4 (1) the order is effective; and

5 (2) the Board shall make a final disposition of the appeal not later
6 than 60 days after the Administrator so advises the Board.

7 (f) *JUDICIAL REVIEW.*—A person substantially affected by an order of the
8 Board under this section, or the Administrator when the Administrator de-
9 cides that an order of the Board under this section will have a significant
10 adverse impact on carrying out this part, may obtain judicial review of the
11 order under section 46110 of this title. The Administrator shall be made a
12 party to the judicial review proceedings. Findings of fact of the Board are
13 conclusive if supported by substantial evidence

14 **§44710. Revocations of airman certificates for controlled**
15 **substance violations**

16 (a) *DEFINITION.*—In this section, “controlled substance” has the same
17 meaning given that term in section 102 of the Comprehensive Drug Abuse
18 Prevention and Control Act of 1970 (21 U.S.C. 802).

19 (b) *REVOCAION.*—(1) The Administrator of the Federal Aviation Adminis-
20 tration shall issue an order revoking an airman certificate issued an individ-
21 ual under section 44703 of this title after the individual is convicted, under
22 a law of the United States or a State related to a controlled substance (except
23 a law related to simple possession of a controlled substance), of an offense
24 punishable by death or imprisonment for more than one year if the Adminis-
25 trator finds that—

26 (A) an aircraft was used to commit, or facilitate the commission of,
27 the offense; and

28 (B) the individual served as an airman, or was on the aircraft, in
29 connection with committing, or facilitating the commission of, the of-
30 fense.

31 (2) The Administrator shall issue an order revoking an airman certificate
32 issued an individual under section 44703 of this title if the Administrator
33 finds that—

34 (A) the individual knowingly carried out an activity punishable,
35 under a law of the United States or a State related to a controlled sub-
36 stance (except a law related to simple possession of a controlled sub-
37 stance), by death or imprisonment for more than one year;

38 (B) an aircraft was used to carry out or facilitate the activity; and

39 (C) the individual served as an airman, or was on the aircraft, in
40 connection with carrying out, or facilitating the carrying out of, the ac-
41 tivity.

1 (3) *The Administrator has no authority under paragraph (1) of this sub-*
2 *section to review whether an airman violated a law of the United States or*
3 *a State related to a controlled substance.*

4 (c) *ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Ad-*
5 *ministrator revokes a certificate under subsection (b) of this section, the Ad-*
6 *ministrator must—*

7 (1) *advise the holder of the certificate of the charges or reasons on*
8 *which the Administrator relies for the proposed revocation; and*

9 (2) *provide the holder of the certificate an opportunity to answer the*
10 *charges and be heard why the certificate should not be revoked.*

11 (d) *APPEALS.—(1) An individual whose certificate is revoked by the Ad-*
12 *ministrator under subsection (b) of this section may appeal the revocation*
13 *order to the National Transportation Safety Board. The Board shall affirm*
14 *or reverse the order after providing notice and an opportunity for a hearing*
15 *on the record. When conducting the hearing, the Board is not bound by find-*
16 *ings of fact of the Administrator but shall be bound by all validly adopted*
17 *interpretations of laws and regulations the Administrator carries out and of*
18 *written agency policy guidance available to the public related to sanctions to*
19 *be imposed under this section unless the Board finds an interpretation is ar-*
20 *bitrary, capricious, or otherwise not according to law.*

21 (2) *When an individual files an appeal with the Board under this sub-*
22 *section, the order of the Administrator revoking the certificate is stayed. How-*
23 *ever, if the Administrator advises the Board that safety in air transportation*
24 *or air commerce requires the immediate effectiveness of the order—*

25 (A) *the order remains effective; and*

26 (B) *the Board shall make a final disposition of the appeal not later*
27 *than 60 days after the Administrator so advises the Board.*

28 (3) *An individual substantially affected by an order of the Board under*
29 *this subsection, or the Administrator when the Administrator decides that an*
30 *order of the Board will have a significant adverse effect on carrying out this*
31 *part, may obtain judicial review of the order under section 46110 of this title.*
32 *The Administrator shall be made a party to the judicial review proceedings.*
33 *Findings of fact of the Board are conclusive if supported by substantial evi-*
34 *dence.*

35 (e) *ACQUITTAL.—(1) The Administrator may not revoke, and the Board*
36 *may not affirm a revocation of, an airman certificate under subsection (b)(2)*
37 *of this section on the basis of an activity described in subsection (b)(2)(A)*
38 *if the holder of the certificate is acquitted of all charges related to a controlled*
39 *substance in an indictment or information arising from the activity.*

1 (2) *If the Administrator has revoked an airman certificate under this sec-*
 2 *tion because of an activity described in subsection (b)(2)(A) of this section,*
 3 *the Administrator shall reissue a certificate to the individual if—*

4 (A) *the individual otherwise satisfies the requirements for a certificate*
 5 *under section 44703 of this title; and*

6 (B)(i) *the individual subsequently is acquitted of all charges related*
 7 *to a controlled substance in an indictment or information arising from*
 8 *the activity; or*

9 (ii) *the conviction on which a revocation under subsection (b)(1) of*
 10 *this section is based is reversed.*

11 (f) *WAIVERS.—The Administrator may waive the requirement of subsection*
 12 *(b) of this section that an airman certificate of an individual be revoked if—*

13 (1) *a law enforcement official of the United States Government or of*
 14 *a State requests a waiver; and*

15 (2) *the Administrator decides that the waiver will facilitate law en-*
 16 *forcement efforts.*

17 **§ 44711. Prohibitions and exemption**

18 (a) *PROHIBITIONS.—A person may not—*

19 (1) *operate a civil aircraft in air commerce without an airworthiness*
 20 *certificate in effect or in violation of a term of the certificate;*

21 (2) *serve in any capacity as an airman with respect to a civil air-*
 22 *craft, aircraft engine, propeller, or appliance used, or intended for use,*
 23 *in air commerce—*

24 (A) *without an airman certificate authorizing the airman to*
 25 *serve in the capacity for which the certificate was issued; or*

26 (B) *in violation of a term of the certificate or a regulation pre-*
 27 *scribed or order issued under section 44701(a) or (b) or 44702–*
 28 *44716 of this title;*

29 (3) *employ for service related to civil aircraft used in air commerce*
 30 *an airman who does not have an airman certificate authorizing the air-*
 31 *man to serve in the capacity for which the airman is employed;*

32 (4) *operate as an air carrier without an air carrier operating certifi-*
 33 *cate or in violation of a term of the certificate;*

34 (5) *operate aircraft in air commerce in violation of a regulation pre-*
 35 *scribed or certificate issued under section 44701(a) or (b) or 44702–*
 36 *44716 of this title;*

37 (6) *operate a seaplane or other aircraft of United States registry on*
 38 *the high seas in violation of a regulation under section 3 of the Inter-*
 39 *national Navigational Rules Act of 1977 (33 U.S.C. 1602);*

1 (7) violate a term of an air agency or production certificate or a regu-
2 lation prescribed or order issued under section 44701(a) or (b) or 44702-
3 44716 of this title related to the holder of the certificate;

4 (8) operate an airport without an airport operating certificate re-
5 quired under section 44706 of this title or in violation of a term of the
6 certificate; or

7 (9) manufacture, deliver, sell, or offer for sale any aviation fuel or ad-
8 ditive in violation of a regulation prescribed under section 44714 of this
9 title.

10 (b) *EXEMPTION.*—On terms the Administrator of the Federal Aviation Ad-
11 ministration prescribes as being in the public interest, the Administrator may
12 exempt a foreign aircraft and airmen serving on the aircraft from subsection
13 (a) of this section. However, an exemption from observing air traffic regula-
14 tions may not be granted.

15 **§44712. Emergency locator transmitters**

16 (a) *INSTALLATION.*—An emergency locator transmitter must be installed on
17 a fixed-wing powered civil aircraft for use in air commerce.

18 (b) *NONAPPLICATION.*—Subsection (a) of this section does not apply to—

19 (1) turbojet-powered aircraft;

20 (2) aircraft when used in scheduled flights by scheduled air carriers
21 holding certificates issued by the Secretary of Transportation under sub-
22 part II of this part;

23 (3) aircraft when used in training operations conducted entirely with-
24 in a 50 mile radius of the airport from which the training operations
25 begin;

26 (4) aircraft when used in flight operations related to design and test-
27 ing, the manufacture, preparation, and delivery of the aircraft, or the
28 aerial application of a substance for an agricultural purpose;

29 (5) aircraft holding certificates from the Administrator of the Federal
30 Aviation Administration for research and development;

31 (6) aircraft when used for showing compliance with regulations, crew
32 training, exhibition, air racing, or market surveys; and

33 (7) aircraft equipped to carry only one individual.

34 (c) *REMOVAL.*—The Administrator shall prescribe regulations specifying the
35 conditions under which an aircraft subject to subsection (a) of this section
36 may operate when its emergency locator transmitter has been removed for in-
37 spection, repair, alteration, or replacement.

38 **§44713. Inspection and maintenance**

39 (a) *GENERAL EQUIPMENT REQUIREMENTS.*—An air carrier shall make, or
40 cause to be made, any inspection, repair, or maintenance of equipment used
41 in air transportation as required by this part or regulations prescribed or

1 orders issued by the Administrator of the Federal Aviation Administration
2 under this part. A person operating, inspecting, repairing, or maintaining
3 the equipment shall comply with those requirements, regulations, and orders.

4 (b) *DUTIES OF INSPECTORS.*—The Administrator of the Federal Aviation
5 Administration shall employ inspectors who shall—

6 (1) inspect aircraft, aircraft engines, propellers, and appliances de-
7 signed for use in air transportation, during manufacture and when in
8 use by an air carrier in air transportation, to enable the Administrator
9 to decide whether the aircraft, aircraft engines, propellers, or appliances
10 are in safe condition and maintained properly; and

11 (2) advise and cooperate with the air carrier during that inspection
12 and maintenance.

13 (c) *UNSAFE AIRCRAFT, ENGINES, PROPELLERS, AND APPLIANCES.*—When
14 an inspector decides that an aircraft, aircraft engine, propeller, or appliance
15 is not in condition for safe operation, the inspector shall notify the air carrier
16 in the form and way prescribed by the Administrator of the Federal Aviation
17 Administration. For 5 days after the carrier is notified, the aircraft, engine,
18 propeller, or appliance may not be used in air transportation or in a way
19 that endangers air transportation unless the Administrator or the inspector
20 decides the aircraft, engine, propeller, or appliance is in condition for safe
21 operation.

22 (d) *MODIFICATIONS IN SYSTEM.*—(1) The Administrator of the Federal
23 Aviation Administration shall make modifications in the system for process-
24 ing forms for major repairs or alterations to fuel tanks and fuel systems of
25 aircraft not used to provide air transportation that are necessary to make the
26 system more effective in serving the needs of users of the system, including
27 officials responsible for enforcing laws related to the regulation of controlled
28 substances (as defined in section 102 of the Comprehensive Drug Abuse Pre-
29 vention and Control Act of 1970 (21 U.S.C. 802)). The modifications shall
30 address at least each of the following deficiencies in, and abuses of, the exist-
31 ing system:

32 (A) the lack of a special identification feature to allow the forms to
33 be distinguished easily from other major repair and alteration forms.

34 (B) the excessive period of time required to receive the forms at the
35 Airmen and Aircraft Registry of the Administration.

36 (C) the backlog of forms waiting for processing at the Registry.

37 (D) the lack of ready access by law enforcement officials to informa-
38 tion contained on the forms.

39 (2) The Administrator of the Federal Aviation Administration shall pre-
40 scribe regulations to carry out paragraph (1) of this subsection and provide
41 a written explanation of how the regulations address each of the deficiencies

1 and abuses described in paragraph (1). In prescribing the regulations, the Ad-
2 ministrator of the Federal Aviation Administration shall consult with the Ad-
3 ministrator of Drug Enforcement, the Commissioner of Customs, other law en-
4 forcement officials of the United States Government, representatives of State
5 and local law enforcement officials, representatives of the general aviation air-
6 craft industry, representatives of users of general aviation aircraft, and other
7 interested persons.

8 **§ 44714. Aviation fuel standards**

9 The Administrator of the Federal Aviation Administration shall pre-
10 scribe—

11 (1) standards for the composition or chemical or physical properties
12 of an aircraft fuel or fuel additive to control or eliminate aircraft emis-
13 sions the Administrator of the Environmental Protection Agency decides
14 under section 231 of the Clean Air Act (42 U.S.C. 7571) endanger the
15 public health or welfare; and

16 (2) regulations providing for carrying out and enforcing those stand-
17 ards.

18 **§ 44715. Controlling aircraft noise and sonic boom**

19 (a) STANDARDS AND REGULATIONS.—(1) To relieve and protect the public
20 health and welfare from aircraft noise and sonic boom, the Administrator of
21 the Federal Aviation Administration shall prescribe—

22 (A) standards to measure aircraft noise and sonic boom; and

23 (B) regulations to control and abate aircraft noise and sonic boom.

24 (2) The Administrator of the Federal Aviation Administration may pre-
25 scribe standards and regulations under this subsection only after consulting
26 with the Administrator of the Environmental Protection Agency. The stand-
27 ards and regulations shall be applied when issuing, amending, modifying,
28 suspending, or revoking a certificate authorized under this chapter.

29 (3) An original type certificate may be issued under section 44704(a) of
30 this title for an aircraft for which substantial noise abatement can be achieved
31 only after the Administrator of the Federal Aviation Administration pre-
32 scribes standards and regulations under this section that apply to that air-
33 craft.

34 (b) CONSIDERATIONS AND CONSULTATION.—When prescribing a standard
35 or regulation under this section, the Administrator of the Federal Aviation
36 Administration shall—

37 (1) consider relevant information related to aircraft noise and sonic
38 boom;

39 (2) consult with appropriate departments, agencies, and instrumental-
40 ities of the United States Government and State and interstate authori-
41 ties;

1 (3) consider whether the standard or regulation is consistent with the
2 highest degree of safety in air transportation or air commerce in the
3 public interest;

4 (4) consider whether the standard or regulation is economically rea-
5 sonable, technologically practicable, and appropriate for the applicable
6 aircraft, aircraft engine, appliance, or certificate; and

7 (5) consider the extent to which the standard or regulation will carry
8 out the purposes of this section.

9 (c) *PROPOSED REGULATIONS OF ADMINISTRATOR OF ENVIRONMENTAL*
10 *PROTECTION AGENCY.—The Administrator of the Environmental Protection*
11 *Agency shall submit to the Administrator of the Federal Aviation Administra-*
12 *tion proposed regulations to control and abate aircraft noise and sonic boom*
13 *(including control and abatement through the use of the authority of the Ad-*
14 *ministrator of the Federal Aviation Administration) that the Administrator*
15 *of the Environmental Protection Agency considers necessary to protect the*
16 *public health and welfare. The Administrator of the Federal Aviation Admin-*
17 *istration shall consider those proposed regulations and shall publish them in*
18 *a notice of proposed regulations not later than 30 days after they are received.*
19 *Not later than 60 days after publication, the Administrator of the Federal*
20 *Aviation Administration shall begin a hearing at which interested persons are*
21 *given an opportunity for oral and written presentations. Not later than 90*
22 *days after the hearing is completed and after consulting with the Adminis-*
23 *trator of the Environmental Protection Agency, the Administrator of the Fed-*
24 *eral Aviation Administration shall—*

25 (1) prescribe regulations as provided by this section—

26 (A) substantially the same as the proposed regulations submitted
27 by the Administrator of the Environmental Protection Agency; or

28 (B) that amend the proposed regulations; or

29 (2) publish in the Federal Register—

30 (A) a notice that no regulation is being prescribed in response to
31 the proposed regulations of the Administrator of the Environmental
32 Protection Agency;

33 (B) a detailed analysis of, and response to, all information the
34 Administrator of the Environmental Protection Agency submitted
35 with the proposed regulations; and

36 (C) a detailed explanation of why no regulation is being pre-
37 scribed.

38 (d) *CONSULTATION AND REPORTS.—(1) If the Administrator of the Envi-*
39 *ronmental Protection Agency believes that the action of the Administrator of*
40 *the Federal Aviation Administration under subsection (c)(1)(B) or (2) of this*
41 *section does not protect the public health and welfare from aircraft noise or*

1 *sonic boom, consistent with the considerations in subsection (b) of this section,*
2 *the Administrator of the Environmental Protection Agency shall consult with*
3 *the Administrator of the Federal Aviation Administration and may request*
4 *a report on the advisability of prescribing the regulation as originally pro-*
5 *posed. The request, including a detailed statement of the information on*
6 *which the request is based, shall be published in the Federal Register.*

7 *(2) The Administrator of the Federal Aviation Administration shall report*
8 *to the Administrator of the Environmental Protection Agency within the time,*
9 *if any, specified in the request. However, the time specified must be at least*
10 *90 days after the date of the request. The report shall—*

11 *(A) be accompanied by a detailed statement of the findings of the Ad-*
12 *ministrator of the Federal Aviation Administration and the reasons for*
13 *the findings;*

14 *(B) identify any statement related to an action under subsection (c)*
15 *of this section filed under section 102(2)(C) of the National Environ-*
16 *mental Policy Act of 1969 (42 U.S.C. 4332(2)(C));*

17 *(C) specify whether and where that statement is available for public*
18 *inspection; and*

19 *(D) be published in the Federal Register unless the request proposes*
20 *specific action by the Administrator of the Federal Aviation Administra-*
21 *tion and the report indicates that action will be taken.*

22 *(e) SUPPLEMENTAL REPORTS.—The Administrator of the Environmental*
23 *Protection Agency may request the Administrator of the Federal Aviation Ad-*
24 *ministration to file a supplemental report if the report under subsection (d)*
25 *of this section indicates that the proposed regulations under subsection (c) of*
26 *this section, for which a statement under section 102(2)(C) of the Act (42*
27 *U.S.C. 4332(2)(C)) is not required, should not be prescribed. The supple-*
28 *mental report shall be published in the Federal Register within the time the*
29 *Administrator of the Environmental Protection Agency specifies. However, the*
30 *time specified must be at least 90 days after the date of the request. The sup-*
31 *plemental report shall contain a comparison of the environmental effects, in-*
32 *cluding those that cannot be avoided, of the action of the Administrator of*
33 *the Federal Aviation Administration and the proposed regulations of the Ad-*
34 *ministrator of the Environmental Protection Agency.*

35 *(f) EXEMPTIONS.—An exemption from a standard or regulation prescribed*
36 *under this section may be granted only if, before granting the exemption, the*
37 *Administrator of the Federal Aviation Administration consults with the Ad-*
38 *ministrator of the Environmental Protection Agency. However, if the Admin-*
39 *istrator of the Federal Aviation Administration finds that safety in air trans-*
40 *portation or air commerce requires an exemption before the Administrator of*
41 *the Environmental Protection Agency can be consulted, the exemption may*

1 be granted. The Administrator of the Federal Aviation Administration shall
2 consult with the Administrator of the Environmental Protection Agency as
3 soon as practicable after the exemption is granted.

4 **§44716. Collision avoidance systems**

5 (a) DEVELOPMENT AND CERTIFICATION.—The Administrator of the Federal
6 Aviation Administration shall—

7 (1) complete the development of the collision avoidance system known
8 as TCAS-II so that TCAS-II can operate under visual and instrument
9 flight rules and can be upgraded to the performance standards applicable
10 to the collision avoidance system known as TCAS-III;

11 (2) develop and carry out a schedule for developing and certifying
12 TCAS-II that will result in certification not later than June 30, 1989;
13 and

14 (3) submit to Congress monthly reports on the progress being made in
15 developing and certifying TCAS-II.

16 (b) INSTALLATION AND OPERATION.—The Administrator shall require by
17 regulation that, not later than 30 months after the date certification is made
18 under subsection (a)(2) of this section, TCAS-II be installed and operated on
19 each civil aircraft that has a maximum passenger capacity of at least 31 seats
20 and is used to provide air transportation of passengers, including intrastate
21 air transportation of passengers. The Administrator may extend the deadline
22 in this subsection for not more than 2 years if the Administrator finds the
23 extension is necessary to promote—

24 (1) a safe and orderly transition to the operation of a fleet of civil
25 aircraft described in this subsection equipped with TCAS-II; or

26 (2) other safety objectives.

27 (c) OPERATIONAL EVALUATION.—Not later than December 30, 1990, the
28 Administrator shall establish a one-year program to collect and assess safety
29 and operational information from civil aircraft equipped with TCAS-II for
30 the operational evaluation of TCAS-II. The Administrator shall encourage
31 foreign air carriers that operate civil aircraft equipped with TCAS-II to par-
32 ticipate in the program.

33 (d) AMENDING SCHEDULE FOR WINDSHEAR EQUIPMENT.—The Adminis-
34 trator shall consider the feasibility and desirability of amending the schedule
35 for installing airborne low-altitude windshear equipment to make the schedule
36 compatible with the schedule for installing TCAS-II.

37 (e) DEADLINE FOR DEVELOPMENT AND CERTIFICATION.—(1) The Adminis-
38 trator shall complete developing and certifying TCAS-III as soon as possible.

39 (2) Necessary amounts may be appropriated from the Airport and Airway
40 Trust Fund established under section 9502 of the Internal Revenue Code of
41 1986 (26 U.S.C. 9502) to carry out this subsection.

1 (f) *INSTALLING AND USING TRANSPONDERS.*—The Administrator shall pre-
 2 scribe regulations requiring that, not later than December 30, 1990, operating
 3 transponders with automatic altitude reporting capability be installed and
 4 used for aircraft operating in designated terminal airspace where radar serv-
 5 ice is provided for separation of aircraft. The Administrator may provide for
 6 access to that airspace (except terminal control areas and airport radar serv-
 7 ice areas) by nonequipped aircraft if the Administrator finds the access will
 8 not interfere with the normal traffic flow.

9 **§44717. Aging aircraft**

10 (a) *INSPECTIONS AND REVIEWS.*—The Administrator of the Federal Avia-
 11 tion Administration shall prescribe regulations that ensure the continuing
 12 airworthiness of aging aircraft. The regulations prescribed under subsection
 13 (a) of this section—

14 (1) at least shall require the Administrator to make inspections, and
 15 review the maintenance and other records, of each aircraft an air carrier
 16 uses to provide air transportation that the Administrator decides may
 17 be necessary to enable the Administrator to decide whether the aircraft
 18 is in safe condition and maintained properly for operation in air trans-
 19 portation;

20 (2) at least shall require an air carrier to demonstrate to the Adminis-
 21 trator, as part of the inspection, that maintenance of the aircraft's age-
 22 sensitive parts and components has been adequate and timely enough to
 23 ensure the highest degree of safety;

24 (3) shall require the air carrier to make available to the Administrator
 25 the aircraft and any records about the aircraft that the Administrator
 26 requires to carry out a review; and

27 (4) shall establish procedures to be followed in carrying out an inspec-
 28 tion.

29 (b) *WHEN AND HOW INSPECTIONS AND REVIEWS SHALL BE CARRIED*
 30 *OUT.*—(1) Inspections and reviews required under subsection (a)(1) of this
 31 section shall be carried out as part of each heavy maintenance check of the
 32 aircraft conducted after the 14th year in which the aircraft has been in serv-
 33 ice.

34 (2) Inspections under subsection (a)(1) of this section shall be carried out
 35 as provided under section 44701(a)(2)(B) and (C) of this title.

36 (c) *AIRCRAFT MAINTENANCE SAFETY PROGRAMS.*—The Administrator shall
 37 establish—

38 (1) a program to verify that air carriers are maintaining their air-
 39 craft according to maintenance programs approved by the Adminis-
 40 trator;

41 (2) a program—

1 (A) to provide inspectors and engineers of the Administration
2 with training necessary to conduct auditing inspections of aircraft
3 operated by air carriers for corrosion and metal fatigue; and

4 (B) to enhance participation of those inspectors and engineers in
5 those inspections; and

6 (3) a program to ensure that air carriers demonstrate to the Adminis-
7 trator their commitment and technical competence to ensure the air-
8 worthiness of aircraft that the carriers operate.

9 (d) FOREIGN AIR TRANSPORTATION.—(1) The Administrator shall take all
10 possible steps to encourage governments of foreign countries and relevant
11 international organizations to develop standards and requirements for inspec-
12 tions and reviews that—

13 (A) will ensure the continuing airworthiness of aging aircraft used by
14 foreign air carriers to provide foreign air transportation to and from the
15 United States; and

16 (B) will provide passengers of those foreign air carriers with the same
17 level of safety that will be provided passengers of air carriers by carrying
18 out this section.

19 (2) Not later than September 30, 1994, the Administrator shall report to
20 Congress on carrying out this subsection.

21 **§44718. Structures interfering with air commerce**

22 (a) NOTICE.—By regulation or by order when necessary, the Secretary of
23 Transportation shall require a person to give adequate public notice, in the
24 form and way the Secretary prescribes, of the construction, alteration, estab-
25 lishment, or expansion, or the proposed construction, alteration, establish-
26 ment, or expansion, of a structure or sanitary landfill when the notice will
27 promote—

28 (1) safety in air commerce; and

29 (2) the efficient use and preservation of the navigable airspace and of
30 airport traffic capacity at public-use airports.

31 (b) STUDIES.—(1) Under regulations prescribed by the Secretary, if the
32 Secretary decides that constructing or altering a structure may result in an
33 obstruction of the navigable airspace or an interference with air navigation
34 facilities and equipment or the navigable airspace, the Secretary shall conduct
35 an aeronautical study to decide the extent of any adverse impact on the safe
36 and efficient use of the airspace, facilities, or equipment. In conducting the
37 study, the Secretary shall consider factors relevant to the efficient and effective
38 use of the navigable airspace, including—

39 (A) the impact on arrival, departure, and en route procedures for air-
40 craft operating under visual flight rules;

1 (B) the impact on arrival, departure, and en route procedures for air-
2 craft operating under instrument flight rules;

3 (C) the impact on existing public-use airports and aeronautical facili-
4 ties;

5 (D) the impact on planned public-use airports and aeronautical facili-
6 ties; and

7 (E) the cumulative impact resulting from the proposed construction or
8 alteration of a structure when combined with the impact of other existing
9 or proposed structures.

10 (2) On completing the study, the Secretary shall issue a report disclosing
11 completely the extent of the adverse impact on the safe and efficient use of
12 the navigable airspace that the Secretary finds will result from constructing
13 or altering the structure.

14 (c) *BROADCAST APPLICATIONS AND TOWER STUDIES.*—In carrying out
15 laws related to a broadcast application and conducting an aeronautical study
16 related to broadcast towers, the Administrator of the Federal Aviation Admin-
17 istration and the Federal Communications Commission shall take action nec-
18 essary to coordinate efficiently—

19 (1) the receipt and consideration of, and action on, the application;
20 and

21 (2) the completion of any associated aeronautical study.

22 **§ 44719. Standards for navigational aids**

23 The Secretary of Transportation shall prescribe regulations on standards
24 for installing navigational aids, including airport control towers. For each
25 type of facility, the regulations shall consider at a minimum traffic density
26 (number of aircraft operations without consideration of aircraft size), terrain
27 and other obstacles to navigation, weather characteristics, passengers served,
28 and potential aircraft operating efficiencies.

29 **§ 44720. Meteorological services**

30 (a) *RECOMMENDATIONS.*—The Administrator of the Federal Aviation Ad-
31 ministration shall make recommendations to the Secretary of Commerce on
32 providing meteorological services necessary for the safe and efficient movement
33 of aircraft in air commerce. In providing the services, the Secretary shall co-
34 operate with the Administrator and give complete consideration to those rec-
35 ommendations.

36 (b) *PROMOTING SAFETY AND EFFICIENCY.*—To promote safety and effi-
37 ciency in air navigation to the highest possible degree, the Secretary shall—

38 (1) observe, measure, investigate, and study atmospheric phenomena,
39 and maintain meteorological stations and offices, that are necessary or
40 best suited for finding out in advance information about probable weath-
41 er conditions;

1 (2) provide reports to the Administrator to persons engaged in civil
2 aeronautics that are designated by the Administrator and to other per-
3 sons designated by the Secretary in a way and with a frequency that
4 best will result in safety in, and facilitating, air navigation;

5 (3) cooperate with persons engaged in air commerce in meteorological
6 services, maintain reciprocal arrangements with those persons in carry-
7 ing out this clause, and collect and distribute weather reports available
8 from aircraft in flight;

9 (4) maintain and coordinate international exchanges of meteorological
10 information required for the safety and efficiency of air navigation;

11 (5) in cooperation with other departments, agencies, and instrumen-
12 talities of the United States Government, meteorological services of for-
13 eign countries, and persons engaged in air commerce, participate in de-
14 veloping an international basic meteorological reporting network, includ-
15 ing the establishment, operation, and maintenance of reporting stations
16 on the high seas, in polar regions, and in foreign countries;

17 (6) coordinate meteorological requirements in the United States to
18 maintain standard observations, to promote efficient use of facilities, and
19 to avoid duplication of services unless the duplication tends to promote
20 the safety and efficiency of air navigation; and

21 (7) promote and develop meteorological science and foster and support
22 research projects in meteorology through the use of private and govern-
23 mental research facilities and provide for publishing the results of the
24 projects unless publication would not be in the public interest.

25 **§44721. Aeronautical maps and charts**

26 (a) PUBLICATION.—(1) The Administrator of the Federal Aviation Admin-
27 istration may arrange for the publication of aeronautical maps and charts
28 necessary for the safe and efficient movement of aircraft in air navigation,
29 using the facilities and assistance of departments, agencies, and instrumenta-
30 lities of the United States Government as far as practicable.

31 (2) In carrying out paragraph (1) of this subsection, the Administrator
32 shall update and arrange for the publication of clearly defined routes for
33 navigating through a complex terminal airspace area and to and from an
34 airport located in such an area, if the Administrator decides that publication
35 of the routes would promote safety in air navigation. The routes shall be de-
36 veloped in consultation with pilots and other users of affected airports and
37 shall be for the optional use of pilots operating under visual flight rules.

38 (b) INDEMNIFICATION.—The Government shall make an agreement to in-
39 demnify any person that publishes a map or chart for use in aeronautics from
40 any part of a claim arising out of the depiction by the person on the map

1 or chart of a defective or deficient flight procedure or airway if the flight pro-
2 cedure or airway was—

3 (1) prescribed by the Administrator;

4 (2) depicted accurately on the map or chart; and

5 (3) not obviously defective or deficient.

6 **§44722. Aircraft operations in winter conditions**

7 *The Administrator of the Federal Aviation Administration shall prescribe*
8 *regulations requiring procedures to improve safety of aircraft operations dur-*
9 *ing winter conditions. In deciding on the procedures to be required, the Ad-*
10 *ministrator shall consider at least aircraft and air traffic control modifica-*
11 *tions, the availability of different types of deicing fluids (considering their ef-*
12 *ficacy and environmental limitations), the types of deicing equipment avail-*
13 *able, and the feasibility and desirability of establishing timeframes within*
14 *which deicing must occur under certain types of inclement weather.*

15 **§44723. Annual report**

16 *Not later than January 1 of each year, the Secretary of Transportation*
17 *shall submit to Congress a comprehensive report on the safety enforcement ac-*
18 *tivities of the Federal Aviation Administration during the fiscal year ending*
19 *the prior September 30th. The report shall include—*

20 (1) *a comparison of end-of-year staffing levels by operations, mainte-*
21 *nance, and avionics inspector categories to staffing goals and a statement*
22 *on how staffing standards were applied to make allocations between air*
23 *carrier and general aviation operations, maintenance, and avionics in-*
24 *spectors;*

25 (2) *schedules showing the range of inspector experience by various in-*
26 *spector work force categories, and the number of inspectors in each of the*
27 *categories who are considered fully qualified;*

28 (3) *schedules showing the number and percentage of inspectors who*
29 *have received mandatory training by individual course, and the number*
30 *of inspectors by work force categories, who have received all mandatory*
31 *training;*

32 (4) *a description of the criteria used to set annual work programs, an*
33 *explanation of how these criteria differ from criteria used in the prior*
34 *fiscal year and how the annual work programs ensure compliance with*
35 *appropriate regulations and safe operating practices;*

36 (5) *a comparison of actual inspections performed during the fiscal*
37 *year to the annual work programs by field location and, for any field*
38 *location completing less than 80 percent of its planned number of inspec-*
39 *tions, an explanation of why annual work program plans were not met;*

40 (6) *a statement of the adequacy of Administration internal manage-*
41 *ment controls available to ensure that field managers comply with Ad-*

1 *ministration policies and procedures, including those on inspector prior-*
 2 *ities, district office coordination, minimum inspection standards, and*
 3 *inspection followup;*

4 *(7) the status of efforts made by the Administration to update inspec-*
 5 *tor guidance documents and regulations to include technological, man-*
 6 *agement, and structural changes taking place in the aviation industry,*
 7 *including a listing of the backlog of all proposed regulatory amendments;*

8 *(8) a list of the specific operational measures of effectiveness used to*
 9 *evaluate—*

10 *(A) the progress in meeting program objectives;*

11 *(B) the quality of program delivery; and*

12 *(C) the nature of emerging safety problems;*

13 *(9) a schedule showing the number of civil penalty cases closed during*
 14 *the 2 prior fiscal years, including the total initial and final penalties*
 15 *imposed, the total number of dollars collected, the range of dollar*
 16 *amounts collected, the average case processing time, and the range of case*
 17 *processing time;*

18 *(10) a schedule showing the number of enforcement actions taken (ex-*
 19 *cept civil penalties) during the 2 prior fiscal years, including the total*
 20 *number of violations cited, and the number of cited violation cases closed*
 21 *by certificate suspensions, certificate revocations, warnings, and no ac-*
 22 *tion taken; and*

23 *(11) schedules showing the safety record of the aviation industry dur-*
 24 *ing the fiscal year for air carriers and general aviation, including—*

25 *(A) the number of inspections performed when deficiencies were*
 26 *identified compared with inspections when no deficiencies were*
 27 *found;*

28 *(B) the frequency of safety deficiencies for each air carrier; and*

29 *(C) an analysis based on data of the general status of air carrier*
 30 *and general aviation compliance with aviation regulations.*

31 **CHAPTER 449—SECURITY**

SUBCHAPTER I—REQUIREMENTS

Sec.

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44902. *Refusal to transport passengers and property.*

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SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

44931. *Director of Intelligence and Security.*
 44932. *Assistant Administrator for Civil Aviation Security.*
 44933. *Federal Security Managers.*
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SUBCHAPTER I—REQUIREMENTS

§ 44901. Screening passengers and property

(a) *GENERAL REQUIREMENTS.*—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier.

(b) *AMENDING REGULATIONS.*—Notwithstanding subsection (a) of this section, the Administrator may amend a regulation prescribed under subsection (a) to require screening only to ensure security against criminal violence and aircraft piracy in air transportation and intrastate air transportation.

(c) *EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.*—The Administrator—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Administrator decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

§ 44902. Refusal to transport passengers and property

(a) *MANDATORY REFUSAL.*—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance;
 or

1 (2) *property of a passenger who does not consent to a search of the*
 2 *property establishing whether the property unlawfully contains a dan-*
 3 *gerous weapon, explosive, or other destructive substance.*

4 (b) *PERMISSIVE REFUSAL.*—Subject to regulations of the Administrator, an
 5 *air carrier, intrastate air carrier, or foreign air carrier may refuse to trans-*
 6 *port a passenger or property the carrier decides is, or might be, inimical to*
 7 *safety.*

8 (c) *AGREEING TO CONSENT TO SEARCH.*—An agreement to carry pas-
 9 *sengers or property in air transportation or intrastate air transportation by*
 10 *an air carrier, intrastate air carrier, or foreign air carrier is deemed to in-*
 11 *clude an agreement that the passenger or property will not be carried if con-*
 12 *sent to search the passenger or property for a purpose referred to in this sec-*
 13 *tion is not given.*

14 **§ 44903. Air transportation security**

15 (a) *DEFINITION.*—In this section, “law enforcement personnel” means indi-
 16 *viduals—*

17 (1) *authorized to carry and use firearms;*

18 (2) *vested with the degree of the police power of arrest the Adminis-*
 19 *trator of the Federal Aviation Administration considers necessary to*
 20 *carry out this section; and*

21 (3) *identifiable by appropriate indicia of authority.*

22 (b) *PROTECTION AGAINST VIOLENCE AND PIRACY.*—The Administrator
 23 *shall prescribe regulations to protect passengers and property on an aircraft*
 24 *operating in air transportation or intrastate air transportation against an*
 25 *act of criminal violence or aircraft piracy. When prescribing a regulation*
 26 *under this subsection, the Administrator shall—*

27 (1) *consult with the Secretary of Transportation, the Attorney Gen-*
 28 *eral, the heads of other departments, agencies, and instrumentalities of*
 29 *the United States Government, and State and local authorities;*

30 (2) *consider whether a proposed regulation is consistent with—*

31 (A) *protecting passengers; and*

32 (B) *the public interest in promoting air transportation and*
 33 *intrastate air transportation;*

34 (3) *to the maximum extent practicable, require a uniform procedure*
 35 *for searching and detaining passengers and property to ensure—*

36 (A) *their safety; and*

37 (B) *courteous and efficient treatment by an air carrier, an agent*
 38 *or employee of an air carrier, and Government, State, and local law*
 39 *enforcement personnel carrying out this section; and*

40 (4) *consider the extent to which a proposed regulation will carry out*
 41 *this section.*

1 (c) *SECURITY PROGRAMS.*—(1) *The Administrator shall prescribe regula-*
2 *tions under subsection (b) of this section that require each operator of an air-*
3 *port regularly serving an air carrier holding a certificate issued by the Sec-*
4 *retary of Transportation to establish an air transportation security program*
5 *that provides a law enforcement presence and capability at each of those air-*
6 *ports that is adequate to ensure the safety of passengers. The regulations shall*
7 *authorize the operator to use the services of qualified State, local, and private*
8 *law enforcement personnel. When the Administrator decides, after being noti-*
9 *fied by an operator in the form the Administrator prescribes, that not enough*
10 *qualified State, local, and private law enforcement personnel are available to*
11 *carry out subsection (b), the Administrator may authorize the operator to use,*
12 *on a reimbursable basis, personnel employed by the Administrator, or by an-*
13 *other department, agency, or instrumentality of the Government with the con-*
14 *sent of the head of the department, agency, or instrumentality, to supplement*
15 *State, local, and private law enforcement personnel. When deciding whether*
16 *additional personnel are needed, the Administrator shall consider the number*
17 *of passengers boarded at the airport, the extent of anticipated risk of criminal*
18 *violence or aircraft piracy at the airport or to the air carrier aircraft oper-*
19 *ations at the airport, and the availability of qualified State or local law en-*
20 *forcement personnel at the airport.*

21 (2)(A) *The Administrator may approve a security program of an airport*
22 *operator, or an amendment in an existing program, that incorporates a secu-*
23 *rity program of an airport tenant (except an air carrier separately comply-*
24 *ing with part 108 or 129 of title 14, Code of Federal Regulations) having*
25 *access to a secured area of the airport, if the program or amendment incor-*
26 *porates—*

27 (i) *the measures the tenant will use, within the tenant's leased areas*
28 *or areas designated for the tenant's exclusive use under an agreement*
29 *with the airport operator, to carry out the security requirements imposed*
30 *by the Administrator on the airport operator under the access control*
31 *system requirements of section 107.14 of title 14, Code of Federal Regula-*
32 *tions, or under other requirements of part 107 of title 14; and*

33 (ii) *the methods the airport operator will use to monitor and audit*
34 *the tenant's compliance with the security requirements and provides that*
35 *the tenant will be required to pay monetary penalties to the airport op-*
36 *erator if the tenant fails to carry out a security requirement under a*
37 *contractual provision or requirement imposed by the airport operator.*

38 (B) *If the Administrator approves a program or amendment described in*
39 *subparagraph (A) of this paragraph, the airport operator may not be found*
40 *to be in violation of a requirement of this subsection or subsection (b) of this*
41 *section when the airport operator demonstrates that the tenant or an em-*

1 *ployee, permittee, or invitee of the tenant is responsible for the violation and*
2 *that the airport operator has complied with all measures in its security pro-*
3 *gram for securing compliance with its security program by the tenant.*

4 *(d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE AR-*
5 *RESTS.—With the approval of the Attorney General and the Secretary of*
6 *State, the Secretary of Transportation may authorize an individual who car-*
7 *ries out air transportation security duties—*

8 *(1) to carry firearms; and*

9 *(2) to make arrests without warrant for an offense against the United*
10 *States committed in the presence of the individual or for a felony under*
11 *the laws of the United States, if the individual reasonably believes the*
12 *individual to be arrested has committed or is committing a felony.*

13 *(e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Admin-*
14 *istrator has the exclusive responsibility to direct law enforcement activity re-*
15 *lated to the safety of passengers on an aircraft involved in an offense under*
16 *section 46502 of this title from the moment all external doors of the aircraft*
17 *are closed following boarding until those doors are opened to allow passengers*
18 *to leave the aircraft. When requested by the Administrator, other departments,*
19 *agencies, and instrumentalities of the Government shall provide assistance*
20 *necessary to carry out this subsection.*

21 **§ 44904. Domestic air transportation system security**

22 *(a) ASSESSING THREATS.—The Administrator of the Federal Aviation Ad-*
23 *ministration and the Director of the Federal Bureau of Investigation jointly*
24 *shall assess current and potential threats to the domestic air transportation*
25 *system. The assessment shall include consideration of the extent to which there*
26 *are individuals with the capability and intent to carry out terrorist or related*
27 *unlawful acts against that system and the ways in which those individuals*
28 *might carry out those acts. The Administrator and the Director jointly shall*
29 *decide on and carry out the most effective method for continuous analysis and*
30 *monitoring of security threats to that system.*

31 *(b) ASSESSING SECURITY.—In coordination with the Director, the Admin-*
32 *istrator shall carry out periodic threat and vulnerability assessments on secu-*
33 *rity at each airport that is part of the domestic air transportation system.*
34 *Each assessment shall include consideration of—*

35 *(1) the adequacy of security procedures related to the handling and*
36 *transportation of checked baggage and cargo;*

37 *(2) space requirements for security personnel and equipment;*

38 *(3) separation of screened and unscreened passengers, baggage, and*
39 *cargo;*

40 *(4) separation of the controlled and uncontrolled areas of airport fa-*
41 *cilities; and*

1 (5) coordination of the activities of security personnel of the Adminis-
2 tration, the United States Customs Service, the Immigration and Natu-
3 ralization Service, and air carriers, and of other law enforcement person-
4 nel.

5 (c) *IMPROVING SECURITY*.—The Administrator shall take necessary actions
6 to improve domestic air transportation security by correcting any deficiencies
7 in that security discovered in the assessments, analyses, and monitoring car-
8 ried out under this section.

9 **§ 44905. Information about threats to civil aviation**

10 (a) *PROVIDING INFORMATION*.—Under guidelines the Secretary of Trans-
11 portation prescribes, an air carrier, airport operator, ticket agent, or individ-
12 ual employed by an air carrier, airport operator, or ticket agent, receiving
13 information (except a communication directed by the United States Govern-
14 ment) about a threat to civil aviation shall provide the information promptly
15 to the Secretary.

16 (b) *FLIGHT CANCELLATION*.—If a decision is made that a particular threat
17 cannot be addressed in a way adequate to ensure, to the extent feasible, the
18 safety of passengers and crew of a particular flight or series of flights, the
19 Administrator of the Federal Aviation Administration shall cancel the flight
20 or series of flights.

21 (c) *GUIDELINES ON PUBLIC NOTICE*.—(1) The President shall develop
22 guidelines for ensuring that public notice is provided in appropriate cases
23 about threats to civil aviation. The guidelines shall identify officials respon-
24 sible for—

25 (A) deciding, on a case-by-case basis, if public notice of a threat is
26 in the best interest of the United States and the traveling public;

27 (B) ensuring that public notice is provided in a timely and effective
28 way, including the use of a toll-free telephone number; and

29 (C) canceling the departure of a flight or series of flights under sub-
30 section (b) of this section.

31 (2) The guidelines shall provide for consideration of—

32 (A) the specificity of the threat;

33 (B) the credibility of intelligence information related to the threat;

34 (C) the ability to counter the threat effectively;

35 (D) the protection of intelligence information sources and methods;

36 (E) cancellation, by an air carrier or the Administrator, of a flight
37 or series of flights instead of public notice;

38 (F) the ability of passengers and crew to take steps to reduce the risk
39 to their safety after receiving public notice of a threat; and

40 (G) other factors the Administrator considers appropriate.

1 (d) *GUIDELINES ON NOTICE TO CREWS.*—The Administrator shall develop
2 guidelines for ensuring that notice in appropriate cases of threats to the secu-
3 rity of an air carrier flight is provided to the flight crew and cabin crew of
4 that flight.

5 (e) *LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.*—Notice of a threat
6 to civil aviation may be provided to selective potential travelers only if the
7 threat applies only to those travelers.

8 (f) *RESTRICTING ACCESS TO INFORMATION.*—In cooperation with the de-
9 partments, agencies, and instrumentalities of the Government that collect, re-
10 ceive, and analyze intelligence information related to aviation security, the
11 Administrator shall develop procedures to minimize the number of individuals
12 who have access to information about threats. However, a restriction on access
13 to that information may be imposed only if the restriction does not diminish
14 the ability of the Government to carry out its duties and powers related to
15 aviation security effectively, including providing notice to the public and
16 flight and cabin crews under this section.

17 (g) *DISTRIBUTION OF GUIDELINES.*—The guidelines developed under this
18 section shall be distributed for use by appropriate officials of the Department
19 of Transportation, the Department of State, the Department of Justice, and
20 air carriers.

21 **§ 44906. Foreign air carrier security programs**

22 The Administrator of the Federal Aviation Administration shall continue
23 in effect the requirement of section 129.25 of title 14, Code of Federal Regula-
24 tions, that a foreign air carrier must adopt and use a security program ap-
25 proved by the Administrator. The Administrator may approve a security pro-
26 gram of a foreign air carrier under section 129.25 only if the Administrator
27 decides the security program provides passengers of the foreign air carrier a
28 level of protection similar to the level those passengers would receive under
29 the security programs of air carriers serving the same airport. The Adminis-
30 trator shall require a foreign air carrier to use procedures equivalent to those
31 required of air carriers serving the same airport if the Administrator decides
32 that the procedures are necessary to provide a level of protection similar to
33 that provided passengers of the air carriers serving the same airport. The Ad-
34 ministrator shall prescribe regulations to carry out this section.

35 **§ 44907. Security standards at foreign airports**

36 (a) *ASSESSMENT.*—(1) At intervals the Secretary of Transportation consid-
37 ers necessary, the Secretary shall assess the effectiveness of the security meas-
38 ures maintained at—

39 (A) a foreign airport—

40 (i) served by an air carrier;

41 (ii) from which a foreign air carrier serves the United States; or

1 (iii) that poses a high risk of introducing danger to international
2 air travel; and

3 (B) other foreign airports the Secretary considers appropriate.

4 (2) The Secretary of Transportation shall conduct an assessment under
5 paragraph (1) of this subsection—

6 (A) in consultation with appropriate aeronautic authorities of the gov-
7 ernment of a foreign country concerned and each air carrier serving the
8 foreign airport for which the Secretary is conducting the assessment;

9 (B) to establish the extent to which a foreign airport effectively main-
10 tains and carries out security measures; and

11 (C) by using a standard that will result in an analysis of the security
12 measures at the airport based at least on the standards and appropriate
13 recommended practices contained in Annex 17 to the Convention on
14 International Civil Aviation in effect on the date of the assessment.

15 (3) Each report to Congress required under section 44938(b) of this title
16 shall contain a summary of the assessments conducted under this subsection.

17 (b) CONSULTATION.—In carrying out subsection (a) of this section, the Sec-
18 retary of Transportation shall consult with the Secretary of State—

19 (1) on the terrorist threat that exists in each country; and

20 (2) to establish which foreign airports are not under the de facto con-
21 trol of the government of the foreign country in which they are located
22 and pose a high risk of introducing danger to international air travel.

23 (c) NOTIFYING FOREIGN AUTHORITIES.—When the Secretary of Transpor-
24 tation, after conducting an assessment under subsection (a) of this section, de-
25 cides that an airport does not maintain and carry out effective security meas-
26 ures, the Secretary of Transportation, after advising the Secretary of State,
27 shall notify the appropriate authorities of the government of the foreign coun-
28 try of the decision and recommend the steps necessary to bring the security
29 measures in use at the airport up to the standard used by the Secretary of
30 Transportation in making the assessment.

31 (d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT EF-
32 FECTIVE SECURITY MEASURES.—(1) When the Secretary of Transportation
33 decides under this section that an airport does not maintain and carry out
34 effective security measures—

35 (A) the Secretary of Transportation shall—

36 (i) publish the identity of the airport in the Federal Register;

37 (ii) have the identity of the airport posted and displayed promi-
38 nently at all United States airports at which scheduled air carrier
39 operations are provided regularly; and

40 (iii) notify the news media of the identity of the airport;

1 (B) each air carrier and foreign air carrier providing transportation
2 between the United States and the airport shall provide written notice
3 of the decision, on or with the ticket, to each passenger buying a ticket
4 for transportation between the United States and the airport;

5 (C) notwithstanding section 40105(b) of this title, the Secretary of
6 Transportation, after consulting with the appropriate aeronautic au-
7 thorities of the foreign country concerned and each air carrier serving
8 the airport and with the approval of the Secretary of State, may with-
9 hold, revoke, or prescribe conditions on the operating authority of an air
10 carrier or foreign air carrier that uses that airport to provide foreign
11 air transportation; and

12 (D) the President may prohibit an air carrier or foreign air carrier
13 from providing transportation between the United States and any other
14 foreign airport that is served by aircraft flying to or from the airport
15 with respect to which a decision is made under this section.

16 (2)(A) Paragraph (1) of this subsection becomes effective—

17 (i) 90 days after the government of a foreign country is notified under
18 subsection (c) of this section if the Secretary of Transportation finds that
19 the government has not brought the security measures at the airport up
20 to the standard the Secretary used in making an assessment under sub-
21 section (a) of this section; or

22 (ii) immediately on the decision of the Secretary of Transportation
23 under subsection (c) of this section if the Secretary of Transportation de-
24 cides, after consulting with the Secretary of State, that a condition exists
25 that threatens the safety or security of passengers, aircraft, or crew trav-
26 eling to or from the airport.

27 (B) The Secretary of Transportation immediately shall notify the Secretary
28 of State of a decision under subparagraph (A)(ii) of this paragraph so that
29 the Secretary of State may issue a travel advisory required under section
30 44908(a) of this title.

31 (3) The Secretary of Transportation promptly shall submit to Congress a
32 report (and classified annex if necessary) on action taken under paragraph
33 (1) or (2) of this subsection, including information on attempts made to ob-
34 tain the cooperation of the government of a foreign country in meeting the
35 standard the Secretary used in assessing the airport under subsection (a) of
36 this section.

37 (4) An action required under paragraph (1)(A) and (B) of this subsection
38 is no longer required only if the Secretary of Transportation, in consultation
39 with the Secretary of State, decides that effective security measures are main-
40 tained and carried out at the airport. The Secretary of Transportation shall
41 notify Congress when the action is no longer required to be taken.

1 (e) *SUSPENSIONS.*—Notwithstanding sections 40105(b) and 40106(b) of this
 2 title, the Secretary of Transportation, with the approval of the Secretary of
 3 State and without notice or a hearing, shall suspend the right of an air car-
 4 rier or foreign air carrier to provide foreign air transportation, and the right
 5 of a person to operate aircraft in foreign air commerce, to or from a foreign
 6 airport when the Secretary of Transportation decides that—

7 (1) a condition exists that threatens the safety or security of pas-
 8 sengers, aircraft, or crew traveling to or from that airport; and

9 (2) the public interest requires an immediate suspension of transpor-
 10 tation between the United States and that airport.

11 (f) *CONDITION OF CARRIER AUTHORITY.*—This section is a condition to au-
 12 thority the Secretary of Transportation grants under this part to an air car-
 13 rier or foreign air carrier.

14 **§ 44908. Travel advisory and suspension of foreign assistance**

15 (a) *TRAVEL ADVISORIES.*—On being notified by the Secretary of Transpor-
 16 tation that the Secretary of Transportation has decided under section
 17 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the safety
 18 or security of passengers, aircraft, or crew traveling to or from a foreign air-
 19 port that the Secretary of Transportation has decided under section 44907 of
 20 this title does not maintain and carry out effective security measures, the Sec-
 21 retary of State—

22 (1) immediately shall issue a travel advisory for that airport;

23 (2) shall publish the advisory in the Federal Register; and

24 (3) shall publicize the advisory widely.

25 (b) *SUSPENDING ASSISTANCE.*—The President shall suspend assistance pro-
 26 vided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or
 27 the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which
 28 is located an airport with respect to which section 44907(d)(1) of this title
 29 becomes effective if the Secretary of State decides the country is a high terror-
 30 ist threat country. The President may waive this subsection if the President
 31 decides, and reports to Congress, that the waiver is required because of na-
 32 tional security interests or a humanitarian emergency.

33 (c) *ACTIONS NO LONGER REQUIRED.*—An action required under this sec-
 34 tion is no longer required only if the Secretary of Transportation has made
 35 a decision as provided under section 44907(d)(4) of this title. The Secretary
 36 shall notify Congress when the action is no longer required to be taken.

37 **§ 44909. Passenger manifests**

38 (a) *AIR CARRIER REQUIREMENTS.*—(1) Not later than March 16, 1991, the
 39 Secretary of Transportation shall require each air carrier to provide a pas-
 40 senger manifest for a flight to an appropriate representative of the Secretary
 41 of State—

1 (A) not later than one hour after that carrier is notified of an aviation
2 disaster outside the United States involving that flight; or

3 (B) if it is not technologically feasible or reasonable to comply with
4 clause (A) of this paragraph, then as expeditiously as possible, but not
5 later than 3 hours after the carrier is so notified.

6 (2) The passenger manifest shall include the following information:

7 (A) the full name of each passenger.

8 (B) the passport number of each passenger, if required for travel.

9 (C) the name and telephone number of a contact for each passenger.

10 (3) In carrying out this subsection, the Secretary of Transportation shall
11 consider the necessity and feasibility of requiring air carriers to collect pas-
12 senger manifest information as a condition for passengers boarding a flight
13 of the carrier.

14 (b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transpor-
15 tation shall consider imposing a requirement on foreign air carriers com-
16 parable to that imposed on air carriers under subsection (a)(1) and (2) of
17 this section.

18 **§44910. Agreements on aircraft sabotage, aircraft hijacking,**
19 **and airport security**

20 The Secretary of State shall seek multilateral and bilateral agreement on
21 strengthening enforcement measures and standards for compliance related to
22 aircraft sabotage, aircraft hijacking, and airport security.

23 **§44911. Intelligence**

24 (a) DEFINITION.—In this section, “intelligence community” means the in-
25 telligence and intelligence-related activities of the following units of the Unit-
26 ed States Government:

27 (1) the Department of State.

28 (2) the Department of Defense.

29 (3) the Department of the Treasury.

30 (4) the Department of Energy.

31 (5) the Departments of the Army, Navy, and Air Force.

32 (6) the Central Intelligence Agency.

33 (7) the National Security Agency.

34 (8) the Defense Intelligence Agency.

35 (9) the Federal Bureau of Investigation.

36 (10) the Drug Enforcement Administration.

37 (b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—The head of
38 each unit in the intelligence community shall prescribe policies and proce-
39 dures to ensure that intelligence reports about international terrorism are
40 made available, as appropriate, to the heads of other units in the intelligence

1 community, the Secretary of Transportation, and the Administrator of the
2 Federal Aviation Administration.

3 (c) *UNIT FOR STRATEGIC PLANNING ON TERRORISM.*—The heads of the
4 units in the intelligence community shall consider placing greater emphasis
5 on strategic intelligence efforts by establishing a unit for strategic planning
6 on terrorism.

7 (d) *DESIGNATION OF INTELLIGENCE OFFICER.*—At the request of the Sec-
8 retary, the Director of Central Intelligence shall designate at least one intel-
9 ligence officer of the Central Intelligence Agency to serve in a senior position
10 in the Office of the Secretary.

11 (e) *WRITTEN WORKING AGREEMENTS.*—The heads of units in the intel-
12 ligence community, the Secretary, and the Administrator shall review and,
13 as appropriate, revise written working agreements between the intelligence
14 community and the Administrator.

15 **§44912. Research and development**

16 (a) *PROGRAM REQUIREMENT.*—(1) The Administrator of the Federal Avia-
17 tion Administration shall establish and carry out a program to accelerate and
18 expand the research, development, and implementation of technologies and
19 procedures to counteract terrorist acts against civil aviation. The program
20 shall provide for developing and having in place, not later than November 16,
21 1993, new equipment and procedures necessary to meet the technological chal-
22 lenges presented by terrorism. The program shall include research on, and de-
23 velopment of, technological improvements and ways to enhance human per-
24 formance.

25 (2) In designing and carrying out the program established under this sub-
26 section, the Administrator shall—

27 (A) consult and coordinate activities with other departments, agencies,
28 and instrumentalities of the United States Government doing similar re-
29 search;

30 (B) identify departments, agencies, and instrumentalities that would
31 benefit from that research; and

32 (C) seek cost-sharing agreements with those departments, agencies, and
33 instrumentalities.

34 (3) In carrying out the program established under this subsection, the Ad-
35 ministrator shall review and consider the annual reports the Secretary of
36 Transportation submits to Congress on transportation security and intel-
37 ligence.

38 (4) The Administrator may—

39 (A) make grants to institutions of higher learning and other appro-
40 priate research facilities with demonstrated ability to carry out research

1 described in paragraph (1) of this subsection, and fix the amounts and
2 terms of the grants; and

3 (B) make cooperative agreements with governmental authorities the
4 Administrator decides are appropriate.

5 (b) REVIEW OF THREATS.—(1) The Administrator shall complete an inten-
6 sive review of threats to civil aviation, with particular focus on—

7 (A) explosive material that presents the most significant threat to civil
8 aircraft;

9 (B) the minimum amounts, configurations, and types of explosive ma-
10 terial that can cause, or would reasonably be expected to cause, cata-
11 strophic damage to commercial aircraft in service and expected to be in
12 service in the 10-year period beginning on November, 16, 1990;

13 (C) the amounts, configurations, and types of explosive material that
14 can be detected reliably by existing, or reasonably anticipated, near-term
15 explosive detection technologies;

16 (D) the feasibility of using various ways to minimize damage caused
17 by explosive material that cannot be detected reliably by existing, or rea-
18 sonably anticipated, near-term explosive detection technologies;

19 (E) the ability to screen passengers, carry-on baggage, checked bag-
20 gage, and cargo; and

21 (F) the technologies that might be used in the future to attempt to de-
22 stroy or otherwise threaten commercial aircraft and the way in which
23 those technologies can be countered effectively.

24 (2) The Administrator shall use the results of the review under this sub-
25 section to develop the focus and priorities of the program established under
26 subsection (a) of this section.

27 (c) SCIENTIFIC ADVISORY PANEL.—The Administrator shall establish a sci-
28 entific advisory panel, as a subcommittee of the Research, Engineering and
29 Development Advisory Committee, to review, comment on, advise on the
30 progress of, and recommend modifications in, the program established under
31 subsection (a) of this section, including the need for long-range research pro-
32 grams to detect and prevent catastrophic damage to commercial aircraft by
33 the next generation of terrorist weapons. The panel shall consist of individuals
34 with scientific and technical expertise in—

35 (1) the development and testing of effective explosive detection systems;

36 (2) aircraft structure and experimentation to decide on the type and
37 minimum weights of explosives that an effective technology must be capa-
38 ble of detecting;

39 (3) technologies involved in minimizing airframe damage to aircraft
40 from explosives; and

1 (4) other scientific and technical areas the Administrator considers
2 appropriate.

3 **§44913. Explosive detection**

4 (a) *DEPLOYMENT AND PURCHASE OF EQUIPMENT.*—(1) A deployment or
5 purchase of explosive detection equipment under section 108.7(b)(8) or 108.20
6 of title 14, Code of Federal Regulations, or similar regulation is required only
7 if the Administrator of the Federal Aviation Administration certifies that the
8 equipment alone, or as part of an integrated system, can detect under realistic
9 air carrier operating conditions the amounts, configurations, and types of ex-
10 plosive material that would likely be used to cause catastrophic damage to
11 commercial aircraft. The Administrator shall base the certification on the re-
12 sults of tests conducted under protocols developed in consultation with expert
13 scientists outside of the Administration. Those tests shall be completed not
14 later than April 16, 1992.

15 (2) Before completion of the tests described in paragraph (1) of this sub-
16 section, but not later than April 16, 1992, the Administrator may require de-
17 ployment of explosive detection equipment described in paragraph (1) if the
18 Administrator decides that deployment will enhance aviation security signifi-
19 cantly. In making that decision, the Administrator shall consider factors such
20 as the ability of the equipment alone, or as part of an integrated system, to
21 detect under realistic air carrier operating conditions the amounts, configura-
22 tions, and types of explosive material that would likely be used to cause cata-
23 strophic damage to commercial aircraft. The Administrator shall notify the
24 Committee on Commerce, Science, and Transportation of the Senate and the
25 Committee on Public Works and Transportation of the House of Representa-
26 tives of a deployment decision made under this paragraph.

27 (3) This subsection does not prohibit the Administrator from purchasing
28 or deploying explosive detection equipment described in paragraph (1) of this
29 subsection.

30 (b) *GRANTS.*—The Secretary of Transportation may provide grants to con-
31 tinue the Explosive Detection K-9 Team Training Program to detect explo-
32 sives at airports and on aircraft.

33 **§44914. Airport construction guidelines**

34 In consultation with air carriers, airport authorities, and others the Ad-
35 ministrator of the Federal Aviation Administration considers appropriate, the
36 Administrator shall develop guidelines for airport design and construction to
37 allow for maximum security enhancement. In developing the guidelines, the
38 Administrator shall consider the results of the assessment carried out under
39 section 44904(a) of this title.

1 **§ 44915. Exemptions**

2 *The Administrator of the Federal Aviation Administration may exempt*
 3 *from sections 44901, 44903(a)–(c) and (e), 44906, 44935, and 44936 of this*
 4 *title airports in Alaska served only by air carriers that—*

5 *(1) hold certificates issued under section 41102 of this title;*

6 *(2) operate aircraft with certificates for a maximum gross takeoff*
 7 *weight of less than 12,500 pounds; and*

8 *(3) board passengers, or load property intended to be carried in an*
 9 *aircraft cabin, that will be screened under section 44901 of this title at*
 10 *another airport in Alaska before the passengers board, or the property*
 11 *is loaded on, an aircraft for a place outside Alaska.*

12 *SUBCHAPTER II—ADMINISTRATION AND PERSONNEL*

13 **§ 44931. Director of Intelligence and Security**

14 *(a) ORGANIZATION.—There is in the Office of the Secretary of Transporta-*
 15 *tion a Director of Intelligence and Security. The Director reports directly*
 16 *to the Secretary.*

17 *(b) DUTIES AND POWERS.—The Director shall—*

18 *(1) receive, assess, and distribute intelligence information related to*
 19 *long-term transportation security;*

20 *(2) develop policies, strategies, and plans for dealing with threats to*
 21 *transportation security;*

22 *(3) make other plans related to transportation security, including co-*
 23 *ordinating countermeasures with appropriate departments, agencies, and*
 24 *instrumentalities of the United States Government;*

25 *(4) serve as the primary liaison of the Secretary to the intelligence*
 26 *and law enforcement communities; and*

27 *(5) carry out other duties and powers the Secretary decides are nec-*
 28 *essary to ensure, to the extent possible, the security of the traveling pub-*
 29 *lic.*

30 **§ 44932. Assistant Administrator for Civil Aviation Security**

31 *(a) ORGANIZATION.—There is an Assistant Administrator for Civil Avia-*
 32 *tion Security. The Assistant Administrator reports directly to the Adminis-*
 33 *trator of the Federal Aviation Administration and is subject to the authority*
 34 *of the Administrator.*

35 *(b) DUTIES AND POWERS.—The Assistant Administrator shall—*

36 *(1) on a day-to-day basis, manage and provide operational guidance*
 37 *to the field security resources of the Administration, including Federal*
 38 *Security Managers as provided by section 44933 of this title;*

39 *(2) enforce security-related requirements;*

40 *(3) identify the research and development requirements of security-re-*
 41 *lated activities;*

- 1 (4) inspect security systems;
- 2 (5) report information to the Director of Intelligence and Security that
3 may be necessary to allow the Director to carry out assigned duties and
4 powers;
- 5 (6) assess threats to civil aviation; and
- 6 (7) carry out other duties and powers the Administrator considers ap-
7 propriate.
- 8 (c) REVIEW AND DEVELOPMENT OF WAYS TO STRENGTHEN SECURITY.—
9 The Assistant Administrator shall review and, as necessary, develop ways to
10 strengthen air transportation security, including ways—
- 11 (1) to strengthen controls over checked baggage in air transportation,
12 including ways to ensure baggage reconciliation and inspection of items
13 in passenger baggage that could potentially contain explosive devices;
- 14 (2) to strengthen control over individuals having access to aircraft;
- 15 (3) to improve testing of security systems;
- 16 (4) to ensure the use of the best available x-ray equipment for air
17 transportation security purposes; and
- 18 (5) to strengthen preflight screening of passengers.

19 **§ 44933. Federal Security Managers**

- 20 (a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Administrator
21 of the Federal Aviation Administration shall establish the position of Federal
22 Security Manager at each airport in the United States at which the Adminis-
23 trator decides a Manager is necessary for air transportation security. The Ad-
24 ministrator shall designate individuals as Managers for, and station those
25 Managers at, those airports. The Administrator may designate a current field
26 employee of the Administration as a Manager. A Manager reports directly to
27 the Assistant Administrator for Civil Aviation Security. The Administrator
28 shall station an individual as Manager at each airport in the United States
29 that the Secretary of Transportation designates as a category X airport.
- 30 (b) DUTIES AND POWERS.—The Manager at each airport shall—
- 31 (1) receive intelligence information related to aviation security;
- 32 (2) ensure, and assist in, the development of a comprehensive security
33 plan for the airport that—
- 34 (A) establishes the responsibilities of each air carrier and airport
35 operator for air transportation security at the airport; and
- 36 (B) includes measures to be taken during periods of normal air-
37 port operations and during periods when the Manager decides that
38 there is a need for additional airport security, and identifies the in-
39 dividuals 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, including
3 the security plan under clause (2) of this subsection;

4 (4) serve as the on-site coordinator of the Administrator's response to
5 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 Administrator
15 of the Federal Aviation Administration shall establish the position of Foreign
16 Security Liaison Officer for each airport outside the United States at which
17 the Administrator decides an Officer is necessary for air transportation secu-
18 rity. In coordination with the Secretary of State, the Administrator shall des-
19 ignate an Officer for each of those airports. In coordination with the Sec-
20 retary, the Administrator shall designate an Officer for each of those airports
21 where extraordinary security measures are in place. The Secretary shall give
22 high priority to stationing those Officers.

23 (b) *DUTIES AND POWERS.*—An Officer reports directly to the Assistant Ad-
24 ministrator for Civil Aviation Security. The Officer at each airport shall—

25 (1) serve as the liaison of the Assistant Administrator to foreign secu-
26 rity authorities (including governments of foreign countries and foreign
27 airport authorities) in carrying out United States Government security
28 requirements at that airport; and

29 (2) to the extent practicable, carry out duties and powers referred to
30 in section 44933(b) of this title.

31 (c) *COORDINATION OF ACTIVITIES.*—The activities of each Officer shall be
32 coordinated with the chief of the diplomatic mission of the United States to
33 which the Officer is assigned. Activities of an Officer under this section shall
34 be consistent with the duties and powers of the Secretary and the chief of mis-
35 sion to a foreign country under section 103 of the Omnibus Diplomatic Secu-
36 rity and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the
37 Foreign Service Act of 1980 (22 U.S.C. 3927).

38 **§ 44935. Employment standards and training**

39 (a) *EMPLOYMENT STANDARDS.*—The Administrator of the Federal Aviation
40 Administration shall prescribe standards for the employment and continued

1 employment of, and contracting for, air carrier personnel and, as appro-
2 priate, 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 review
10 issues related to human performance in the aviation security system to maxi-
11 mize that performance. When the review is completed, the Administrator shall
12 recommend guidelines and prescribe appropriate changes in existing proce-
13 dures to improve that performance.

14 (c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—

15 (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 minimum
19 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 COORDINATORS,
27 SUPERVISORY PERSONNEL, AND PILOTS.—(1) The Administrator shall pre-
28 scribe 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 coordinators
35 and security supervisory personnel.

36 **§ 44936. Employment investigations and restrictions**

37 (a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1) The Administrator
38 of the Federal Aviation Administration shall require by regulation that an
39 employment investigation, including a criminal history record check, shall be
40 conducted, as the Administrator decides is necessary to ensure air transpor-
41 tation security, of each individual employed in, or applying for, a position

1 *in which the individual has unescorted access, or may permit other individ-*
2 *uals 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 inves-*
9 *tigation the Administrator requires is conducted.*

10 *(b) PROHIBITED EMPLOYMENT.—(1) Except as provided in paragraph (3)*
11 *of this subsection, an air carrier, foreign air carrier, or airport operator may*
12 *not employ, or authorize or make a contract for the services of, an individual*
13 *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 convicted*
18 *of—*

19 *(i) a crime referred to in section 46306, 46308, 46312, 46314, or*
20 *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 pro-*
37 *hibit the employment of an individual in a position described in subsection*
38 *(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 investiga-*

1 tion required under this section, if the Administrator approves a plan to em-
2 ploy the individual that provides alternate security arrangements.

3 (c) *FINGERPRINTING AND RECORD CHECK INFORMATION.*—(1) If the Ad-
4 ministrator requires an identification and criminal history record check, to
5 be conducted by the Attorney General, as part of an investigation under this
6 section, the Administrator shall designate an individual to obtain fingerprints
7 and submit those fingerprints to the Attorney General. The Attorney General
8 may make the results of a check available to an individual the Administrator
9 designates. Before designating an individual to obtain and submit finger-
10 prints or receive results of a check, the Administrator shall consult with the
11 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 Gen-
22 eral; 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 carry-
27 ing out this section. The employer of the individual being investigated shall
28 pay the costs of a record check of the individual. Money collected under this
29 section shall be credited to the account in the Treasury from which the ex-
30 penses were incurred and are available to the Administrator and the Attorney
31 General for those expenses.

32 (e) *WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.*—This sec-
33 tion does not require an investigation or record check when the investigation
34 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 of
40 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*

(3) *that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this*

1 title for each foreign air carrier security program at airports outside the
2 United States—

3 (A) at which the Administrator decides that Foreign Security Li-
4 aison Officers are necessary for air transportation security; and

5 (B) for which extraordinary security measures are in place.

6 (c) *DOMESTIC AIR TRANSPORTATION SYSTEM SECURITY.*—The Adminis-
7 trator shall submit to Congress an annual report for each of the calendar
8 years 1991 and 1992 on the progress being made, and the problems occurring,
9 in carrying out section 44904 of this title. The report shall include rec-
10 ommendations for improving domestic air transportation security.

11 **CHAPTER 451—ALCOHOL AND CONTROLLED**
12 **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.

13 **§ 45101. Definition**

14 In this chapter, “controlled substance” means any substance under section
15 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970
16 (21 U.S.C. 802) specified by the Administrator of the Federal Aviation Ad-
17 ministration.

18 **§ 45102. Alcohol and controlled substances testing programs**

19 (a) *PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CAR-*
20 *RIERS.*—(1) In the interest of aviation safety, the Administrator of the Fed-
21 eral Aviation Administration shall prescribe regulations not later than Octo-
22 ber 28, 1992, that establish a program requiring air carriers and foreign air
23 carriers to conduct preemployment, reasonable suspicion, random, and post-
24 accident testing of airmen, crewmembers, airport security screening contract
25 personnel, and other air carrier employees responsible for safety-sensitive
26 functions (as decided by the Administrator) for the use of alcohol or a con-
27 trolled substance in violation of law or a United States Government regula-
28 tion.

29 (2) When the Administrator considers it appropriate in the interest of safe-
30 ty, the Administrator may prescribe regulations for conducting periodic re-
31 curring testing of airmen, crewmembers, airport security screening contract
32 personnel, and other air carrier employees responsible for safety-sensitive
33 functions for the use of alcohol or a controlled substance in violation of law
34 or a Government regulation.

35 (b) *PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRA-*
36 *TION.*—(1) The Administrator shall establish a program of preemployment,

1 reasonable suspicion, random, and post-accident testing for the use of alcohol
2 or a controlled substance in violation of law or a Government regulation for
3 employees of the Administration whose duties include responsibility for safety-
4 sensitive functions.

5 (2) When the Administrator considers it appropriate in the interest of safe-
6 ty, the Administrator may prescribe regulations for conducting periodic re-
7 curring testing of employees of the Administration responsible for safety-sen-
8 sitive functions for use of alcohol or a controlled substance in violation of law
9 or a Government regulation.

10 (c) *SANCTIONS.*—In prescribing regulations under the programs required
11 by this section, the Administrator shall require, as the Administrator consid-
12 ers appropriate, the suspension or revocation of any certificate issued to an
13 individual referred to in this section, or the disqualification or dismissal of
14 the individual, under this chapter when a test conducted and confirmed under
15 this chapter indicates the individual has used alcohol or a controlled sub-
16 stance in violation of law or a Government regulation.

17 **§ 45103. Prohibited service**

18 (a) *USE OF ALCOHOL OR A CONTROLLED SUBSTANCE.*—An individual
19 may not use alcohol or a controlled substance after October 28, 1991, in viola-
20 tion of law or a United States Government regulation and serve as an air-
21 man, crewmember, airport security screening contract employee, air carrier
22 employee responsible for safety-sensitive functions (as decided by the Adminis-
23 trator of the Federal Aviation Administration), or employee of the Adminis-
24 tration with responsibility for safety-sensitive functions.

25 (b) *REHABILITATION REQUIRED TO RESUME SERVICE.*—Notwithstanding
26 subsection (a) of this section, an individual found to have used alcohol or a
27 controlled substance after October 28, 1991, in violation of law or a Govern-
28 ment regulation may serve as an airman, crewmember, airport security
29 screening contract employee, air carrier employee responsible for safety-sen-
30 sitive functions (as decided by the Administrator), or employee of the Admin-
31 istration with responsibility for safety-sensitive functions only if the individ-
32 ual completes a rehabilitation program described in section 45105 of this title.

33 (c) *PERFORMANCE OF PRIOR DUTIES PROHIBITED.*—An individual who
34 served as an airman, crewmember, airport security screening contract em-
35 ployee, air carrier employee responsible for safety-sensitive functions (as de-
36 cided by the Administrator), or employee of the Administration with respon-
37 sibility for safety-sensitive functions and who was found by the Administrator
38 to have used alcohol or a controlled substance after October 28, 1991, in viola-
39 tion of law or a Government regulation may not carry out the duties related
40 to air transportation that the individual carried out before the finding of the
41 Administrator if the individual—

1 (1) used the alcohol or controlled substance when on duty;

2 (2) began or completed a rehabilitation program described in section
3 45105 of this title before using the alcohol or controlled substance; or

4 (3) refuses to begin or complete a rehabilitation program described in
5 section 45105 of this title after a finding by the Administrator under
6 this section.

7 **§45104. Testing and laboratory requirements**

8 In carrying out section 45102 of this title, the Administrator of the Federal
9 Aviation Administration shall develop requirements that—

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 in
18 carrying out this chapter, including standards requiring the use of
19 the best available technology to ensure the complete reliability and
20 accuracy of controlled substances tests and strict procedures govern-
21 ing the chain of custody of specimens collected for controlled sub-
22 stances 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 chapter;

29 (3) require that a laboratory involved in controlled substances testing
30 under this chapter have the capability and facility, at the laboratory, of
31 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 United States Government regulation
34 be confirmed by a scientifically recognized method of testing capable of
35 providing quantitative information about alcohol or a controlled sub-
36 stance;

37 (5) provide that each specimen be subdivided, secured, and labeled in
38 the presence of the tested individual and that a part of the specimen be
39 retained in a secure manner to prevent the possibility of tampering, so
40 that if the individual's confirmation test results are positive the individ-
41 ual has an opportunity to have the retained part tested by a 2d con-

1 *firmation test done independently at another certified laboratory if the*
2 *individual requests the 2d confirmation test not later than 3 days after*
3 *being advised of the results of the first confirmation test;*

4 *(6) ensure appropriate safeguards for testing to detect and quantify*
5 *alcohol in breath and body fluid samples, including urine and blood,*
6 *through the development of regulations that may be necessary and in*
7 *consultation with the Secretary of Health and Human Services;*

8 *(7) provide for the confidentiality of test results and medical informa-*
9 *tion (except information about alcohol or a controlled substance) of em-*
10 *ployees, except that this clause does not prevent the use of test results for*
11 *the orderly imposition of appropriate sanctions under this chapter; and*

12 *(8) ensure that employees are selected for tests by nondiscriminatory*
13 *and impartial methods, so that no employee is harassed by being treated*
14 *differently from other employees in similar circumstances.*

15 **§45105. Rehabilitation**

16 *(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CAR-*
17 *RIERS.—The Administrator of the Federal Aviation Administration shall pre-*
18 *scribe regulations establishing requirements for rehabilitation programs that*
19 *at least provide for the identification and opportunity for treatment of em-*
20 *ployees of air carriers and foreign air carriers referred to in section*
21 *45102(a)(1) of this title who need assistance in resolving problems with the*
22 *use of alcohol or a controlled substance in violation of law or a United States*
23 *Government regulation. Each air carrier and foreign air carrier is encour-*
24 *aged to make such a program available to all its employees in addition to*
25 *the employees referred to in section 45102(a)(1)(A). The Administrator shall*
26 *decide on the circumstances under which employees shall be required to par-*
27 *ticipate in a program. This subsection does not prevent an air carrier or for-*
28 *eign air carrier from establishing a program under this subsection in coopera-*
29 *tion with another air carrier or foreign air carrier.*

30 *(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRA-*
31 *TION.—The Administrator shall establish and maintain a rehabilitation pro-*
32 *gram that at least provides for the identification and opportunity for treat-*
33 *ment of employees of the Administration whose duties include responsibility*
34 *for safety-sensitive functions who need assistance in resolving problems with*
35 *the use of alcohol or a controlled substance.*

36 **§45106. Relationship to other laws, regulations, standards,**
37 **and orders**

38 *(a) EFFECT ON STATE AND LOCAL GOVERNMENT LAWS, REGULATIONS,*
39 *STANDARDS, OR ORDERS.—A State or local government may not prescribe,*
40 *issue, or continue in effect a law, regulation, standard, or order that is incon-*
41 *sistent with regulations prescribed under this chapter. However, a regulation*

1 *prescribed under this chapter does not preempt a State criminal law that im-*
 2 *poses sanctions for reckless conduct leading to loss of life, injury, or damage*
 3 *to property.*

4 *(b) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—(1) In prescribing*
 5 *regulations under this chapter, the Administrator of the Federal Aviation Ad-*
 6 *ministration—*

7 *(A) shall establish only requirements applicable to foreign air carriers*
 8 *that are consistent with international obligations of the United States;*
 9 *and*

10 *(B) shall consider applicable laws and regulations of foreign countries.*

11 *(2) The Secretaries of State and Transportation jointly shall request the*
 12 *governments of foreign countries that are members of the International Civil*
 13 *Aviation Organization to strengthen and enforce existing standards to pro-*
 14 *hibit crewmembers in international civil aviation from using alcohol or a*
 15 *controlled substance in violation of law or a United States Government regu-*
 16 *lation.*

17 *(c) OTHER REGULATIONS ALLOWED.—This section does not prevent the Ad-*
 18 *ministrator from continuing in effect, amending, or further supplementing a*
 19 *regulation prescribed before October 28, 1991, governing the use of alcohol or*
 20 *a controlled substance by airmen, crewmembers, airport security screening*
 21 *contract employees, air carrier employees responsible for safety-sensitive func-*
 22 *tions (as decided by the Administrator), or employees of the Administration*
 23 *with responsibility for safety-sensitive functions.*

24 **CHAPTER 453—FEES**

Sec.

45301. Authority to impose fees.

45302. Fees involving aircraft not providing air transportation.

45303. Maximum fees for private person services.

25 **§ 45301. Authority to impose fees**

26 *(a) GENERAL AUTHORITY.—The Secretary of Transportation may impose*
 27 *a fee for an approval, test, authorization, certificate, permit, registration,*
 28 *transfer, or rating related to aviation that has not been approved by Congress*
 29 *only when the fee—*

30 *(1)(A) was in effect on January 1, 1973; and*

31 *(B) is not more than the fee in effect on January 1, 1973, adjusted*
 32 *in proportion to changes in the Consumer Price Index of All Urban Con-*
 33 *sumers published by the Secretary of Labor between January 1, 1973,*
 34 *and the date the fee is imposed; or*

35 *(2) is imposed under section 45302 of this title.*

36 *(b) NONAPPLICATION.—This section does not apply to a fee for a test, au-*
 37 *thorization, certificate, permit, or rating related to an airman or repair sta-*
 38 *tion administered or issued outside the United States.*

1 **§45302. Fees involving aircraft not providing air transportation**
2 **tation**

3 (a) *APPLICATION.*—This section applies only to aircraft not used to provide
4 air transportation.

5 (b) *GENERAL AUTHORITY AND MAXIMUM FEES.*—The Administrator of the
6 Federal Aviation Administration may impose fees to pay for the costs of issu-
7 ing airman certificates to pilots and certificates of registration of aircraft and
8 processing forms for major repairs and alterations of fuel tanks and fuel sys-
9 tems of aircraft. The following fees may not be more than the amounts speci-
10 fied:

11 (1) \$12 for issuing an airman's certificate to a pilot.

12 (2) \$25 for registering an aircraft after the transfer of ownership.

13 (3) \$15 for renewing an aircraft registration.

14 (4) \$7.50 for processing a form for a major repair or alteration of a
15 fuel tank or fuel system of an aircraft.

16 (c) *ADJUSTMENTS.*—The Administrator shall adjust the maximum fees es-
17 tablished by subsection (b) of this section for changes in the Consumer Price
18 Index of All Urban Consumers published by the Secretary of Labor.

19 (d) *CREDIT TO ACCOUNT AND AVAILABILITY.*—Money collected from fees
20 imposed under this section shall be credited to the account in the Treasury
21 from which the Administrator incurs expenses in carrying out chapter 441
22 and sections 44701–44716 of this title (except sections 44701(c), 44703(f)(2),
23 and 44713(d)(2)). The money is available to the Administrator to pay ex-
24 penses for which the fees are collected.

25 **§45303. Maximum fees for private person services**

26 The Administrator of the Federal Aviation Administration may establish
27 maximum fees that private persons may charge for services performed under
28 a delegation to the person under section 44702(d) of this title.

29 **SUBPART IV—ENFORCEMENT AND PENALTIES**

30 **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 Avia-
tion Administration.

46107. Enforcement by the Attorney General.

46108. Enforcement of certificate requirements by interested persons.

46109. Joinder and intervention.

46110. Judicial review.

31 **§46101. Complaints and investigations**

32 (a) *GENERAL.*—(1) A person may file a complaint in writing with the Sec-
33 retary of Transportation (or the Administrator of the Federal Aviation Ad-

1 *ministration with respect to aviation safety duties and powers designated to*
 2 *be carried out by the Administrator) about a person violating this part or*
 3 *a requirement prescribed under this part. Except as provided in subsection*
 4 *(b) of this section, the Secretary or Administrator shall investigate the com-*
 5 *plaint if a reasonable ground appears to the Secretary or Administrator for*
 6 *the investigation.*

7 *(2) On the initiative of the Secretary of Transportation or the Adminis-*
 8 *trator, as appropriate, the Secretary or Administrator may conduct an inves-*
 9 *tigation, if a reasonable ground appears to the Secretary or Administrator*
 10 *for the investigation, about—*

11 *(A) a person violating this part or a requirement prescribed under*
 12 *this part; or*

13 *(B) any question that may arise under this part.*

14 *(3) The Secretary of Transportation or Administrator may dismiss a com-*
 15 *plaint without a hearing when the Secretary or Administrator is of the opin-*
 16 *ion that the complaint does not state facts that warrant an investigation or*
 17 *action.*

18 *(4) After notice and an opportunity for a hearing and subject to section*
 19 *40105(b) of this title, the Secretary of Transportation or Administrator shall*
 20 *issue an order to compel compliance with this part if the Secretary or Admin-*
 21 *istrator finds in an investigation under this subsection that a person is vio-*
 22 *lating this part.*

23 *(b) COMPLAINTS AGAINST MEMBERS OF ARMED FORCES.—The Secretary*
 24 *of Transportation or Administrator shall refer a complaint against a member*
 25 *of the armed forces of the United States performing official duties to the Sec-*
 26 *retary of the department concerned for action. Not later than 90 days after*
 27 *receiving the complaint, the Secretary of that department shall inform the*
 28 *Secretary of Transportation or Administrator of the action taken on the com-*
 29 *plaint, including any corrective or disciplinary action taken.*

30 **§46102. Proceedings**

31 *(a) CONDUCTING PROCEEDINGS.—Subject to subchapter II of chapter 5 of*
 32 *title 5, the Secretary of Transportation (or the Administrator of the Federal*
 33 *Aviation Administration with respect to aviation safety duties and powers*
 34 *designated to be carried out by the Administrator) may conduct proceedings*
 35 *in a way conducive to justice and the proper dispatch of business.*

36 *(b) APPEARANCE.—A person may appear and be heard before the Secretary*
 37 *and the Administrator in person or by an attorney. The Secretary may ap-*
 38 *pear and participate as an interested party in a proceeding the Adminis-*
 39 *trator conducts under section 40113(a) of this title.*

40 *(c) RECORDING AND PUBLIC ACCESS.—Official action taken by the Sec-*
 41 *retary and Administrator under this part shall be recorded. Proceedings be-*

1 *fore the Secretary and Administrator shall be open to the public on the re-*
2 *quest of an interested party unless the Secretary or Administrator decides*
3 *that secrecy is required because of national defense.*

4 (d) *CONFLICTS OF INTEREST.*—*The Secretary, the Administrator, or an of-*
5 *ficer or employee of the Administration may not participate in a proceeding*
6 *referred to in subsection (a) of this section in which the individual has a pe-*
7 *cuniary interest.*

8 **§ 46103. Service of notice, process, and actions**

9 (a) *DESIGNATING AGENTS.*—(1) *Each air carrier and foreign air carrier*
10 *shall designate an agent on whom service of notice and process in a proceed-*
11 *ing before, and an action of, the Secretary of Transportation (or the Adminis-*
12 *trator of the Federal Aviation Administration with respect to aviation safety*
13 *duties and powers designated to be carried out by the Administrator) may*
14 *be made.*

15 (2) *The designation—*

16 (A) *shall be in writing and filed with the Secretary or Administrator;*

17 *and*

18 (B) *may be changed in the same way as originally made.*

19 (b) *SERVICE.*—(1) *Service may be made—*

20 (A) *by personal service;*

21 (B) *on a designated agent; or*

22 (C) *by certified or registered mail to the person to be served or the*
23 *designated agent of the person.*

24 (2) *The date of service made by certified or registered mail is the date of*
25 *mailing.*

26 (c) *SERVING AGENTS.*—*Service on an agent designated under this section*
27 *shall be made at the office or usual place of residence of the agent. If an air*
28 *carrier or foreign air carrier does not have a designated agent, service may*
29 *be made by posting the notice, process, or action in the office of the Secretary*
30 *or Administrator.*

31 **§ 46104. Evidence**

32 (a) *GENERAL.*—*In conducting a hearing or investigation under this part,*
33 *the Secretary of Transportation (or the Administrator of the Federal Aviation*
34 *Administration with respect to aviation safety duties and powers designated*
35 *to be carried out by the Administrator) may—*

36 (1) *subpena witnesses and records related to a matter involved in the*
37 *hearing or investigation from any place in the United States to the des-*
38 *ignated place of the hearing or investigation;*

39 (2) *administer oaths;*

40 (3) *examine witnesses; and*

1 (4) receive evidence at a place in the United States the Secretary or
2 Administrator designates.

3 (b) *COMPLIANCE WITH SUBPENAS.*—If a person disobeys a subpoena, the
4 Secretary, the Administrator, or a party to a proceeding before the Secretary
5 or Administrator may petition a court of the United States to enforce the sub-
6 poena. A judicial proceeding to enforce a subpoena under this section may be
7 brought in the jurisdiction in which the proceeding or investigation is con-
8 ducted. The court may punish a failure to obey an order of the court to com-
9 ply with the subpoena as a contempt of court.

10 (c) *DEPOSITIONS.*—(1) In a proceeding or investigation, the Secretary or
11 Administrator may order a person to give testimony by deposition and to
12 produce records. If a person fails to be deposed or to produce records, the
13 order may be enforced in the same way a subpoena may be enforced under
14 subsection (b) of this section.

15 (2) A deposition may be taken before an individual designated by the Sec-
16 retary or Administrator and having the power to administer oaths.

17 (3) Before taking a deposition, the party or the attorney of the party pro-
18 posing to take the deposition must give reasonable notice in writing to the
19 opposing party or the attorney of record of that party. The notice shall state
20 the name of the witness and the time and place of taking the deposition.

21 (4) The testimony of a person deposed under this subsection shall be under
22 oath. The person taking the deposition shall prepare, or cause to be prepared,
23 a transcript of the testimony taken. The transcript shall be subscribed by the
24 deponent. Each deposition shall be filed promptly with the Secretary or Ad-
25 ministrator.

26 (5) If the laws of a foreign country allow, the testimony of a witness in
27 that country may be taken by deposition—

28 (A) by a consular officer or an individual commissioned by the Sec-
29 retary or Administrator or agreed on by the parties by written stipula-
30 tion filed with the Secretary or Administrator; or

31 (B) under letters rogatory issued by a court of competent jurisdiction
32 at the request of the Secretary or Administrator.

33 (d) *WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EX-*
34 *PENSES.*—A witness summoned before the Secretary or Administrator or
35 whose deposition is taken under this section and the individual taking the
36 deposition are each entitled to the same fee and mileage that the witness and
37 individual would have been paid for those services in a court of the United
38 States. Under regulations of the Secretary or Administrator, the Secretary or
39 Administrator shall pay the necessary expenses incident to executing, in an-
40 other country, a commission or letter rogatory issued at the initiative of the
41 Secretary or Administrator.

1 (e) *DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.*—When designated
2 by the Secretary or Administrator, an employee appointed under section 3105
3 of title 5 may conduct a hearing, subpoena witnesses, administer oaths, exam-
4 ine witnesses, and receive evidence at a place in the United States the Sec-
5 retary or Administrator designates. On request of a party, the Secretary or
6 Administrator shall hear or receive argument.

7 **§ 46105. Regulations and orders**

8 (a) *EFFECTIVENESS OF ORDERS.*—Except as provided in this part, a regu-
9 lation prescribed or order issued by the Secretary of Transportation (or the
10 Administrator of the Federal Aviation Administration with respect to avia-
11 tion safety duties and powers designated to be carried out by the Adminis-
12 trator) takes effect within a reasonable time prescribed by the Secretary or
13 Administrator. The regulation or order remains in effect under its own terms
14 or until superseded. Except as provided in this part, the Secretary or Admin-
15 istrator may amend, modify, or suspend an order in the way, and by giving
16 the notice, the Secretary or Administrator decides.

17 (b) *CONTENTS AND SERVICE OF ORDERS.*—An order of the Secretary or
18 Administrator shall include the findings of fact on which the order is based
19 and shall be served on the parties to the proceeding and the persons affected
20 by the order.

21 (c) *EMERGENCIES.*—When the Administrator is of the opinion that an
22 emergency exists related to safety in air commerce and requires immediate
23 action, the Administrator, on the initiative of the Administrator or on com-
24 plaint, may prescribe regulations and issue orders immediately to meet the
25 emergency, with or without notice and without regard to this part and sub-
26 chapter II of chapter 5 of title 5. The Administrator shall begin a proceeding
27 immediately about an emergency under this subsection and give preference,
28 when practicable, to the proceeding.

29 **§ 46106. Enforcement by the Secretary of Transportation and**
30 **Administrator of the Federal Aviation Administra-**
31 **tion**

32 The Secretary of Transportation (or the Administrator of the Federal Avia-
33 tion Administration with respect to aviation safety duties and powers des-
34 igned to be carried out by the Administrator) may bring a civil action
35 against a person in a district court of the United States to enforce this part
36 or a requirement or regulation prescribed, or an order or any term of a cer-
37 tificate or permit issued, under this part. The action may be brought in the
38 judicial district in which the person does business or the violation occurred.

39 **§ 46107. Enforcement by the Attorney General**

40 (a) *CIVIL ACTIONS TO ENFORCE SECTION 40106(b).*—The Attorney Gen-
41 eral may bring a civil action in a district court of the United States against

1 a person to enforce section 40106(b) of this title. The action may be brought
2 in the judicial district in which the person does business or the violation oc-
3 curred.

4 (b) *CIVIL ACTIONS TO ENFORCE THIS PART.*—(1) On request of the Sec-
5 retary of Transportation (or the Administrator of the Federal Aviation Ad-
6 ministration with respect to aviation safety duties and powers designated to
7 be carried out by the Administrator), the Attorney General may bring a civil
8 action in an appropriate court—

9 (A) to enforce this part or a requirement or regulation prescribed, or
10 an order or any term of a certificate or permit issued, under this part;
11 and

12 (B) to prosecute a person violating this part or a requirement or regu-
13 lation prescribed, or an order or any term of a certificate or permit is-
14 sued, under this part.

15 (2) The costs and expenses of a civil action shall be paid out of the appro-
16 priations for the expenses of the courts of the United States.

17 (c) *PARTICIPATION OF SECRETARY OR ADMINISTRATOR.*—On request of the
18 Attorney General, the Secretary or Administrator, as appropriate, may par-
19 ticipate in a civil action under this part.

20 **§ 46108. Enforcement of certificate requirements by inter-**
21 **ested persons**

22 An interested person may bring a civil action in a district court of the
23 United States against a person to enforce section 41101(a)(1) of this title. The
24 action may be brought in the judicial district in which the defendant does
25 business or the violation occurred.

26 **§ 46109. Joinder and intervention**

27 A person interested in or affected by a matter under consideration in a
28 proceeding before the Secretary of Transportation or civil action to enforce
29 this part or a requirement or regulation prescribed, or an order or any term
30 of a certificate or permit issued, under this part may be joined as a party
31 or permitted to intervene in the proceeding or civil action.

32 **§ 46110. Judicial review**

33 (a) *FILING AND VENUE.*—Except for an order related to a foreign air car-
34 rier subject to disapproval by the President under section 41307 or 41509(f)
35 of this title, a person disclosing a substantial interest in an order issued by
36 the Secretary of Transportation (or the Administrator of the Federal Aviation
37 Administration with respect to aviation safety duties and powers designated
38 to be carried out by the Administrator) under this part may apply for review
39 of the order by filing a petition for review in the United States Court of Ap-
40 peals for the District of Columbia Circuit or in the court of appeals of the
41 United States for the circuit in which the person resides or has its principal

1 place of business. The petition must be filed not later than 60 days after the
 2 order is issued. The court may allow the petition to be filed after the 60th
 3 day only if there are reasonable grounds for not filing by the 60th day.

4 (b) *JUDICIAL PROCEDURES.*—When a petition is filed under subsection (a)
 5 of this section, the clerk of the court immediately shall send a copy of the peti-
 6 tion to the Secretary or Administrator, as appropriate. The Secretary or Ad-
 7 ministrator shall file with the court a record of any proceeding in which the
 8 order was issued, as provided in section 2112 of title 28.

9 (c) *AUTHORITY OF COURT.*—When the petition is sent to the Secretary or
 10 Administrator, the court has exclusive jurisdiction to affirm, amend, modify,
 11 or set aside any part of the order and may order the Secretary or Adminis-
 12 trator to conduct further proceedings. After reasonable notice to the Secretary
 13 or Administrator, the court may grant interim relief by staying the order or
 14 taking other appropriate action when good cause for its action exists. Find-
 15 ings of fact by the Secretary or Administrator, if supported by substantial
 16 evidence, are conclusive.

17 (d) *REQUIREMENT FOR PRIOR OBJECTION.*—In reviewing an order under
 18 this section, the court may consider an objection to an order of the Secretary
 19 or Administrator only if the objection was made in the proceeding conducted
 20 by the Secretary or Administrator or if there was a reasonable ground for
 21 not making the objection in the proceeding.

22 (e) *SUPREME COURT REVIEW.*—A decision by a court under this section
 23 may be reviewed only by the Supreme Court under section 1254 of title 28.

CHAPTER 463—PENALTIES

Sec.

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§ 46301. Civil penalties

24 (a) *GENERAL PENALTY.*—(1) A person is liable to the United States Gov-
 25 ernment for a civil penalty of not more than \$1,000 for violating—

26 (A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and
 27 40117), chapter 411, section 41301–41306, 41308–41310(a), 41501,
 28

1 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711,
2 41712, or 41731–41742, chapter 419, subchapter II of chapter 421, chap-
3 ter 441 (except section 44109), or section 44701(a) or (b), 44702–44716,
4 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44909(a), 44912–
5 44915, 44932–44938, 46302, or 46303 of this title;

6 (B) a regulation prescribed or order issued under any provision to
7 which clause (A) of this paragraph applies;

8 (C) any term of a certificate or permit issued under section 41102,
9 41103, or 41302 of this title; or

10 (D) a regulation of the United States Postal Service under this part.

11 (2) A person operating an aircraft for the transportation of passengers or
12 property for compensation (except an airman serving as an airman) is liable
13 to the Government for a civil penalty of not more than \$10,000 for violat-
14 ing—

15 (A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b),
16 40116, and 40117) or section 44701(a) or (b), 44702–44716, 44901,
17 44903(b) or (c), 44905, 44906, 44912–44915, or 44932–44938 of this
18 title; or

19 (B) a regulation prescribed or order issued under any provision to
20 which clause (A) of this paragraph applies.

21 (3) A civil penalty of not more than \$10,000 may be imposed for each vio-
22 lation under paragraph (1) of this subsection related to—

23 (A) the transportation of hazardous material; or

24 (B) the registration or recordation under chapter 441 of this title of an
25 aircraft not used to provide air transportation.

26 (4) A separate violation occurs under this subsection for each day the viola-
27 tion continues or, if applicable, for each flight involving the violation.

28 (b) *SMOKE ALARM DEVICE PENALTY.*—(1) A passenger may not tamper
29 with, disable, or destroy a smoke alarm device located in a lavatory on an
30 aircraft providing air transportation or intrastate air transportation.

31 (2) An individual violating this subsection is liable to the Government for
32 a civil penalty of not more than \$2,000.

33 (c) *PROCEDURAL REQUIREMENTS.*—(1) The Secretary of Transportation
34 may impose a civil penalty for the following violations only after notice and
35 an opportunity for a hearing:

36 (A) a violation of subsection (b) of this section or chapter 411, section
37 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510,
38 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–41742,
39 chapter 419, or subchapter II of chapter 421 of this title.

40 (B) a violation of a regulation prescribed or order issued under any
41 provision to which clause (A) of this paragraph applies.

1 (C) a violation of any term of a certificate or permit issued under sec-
2 tion 41102, 41103, or 41302 of this title.

3 (D) a violation under subsection (a)(1) of this section related to the
4 transportation of hazardous material.

5 (2) The Secretary shall give written notice of the finding of a violation and
6 the civil penalty under paragraph (1) of this subsection.

7 (d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—(1) In this subsection—

8 (A) “flight engineer” means an individual who holds a flight engineer
9 certificate issued under part 63 of title 14, Code of Federal Regulations.

10 (B) “mechanic” means an individual who holds a mechanic certificate
11 issued under part 65 of title 14, Code of Federal Regulations.

12 (C) “pilot” means an individual who holds a pilot certificate issued
13 under part 61 of title 14, Code of Federal Regulations.

14 (D) “repairman” means an individual who holds a repairman certifi-
15 cate issued under part 65 of title 14, Code of Federal Regulations.

16 (2) The Administrator of the Federal Aviation Administration may impose
17 a civil penalty for a violation of chapter 401 (except sections 40103(a) and
18 (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109),
19 or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905,
20 44906, 44907(d)(1)(B), 44912–44915, 44932–44938, 46302, or 46303 of this
21 title or a regulation prescribed or order issued under any of those provisions.
22 The Administrator shall give written notice of the finding of a violation and
23 the penalty.

24 (3) In a civil action to collect a civil penalty imposed by the Administrator
25 under this subsection, the issues of liability and the amount of the penalty
26 may not be reexamined.

27 (4) Notwithstanding paragraph (2) of this subsection, the district courts of
28 the United States have exclusive jurisdiction of a civil action involving a pen-
29 alty the Administrator initiates if—

30 (A) the amount in controversy is more than \$50,000;

31 (B) the action is in rem or another action in rem based on the same
32 violation has been brought;

33 (C) the action involves an aircraft subject to a lien that has been
34 seized by the Government; or

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

37 (5)(A) The Administrator may issue an order imposing a penalty under
38 this subsection against an individual acting as a pilot, flight engineer, me-
39 chanic, or repairman only after advising the individual of the charges or any
40 reason the Administrator relied on for the proposed penalty and providing

1 *the individual an opportunity to answer the charges and be heard about why*
2 *the order shall not be issued.*

3 *(B) An individual acting as a pilot, flight engineer, mechanic, or repair-*
4 *man may appeal an order imposing a penalty under this subsection to the*
5 *National Transportation Safety Board. After notice and an opportunity for*
6 *a hearing on the record, the Board shall affirm, modify, or reverse the order.*
7 *The Board may modify a civil penalty imposed to a suspension or revocation*
8 *of a certificate.*

9 *(C) When conducting a hearing under this paragraph, 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 out*
12 *and of written agency policy guidance available to the public related to sanc-*
13 *tions to be imposed under this section unless the Board finds an interpreta-*
14 *tion is arbitrary, capricious, or otherwise not according to law.*

15 *(D) When an individual files an appeal with the Board under this para-*
16 *graph, the order of the Administrator is stayed.*

17 *(6) An individual substantially affected by an order of the Board under*
18 *paragraph (5) of this subsection, or the Administrator when the Adminis-*
19 *trator decides that an order of the Board under paragraph (5) will have a*
20 *significant adverse impact on carrying out this part, may obtain judicial re-*
21 *view of the order under section 46110 of this title. The Administrator shall*
22 *be made a party to the judicial review proceedings. Findings of fact of the*
23 *Board are conclusive if supported by substantial evidence.*

24 *(7)(A) The Administrator may impose a penalty on an individual (except*
25 *an individual acting as a pilot, flight engineer, mechanic, or repairman) only*
26 *after notice and an opportunity for a hearing on the record.*

27 *(B) In an appeal from a decision of an administrative law judge as the*
28 *result of a hearing under subparagraph (A) of this paragraph, the Adminis-*
29 *trator shall consider only whether—*

30 *(i) each finding of fact is supported by a preponderance of reliable,*
31 *probative, and substantial evidence;*

32 *(ii) each conclusion of law is made according to applicable law, prece-*
33 *dent, and public policy; and*

34 *(iii) the judge committed a prejudicial error that supports the appeal.*

35 *(C) Except for good cause, a civil action involving a penalty under this*
36 *paragraph may not be initiated later than 2 years after the violation occurs.*

37 *(8) The maximum civil penalty the Administrator or Board may impose*
38 *under this subsection is \$50,000.*

39 *(9) This subsection applies only to a violation occurring after August 25,*
40 *1992.*

1 (e) *PENALTY CONSIDERATIONS.*—*In determining the amount of a civil pen-*
2 *alty under subsection (a)(3) of this section related to transportation of haz-*
3 *ardous material, the Secretary shall consider—*

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

5 (2) *with respect to the violator, the degree of culpability, any history*
6 *of prior violations, the ability to pay, and any effect on the ability to*
7 *continue doing business; and*

8 (3) *other matters that justice requires.*

9 (f) *COMPROMISE AND SETOFF.*—(1)(A) *The Secretary may compromise the*
10 *amount of a civil penalty imposed for violating—*

11 (i) *chapter 401 (except sections 40103(a) and (d), 40105, 40116, and*
12 *40117), chapter 441 (except section 44109), or section 44701(a) or (b),*
13 *44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B),*
14 *44912–44915, or 44932–44938 of this title; or*

15 (ii) *a regulation prescribed or order issued under any provision to*
16 *which clause (i) of this subparagraph applies.*

17 (B) *The Postal Service may compromise the amount of a civil penalty im-*
18 *posed under subsection (a)(1)(D) of this section.*

19 (2) *The Government may deduct the amount of a civil penalty imposed or*
20 *compromised under this subsection from amounts it owes the person liable for*
21 *the penalty.*

22 (g) *JUDICIAL REVIEW.*—*An order of the Secretary imposing a civil penalty*
23 *may be reviewed judicially only under section 46110 of this title.*

24 (h) *NONAPPLICATION.*—(1) *This section does not apply to the following*
25 *when performing official duties:*

26 (A) *a member of the armed forces of the United States.*

27 (B) *a civilian employee of the Department of Defense subject to the*
28 *Uniform Code of Military Justice.*

29 (2) *The appropriate military authority is responsible for taking necessary*
30 *disciplinary action and submitting to the Secretary (or the Administrator*
31 *with respect to aviation safety duties and powers designated to be carried out*
32 *by the Administrator) a timely report on action taken.*

33 **§46302. False information**

34 (a) *CIVIL PENALTY.*—*A person that, knowing the information to be false,*
35 *gives, or causes to be given, under circumstances in which the information*
36 *reasonably may be believed, false information about an alleged attempt being*
37 *made or to be made to do an act that would violate section 46502(a), 46504,*
38 *46505, or 46506 of this title, is liable to the United States Government for*
39 *a civil penalty of not more than \$10,000 for each violation.*

1 (b) *COMPROMISE AND SETOFF.*—(1) *The Secretary of Transportation may*
2 *compromise the amount of a civil penalty imposed under subsection (a) of*
3 *this section.*

4 (2) *The Government may deduct the amount of a civil penalty imposed or*
5 *compromised under this section from amounts it owes the person liable for*
6 *the penalty.*

7 **§ 46303. Carrying a weapon**

8 (a) *CIVIL PENALTY.*—*An individual who, when on, or attempting to board,*
9 *an aircraft in, or intended for operation in, air transportation or intrastate*
10 *air transportation, has on or about the individual or the property of the indi-*
11 *vidual a concealed dangerous weapon that is or would be accessible to the in-*
12 *dividual in flight is liable to the United States Government for a civil penalty*
13 *of not more than \$10,000 for each violation.*

14 (b) *COMPROMISE AND SETOFF.*—(1) *The Secretary of Transportation may*
15 *compromise the amount of a civil penalty imposed under subsection (a) of*
16 *this section.*

17 (2) *The Government may deduct the amount of a civil penalty imposed or*
18 *compromised under this section from amounts it owes the individual liable*
19 *for the penalty.*

20 (c) *NONAPPLICATION.*—*This section does not apply to—*

21 (1) *a law enforcement officer of a State or political subdivision of a*
22 *State, or an officer or employee of the Government, authorized to carry*
23 *arms in an official capacity; or*

24 (2) *another individual the Administrator of the Federal Aviation Ad-*
25 *ministration by regulation authorizes to carry arms in an official capac-*
26 *ity.*

27 **§ 46304. Liens on aircraft**

28 (a) *AIRCRAFT SUBJECT TO LIENS.*—*When an aircraft is involved in a vio-*
29 *lation referred to in section 46301(a)(1)(A)–(C), (2), or (3) of this title and*
30 *the violation is by the owner of, or individual commanding, the aircraft, the*
31 *aircraft is subject to a lien for the civil penalty.*

32 (b) *SEIZURE.*—*An aircraft subject to a lien under this section may be*
33 *seized summarily and placed in the custody of a person authorized to take*
34 *custody of it under regulations of the Secretary of Transportation (or the Ad-*
35 *ministrator of the Federal Aviation Administration with respect to aviation*
36 *safety duties and powers designated to be carried out by the Administrator).*
37 *A report on the seizure shall be submitted to the Attorney General. The Attor-*
38 *ney General promptly shall bring a civil action in rem to enforce the lien*
39 *or notify the Secretary or Administrator that the action will not be brought.*

40 (c) *RELEASE.*—*An aircraft seized under subsection (b) of this section shall*
41 *be released from custody when—*

1 (1) the civil penalty is paid;

2 (2) a compromise amount agreed on is paid;

3 (3) the aircraft is seized under a civil action in rem to enforce the
4 lien;

5 (4) the Attorney General gives notice that a civil action will not be
6 brought under subsection (b) of this section; or

7 (5) a bond (in an amount and with a surety the Secretary or Admin-
8 istrator prescribes), conditioned on payment of the penalty or com-
9 promise, is deposited with the Secretary or Administrator.

10 **§ 46305. Actions to recover civil penalties**

11 A civil penalty under this chapter may be collected by bringing a civil ac-
12 tion against the person subject to the penalty, a civil action in rem against
13 an aircraft subject to a lien for a penalty, or both. The action shall conform
14 as nearly as practicable to a civil action in admiralty, regardless of the place
15 an aircraft in a civil action in rem is seized. However, a party may demand
16 a jury trial of an issue of fact in an action involving a civil penalty under
17 this chapter (except a penalty imposed by the Secretary of Transportation
18 that formerly was imposed by the Civil Aeronautics Board) if the value of
19 the matter in controversy is more than \$20. Issues of fact tried by a jury
20 may be reexamined only under common law rules.

21 **§ 46306. Registration violations involving aircraft not pro-
22 viding air transportation**

23 (a) APPLICATION.—This section applies only to aircraft not used to provide
24 air transportation.

25 (b) GENERAL CRIMINAL PENALTY.—Except as provided by subsection (c)
26 of this section, a person shall be fined under title 18, imprisoned for not more
27 than 3 years, or both, if the person—

28 (1) knowingly and willfully forges or alters a certificate authorized to
29 be issued under this part;

30 (2) knowingly sells, uses, attempts to use, or possesses with the intent
31 to use, such a certificate;

32 (3) knowingly and willfully displays or causes to be displayed on an
33 aircraft a mark that is false or misleading about the nationality or reg-
34 istration of the aircraft;

35 (4) obtains a certificate authorized to be issued under this part by
36 knowingly and willfully falsifying or concealing a material fact, making
37 a false, fictitious, or fraudulent statement, or making or using a false
38 document knowing it contains a false, fictitious, or fraudulent statement
39 or entry;

1 (5) owns an aircraft eligible for registration under section 44102 of
2 this title and knowingly and willfully operates, attempts to operate, or
3 allows another person to operate the aircraft when—

4 (A) the aircraft is not registered under section 44103 of this title
5 or the certificate of registration is suspended or revoked; or

6 (B) the owner knows or has reason to know that the other person
7 does not have proper authorization to operate or navigate the air-
8 craft without registration for a period of time after transfer of own-
9 ership;

10 (6) knowingly and willfully operates or attempts to operate an air-
11 craft eligible for registration under section 44102 of this title knowing
12 that—

13 (A) the aircraft is not registered under section 44103 of this title;

14 (B) the certificate of registration is suspended or revoked; or

15 (C) the person does not have proper authorization to operate or
16 navigate the aircraft without registration for a period of time after
17 transfer of ownership;

18 (7) knowingly and willfully serves or attempts to serve in any capac-
19 ity as an airman without an airman's certificate authorizing the indi-
20 vidual to serve in that capacity;

21 (8) knowingly and willfully employs for service or uses in any capac-
22 ity as an airman an individual who does not have an airman's certifi-
23 cate authorizing the individual to serve in that capacity; or

24 (9) operates an aircraft with a fuel tank or fuel system that has been
25 installed or modified knowing that the tank, system, installation, or
26 modification does not comply with regulations and requirements of the
27 Administrator of the Federal Aviation Administration.

28 (c) *CONTROLLED SUBSTANCE CRIMINAL PENALTY.*—(1) In this subsection,
29 “controlled substance” has the same meaning given that term in section 102
30 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
31 U.S.C. 802).

32 (2) A person violating subsection (b) of this section shall be fined under
33 title 18, imprisoned for not more than 5 years, or both, if the violation is
34 related to transporting a controlled substance by aircraft or aiding or facili-
35 tating a controlled substance violation and the transporting, aiding, or facili-
36 tating—

37 (A) is punishable by death or imprisonment of more than one year
38 under a law of the United States or a State; or

39 (B) provided is related to an act punishable by death or imprisonment
40 for more than one year under a law of the United States or a State re-

1 lated to a controlled substance (except a law related to simple possession
2 of a controlled substance).

3 (3) A term of imprisonment imposed under paragraph (2) of this sub-
4 section shall be served in addition to, and not concurrently with, any other
5 term of imprisonment imposed on the individual.

6 (d) *SEIZURE AND FORFEITURE.*—(1) The Administrator of Drug Enforce-
7 ment or the Commissioner of Customs may seize and forfeit under the customs
8 laws an aircraft whose use is related to a violation of subsection (b) of this
9 section, or to aid or facilitate a violation, regardless of whether a person is
10 charged with the violation.

11 (2) An aircraft's use is presumed to have been related to a violation of,
12 or to aid or facilitate a violation of—

13 (A) subsection (b)(1) of this section if the aircraft certificate of reg-
14 istration has been forged or altered;

15 (B) subsection (b)(3) of this section if there is an external display of
16 false or misleading registration numbers or country of registration;

17 (C) subsection (b)(4) of this section if—

18 (i) the aircraft is registered to a false or fictitious person; or

19 (ii) the application form used to obtain the aircraft certificate of
20 registration contains a material false statement;

21 (D) subsection (b)(5) of this section if the aircraft was operated when
22 it was not registered under section 44103 of this title; or

23 (E) subsection (b)(9) of this section if the aircraft has a fuel tank or
24 fuel system that was installed or altered—

25 (i) in violation of a regulation or requirement of the Adminis-
26 trator of the Federal Aviation Administration; or

27 (ii) if a certificate required to be issued for the installation or
28 alteration is not carried on the aircraft.

29 (3) The Administrator of the Federal Aviation Administration, the Admin-
30 istrator of Drug Enforcement, and the Commissioner shall agree to a memo-
31 randum of understanding to establish procedures to carry out this subsection.

32 (e) *RELATIONSHIP TO STATE LAWS.*—This part does not prevent a State
33 from establishing a criminal penalty, including providing for forfeiture and
34 seizure of aircraft, for a person that—

35 (1) knowingly and willfully forges or alters an aircraft certificate of
36 registration;

37 (2) knowingly sells, uses, attempts to use, or possesses with the intent
38 to use, a fraudulent aircraft certificate of registration;

39 (3) knowingly and willfully displays or causes to be displayed on an
40 aircraft a mark that is false or misleading about the nationality or reg-
41 istration of the aircraft; or

1 (4) obtains an aircraft certificate of registration from the Adminis-
2 trator of the Federal Aviation Administration by—

3 (A) knowingly and willfully falsifying or concealing a material
4 fact;

5 (B) making a false, fictitious, or fraudulent statement; or

6 (C) making or using a false document knowing it contains a
7 false, fictitious, or fraudulent statement or entry.

8 **§46307. Violation of national defense airspace**

9 A person that knowingly or willfully violates section 40103(b)(3) of this
10 title or a regulation prescribed or order issued under section 40103(b)(3) shall
11 be fined under title 18, imprisoned for not more than one year, or both.

12 **§46308. Interference with air navigation**

13 A person shall be fined under title 18, imprisoned for not more than 5
14 years, or both, if the person—

15 (1) with intent to interfere with air navigation in the United States,
16 exhibits in the United States a light or signal at a place or in a way
17 likely to be mistaken for a true light or signal established under this part
18 or for a true light or signal used at an air navigation facility;

19 (2) after a warning from the Administrator of the Federal Aviation
20 Administration, continues to maintain a misleading light or signal; or

21 (3) knowingly interferes with the operation of a true light or signal.

22 **§46309. Concession and price violations**

23 (a) CRIMINAL PENALTY FOR OFFERING, GRANTING, GIVING, OR HELPING
24 TO OBTAIN CONCESSIONS AND LOWER PRICES.—An air carrier, foreign air
25 carrier, ticket agent, or officer, agent, or employee of an air carrier, foreign
26 air carrier, or ticket agent shall be fined under title 18 if the air carrier,
27 foreign air carrier, ticket agent, officer, agent, or employee—

28 (1) knowingly and willfully offers, grants, or gives, or causes to be of-
29 fered, granted, or given, a rebate or other concession in violation of this
30 part; or

31 (2) by any means knowingly and willfully assists, or willingly allows,
32 a person to obtain transportation or services subject to this part at less
33 than the price lawfully in effect.

34 (b) CRIMINAL PENALTY FOR RECEIVING REBATES, PRIVILEGES, AND FA-
35 CILITIES.—A person shall be fined under title 18 if the person by any
36 means—

37 (1) knowingly and willfully solicits, accepts, or receives a rebate of a
38 part of a price lawfully in effect for the foreign air transportation of
39 property, or a service related to the foreign air transportation; or

40 (2) knowingly solicits, accepts, or receives a privilege or facility relat-
41 ed to a matter the Secretary of Transportation requires be specified in

1 a currently effective tariff applicable to the foreign air transportation of
2 property.

3 **§46310. Reporting and recordkeeping violations**

4 (a) *GENERAL CRIMINAL PENALTY.*—An air carrier or an officer, agent, or
5 employee of an air carrier shall be fined under title 18 for intentionally—

6 (1) failing to make a report or keep a record under this part;

7 (2) falsifying, mutilating, or altering a report or record under this
8 part; or

9 (3) filing a false report or record under this part.

10 (b) *SAFETY REGULATION CRIMINAL PENALTY.*—An air carrier or an offi-
11 cer, agent, or employee of an air carrier shall be fined under title 18, impris-
12 oned for not more than 5 years, or both, for intentionally falsifying or con-
13 cealing a material fact, or inducing reliance on a false statement of material
14 fact, in a report or record under section 44701(a) or (b) or 44702–44716 of
15 this title.

16 **§46311. Unlawful disclosure of information**

17 (a) *CRIMINAL PENALTY.*—The Secretary of Transportation, the Adminis-
18 trator of the Federal Aviation Administration with respect to aviation safety
19 duties and powers designated to be carried out by the Administrator, or an
20 officer or employee of the Secretary or Administrator shall be fined under title
21 18, imprisoned for not more than 2 years, or both, if the Secretary, Adminis-
22 trator, officer, or employee knowingly and willfully discloses information
23 that—

24 (1) the Secretary, Administrator, officer, or employee acquires when
25 inspecting the records of an air carrier; or

26 (2) is withheld from public disclosure under section 40115 of this title.

27 (b) *NONAPPLICATION.*—Subsection (a) of this section does not apply if—

28 (1) the officer or employee is directed by the Secretary or Adminis-
29 trator to disclose information that the Secretary or Administrator had
30 ordered withheld; or

31 (2) the Secretary, Administrator, officer, or employee is directed by a
32 court of competent jurisdiction to disclose the information.

33 (c) *WITHHOLDING INFORMATION FROM CONGRESS.*—This section does not
34 authorize the Secretary or Administrator to withhold information from a
35 committee of Congress authorized to have the information.

36 **§46312. Transporting hazardous material**

37 A person shall be fined under title 18, imprisoned for not more than 5
38 years, or both, if the person, in violation of a regulation or requirement relat-
39 ed to the transportation of hazardous material prescribed by the Secretary of
40 Transportation under this part—

1 (1) willfully delivers, or causes to be delivered, property containing
2 hazardous material to an air carrier or to an operator of a civil aircraft
3 for transportation in air commerce; or

4 (2) recklessly causes the transportation in air commerce of the prop-
5 erty.

6 **§46313. Refusing to appear or produce records**

7 A person not obeying a subpoena or requirement of the Secretary of Trans-
8 portation (or the Administrator of the Federal Aviation Administration with
9 respect to aviation safety duties and powers designated to be carried out by
10 the Administrator) to appear and testify or produce records shall be fined
11 under title 18, imprisoned for not more than one year, or both.

12 **§46314. Entering aircraft or airport area in violation of se-
13 curity requirements**

14 (a) *PROHIBITION.*—A person may not knowingly and willfully enter, in
15 violation of security requirements prescribed under section 44901, 44903(b)
16 or (c), or 44906 of this title, an aircraft or an airport area that serves an
17 air carrier or foreign air carrier.

18 (b) *CRIMINAL PENALTY.*—(1) A person violating subsection (a) of this sec-
19 tion shall be fined under title 18, imprisoned for not more than one year,
20 or both.

21 (2) A person violating subsection (a) of this section with intent to commit,
22 in the aircraft or airport area, a felony under a law of the United States
23 or a State shall be fined under title 18, imprisoned for not more than 10
24 years, or both.

25 **§46315. Lighting violations involving transporting con-
26 trolled substances by aircraft not providing air
27 transportation**

28 (a) *APPLICATION.*—This section applies only to aircraft not used to provide
29 air transportation.

30 (b) *CRIMINAL PENALTY.*—A person shall be fined under title 18, impris-
31 oned for not more than 5 years, or both, if—

32 (1) the person knowingly and willfully operates an aircraft in viola-
33 tion of a regulation or requirement of the Administrator of the Federal
34 Aviation Administration related to the display of navigation or anti-
35 collision lights;

36 (2) the person is knowingly transporting a controlled substance by air-
37 craft or aiding or facilitating a controlled substance offense; and

38 (3) the transporting, aiding, or facilitating—

39 (A) is punishable by death or imprisonment for more than one
40 year under a law of the United States or a State; or

(B) is provided in connection with an act punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance).

§ 46316. General criminal penalty when specific penalty not provided

(a) *CRIMINAL PENALTY.*—Except as provided by subsection (b) of this section, when another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates this part, a regulation prescribed or order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) under this part, or any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title shall be fined under title 18. A separate violation occurs for each day the violation continues.

(b) *NONAPPLICATION.*—Subsection (a) of this section does not apply to chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), chapter 445, and sections 44701(a) and (b), 44702–44716, 44901, 44903(b) and (c), 44905, 44906, 44912–44915, and 44932–44938 of this title.

CHAPTER 465—SPECIAL AIRCRAFT JURISDICTION OF 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.*

§ 46501. Definitions

In this chapter—

(1) “aircraft in flight” means an aircraft from the moment all external doors are closed following boarding—

(A) through the moment when one external door is opened to allow passengers to leave the aircraft; or

(B) until, if a forced landing, competent authorities take over responsibility for the aircraft and individuals and property on the aircraft.

(2) “special aircraft jurisdiction of the United States” includes any of the following aircraft in flight:

(A) a civil aircraft of the United States.

(B) an aircraft of the armed forces of the United States.

- 1 (C) another aircraft in the United States.
- 2 (D) another aircraft outside the United States—
- 3 (i) that has its next scheduled destination or last place of de-
- 4 parture in the United States, if the aircraft next lands in the
- 5 United States;
- 6 (ii) on which an individual commits an offense (as defined
- 7 in the Convention for the Suppression of Unlawful Seizure of
- 8 Aircraft) if the aircraft lands in the United States with the in-
- 9 dividual still on the aircraft; or
- 10 (iii) against which an individual commits an offense (as de-
- 11 fined in subsection (d) or (e) of article I, section I of the Con-
- 12 vention for the Suppression of Unlawful Acts against the Safe-
- 13 ty of Civil Aviation) if the aircraft lands in the United States
- 14 with the individual still on the aircraft.
- 15 (E) any other aircraft leased without crew to a lessee whose prin-
- 16 cipal place of business is in the United States or, if the lessee does
- 17 not have a principal place of business, whose permanent residence
- 18 is in the United States.
- 19 (3) an individual commits an offense (as defined in the Convention
- 20 for the Suppression of Unlawful Seizure of Aircraft) when the individ-
- 21 ual, when on an aircraft in flight—
- 22 (A) by any form of intimidation, unlawfully seizes, exercises con-
- 23 trol of, or attempts to seize or exercise control of, the aircraft; or
- 24 (B) is an accomplice of an individual referred to in subclause (A)
- 25 of this clause.

26 **§ 46502. Aircraft piracy**

- 27 (a) *IN SPECIAL AIRCRAFT JURISDICTION.*—(1) *In this subsection—*
- 28 (A) “aircraft piracy” means seizing or exercising control of an air-
- 29 craft in the special aircraft jurisdiction of the United States by force,
- 30 violence, threat of force or violence, or any form of intimidation, and
- 31 with wrongful intent.
- 32 (B) an attempt to commit aircraft piracy is in the special aircraft
- 33 jurisdiction of the United States although the aircraft is not in flight at
- 34 the time of the attempt if the aircraft would have been in the special
- 35 aircraft jurisdiction of the United States had the aircraft piracy been
- 36 completed.
- 37 (2) *An individual committing or attempting to commit aircraft piracy—*
- 38 (A) shall be imprisoned for at least 20 years; or
- 39 (B) if the death of another individual results from the commission or
- 40 attempt, shall be put to death or imprisoned for life.

1 (b) *OUTSIDE SPECIAL AIRCRAFT JURISDICTION.*—(1) *An individual com-*
 2 *mitting an offense (as defined in the Convention for the Suppression of Un-*
 3 *lawful Seizure of Aircraft) on an aircraft in flight outside the special aircraft*
 4 *jurisdiction of the United States and later found in the United States—*

5 (A) *shall be imprisoned for at least 20 years; or*

6 (B) *if the death of another individual results from the commission or*
 7 *attempt, shall be put to death or imprisoned for life.*

8 (2) *This subsection applies only if the place of takeoff or landing of the*
 9 *aircraft on which the individual commits the offense is located outside the ter-*
 10 *ritory of the country of registration of the aircraft.*

11 **§ 46503. Death penalty sentencing procedure for aircraft pi-**
 12 **racy**

13 (a) *GOVERNMENT STIPULATIONS.*—*An individual convicted of violating*
 14 *section 46502 of this title may not be sentenced to death if the United States*
 15 *Government stipulates that at least one of the mitigating factors specified in*
 16 *subsection (c)(1) of this section exists or none of the aggravating factors speci-*
 17 *fied in subsection (c)(2) of this section exists. If the Government does not stip-*
 18 *ulate, the judge presiding at the trial or accepting the guilty plea of the indi-*
 19 *vidual shall hold a separate hearing to decide on the punishment to be im-*
 20 *posed.*

21 (b) *PUNISHMENT HEARINGS.*—(1) *The hearing under this section shall be*
 22 *conducted—*

23 (A) *before the jury that found the defendant guilty;*

24 (B) *before a jury impaneled for the hearing when—*

25 (i) *the defendant was convicted by a guilty plea;*

26 (ii) *the defendant was convicted by a judge without a jury; or*

27 (iii) *the jury finding the defendant guilty was discharged by the*
 28 *judge for good cause; or*

29 (C) *before the judge, on motion of the defendant and with the approval*
 30 *of the judge and the Government.*

31 (2) *At the hearing, the judge shall disclose to the defendant or counsel for*
 32 *the defendant all material contained in any presentence report, except mate-*
 33 *rial the judge decides is required to be withheld to protect human life or na-*
 34 *tional security. Presentence information withheld from the defendant may not*
 35 *be considered in deciding whether the factors specified in subsection (c) of this*
 36 *section exist.*

37 (3) *Information relevant to the mitigating factors specified in subsection*
 38 *(c)(1) of this section may be presented by the Government or the defendant*
 39 *without regard to the rules governing the admissibility of evidence at criminal*
 40 *trials. The burden of establishing the existence of a mitigating factor specified*
 41 *in subsection (c)(1) is on the defendant.*

1 (4) Information relevant to the aggravating factors specified in subsection
2 (c)(2) of this section is admissible only under rules governing the admissibil-
3 ity of evidence at criminal trials. The burden of establishing the existence of
4 an aggravating factor specified in subsection (c)(2) is on the Government.

5 (5) The Government and the defendant may rebut information presented
6 at the hearing. They shall be given an opportunity to present arguments on
7 the adequacy of the information to establish the existence of the factors speci-
8 fied in subsection (c) of this section.

9 (c) MITIGATING AND AGGRAVATING FACTORS.—(1) The judge may not im-
10 pose the death penalty on a defendant if the jury or, if there is no jury, the
11 judge finds under this section that at the time of the violation of section
12 46502 of this title—

13 (A) the defendant was not yet 18 years of age;

14 (B) the capacity of the defendant to appreciate the wrongfulness of the
15 defendant's conduct or to conform the defendant's conduct to the require-
16 ments of law was impaired significantly, but the capacity was not im-
17 paired sufficiently to be a defense to prosecution;

18 (C) the defendant was under unusual and substantial duress, but the
19 duress was not sufficient to be a defense to prosecution;

20 (D) the defendant was a principal (as defined in section 2(a) of title
21 18) in a violation committed by another individual, but the participa-
22 tion of the defendant was relatively minor, although not sufficiently
23 minor to be a defense to prosecution; or

24 (E) the defendant reasonably could not have foreseen that the conduct
25 of the defendant in the violation would cause or create a grave risk of
26 causing death to another individual.

27 (2) If none of the factors specified in paragraph (1) of this subsection exists,
28 the judge shall impose the death penalty on the defendant if the jury or, if
29 there is no jury, the judge finds under this section that—

30 (A) the death of another individual resulted from the violation after
31 the defendant had seized or exercised control of the aircraft; or

32 (B) the death of another individual resulted from the violation and—

33 (i) the defendant has been convicted of another United States or
34 State offense (committed before or at the time of the violation) for
35 which punishment of life imprisonment or death could be imposed;

36 (ii) the defendant has been convicted of at least 2 United States
37 or State offenses with a penalty of more than one year of imprison-
38 ment (committed on different occasions before the time of the viola-
39 tion) that involved inflicting serious bodily injury on another indi-
40 vidual;

1 (iii) in committing the violation, the defendant knowingly created
2 a grave risk of death to an individual in addition to the individual
3 whose death resulted from the violation; or

4 (iv) the defendant committed the violation in an especially hei-
5 nous, cruel, or depraved manner.

6 (d) *DEATH PENALTY REQUIREMENTS.*—(1) If the jury or, if there is no
7 jury, the judge finds by a preponderance of the information that none of the
8 mitigating factors specified in subsection (c)(1) of this section exists and that
9 at least one of the aggravating factors specified in subsection (c)(2) of this
10 section exists, the judge shall impose the death penalty on the defendant. If
11 the jury or judge finds that at least one of the mitigating factors specified
12 in subsection (c)(1) exists, or that none of the aggravating factors specified
13 in subsection (c)(2) exists, the judge may not impose the death penalty on
14 the defendant but shall impose another penalty provided for the defendant's
15 violation of section 46502 of this title.

16 (2) The jury or, if there is no jury, the judge shall return a special verdict
17 containing findings on whether each of the factors specified in subsection (c)
18 of this section exists.

19 **§ 46504. Interference with flight crew members and attend-**
20 **ants**

21 An individual on an aircraft in the special aircraft jurisdiction of the
22 United States who, by assaulting or intimidating a flight crew member or
23 flight attendant of the aircraft, interferes with the performance of the duties
24 of the member or attendant or lessens the ability of the member or attendant
25 to perform those duties, shall be fined under title 18, imprisoned for not more
26 than 20 years, or both. However, if a dangerous weapon is used in assaulting
27 or intimidating the member or attendant, the individual shall be imprisoned
28 for any term of years or for life.

29 **§ 46505. Carrying a weapon or explosive on an aircraft**

30 (a) *DEFINITION.*—In this section, "loaded firearm" means a starter gun or
31 a weapon designed or converted to expel a projectile through an explosive, that
32 has a cartridge, a detonator, or powder in the chamber, magazine, cylinder,
33 or clip.

34 (b) *GENERAL CRIMINAL PENALTY.*—An individual shall be fined under title
35 18, imprisoned for not more than one year, or both, if the individual—

36 (1) when on, or attempting to get on, an aircraft in, or intended for
37 operation in, air transportation or intrastate air transportation, has on
38 or about the individual or the property of the individual a concealed
39 dangerous weapon that is or would be accessible to the individual in
40 flight;

1 (2) has placed, attempted to place, or attempted to have placed a load-
2 ed firearm on that aircraft in property not accessible to passengers in
3 flight; or

4 (3) has on or about the individual, or has placed, attempted to place,
5 or attempted to have placed on that aircraft, an explosive or incendiary
6 device.

7 (c) *CRIMINAL PENALTY INVOLVING DISREGARD FOR HUMAN LIFE.*—An in-
8 dividual who willfully and without regard for the safety of human life, or
9 with reckless disregard for the safety of human life, violates subsection (b) of
10 this section, shall be fined under title 18, imprisoned for not more than 5
11 years, or both.

12 (d) *NONAPPLICATION.*—Subsection (b)(1) of this section does not apply to—

13 (1) a law enforcement officer of a State or political subdivision of a
14 State, or an officer or employee of the United States Government, author-
15 ized to carry arms in an official capacity;

16 (2) another individual the Administrator of the Federal Aviation Ad-
17 ministration by regulation authorizes to carry a dangerous weapon in
18 air transportation or intrastate air transportation; or

19 (3) an individual transporting a weapon (except a loaded firearm) in
20 baggage not accessible to a passenger in flight if the air carrier was in-
21 formed of the presence of the weapon.

22 **§ 46506. Application of certain criminal laws to acts on air-**
23 **craft**

24 An individual on an aircraft in the special aircraft jurisdiction of the
25 United States who commits an act that—

26 (1) if committed in the special maritime and territorial jurisdiction
27 of the United States (as defined in section 7 of title 18) would violate
28 section 113, 114, 661, 662, 1111, 1112, 1113, or 2111 or chapter 109A
29 of title 18, shall be fined under title 18, imprisoned under that section
30 or chapter, or both; or

31 (2) if committed in the District of Columbia would violate section 9
32 of the Act of July 29, 1892 (D.C. Code § 22-1112), shall be fined under
33 title 18, imprisoned under section 9 of the Act, or both.

34 **§ 46507. False information and threats**

35 An individual shall be fined under title 18, imprisoned for not more than
36 5 years, or both, if the individual—

37 (1) knowing the information to be false, willfully and maliciously or
38 with reckless disregard for the safety of human life, gives, or causes to
39 be given, under circumstances in which the information reasonably may
40 be believed, false information about an alleged attempt being made or to

1 be made to do an act that would violate section 46502(a), 46504, 46505,
2 or 46506 of this title; or

3 (2)(A) threatens to violate section 46502(a), 46504, 46505, or 46506
4 of this title, or causes a threat to violate any of those sections to be made;
5 and

6 (B) appears ready and willing to carry out the threat.

7 **PART B—AIRPORT DEVELOPMENT AND NOISE**

8 **CHAPTER 471—AIRPORT DEVELOPMENT**

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9 *SUBCHAPTER I—AIRPORT IMPROVEMENT*

10 **§47101. Policies**

11 (a) *GENERAL.*—It is the policy of the United States—

12 (1) that the safe operation of the airport and airway system is the
13 highest aviation priority;

14 (2) that aviation facilities be constructed and operated to minimize
15 current and projected noise impact on nearby communities;

16 (3) to give special emphasis to developing reliever airports;

17 (4) that appropriate provisions should be made to make the develop-
18 ment and enhancement of cargo hub airports easier;

1 (5) to encourage the development of transportation systems that use
2 various modes of transportation in a way that will serve the States and
3 local communities efficiently and effectively;

4 (6) that airport development projects under this subchapter provide for
5 the protection and enhancement of natural resources and the quality of
6 the environment of the United States;

7 (7) that airport construction and improvement projects that increase
8 the capacity of facilities to accommodate passenger and cargo traffic be
9 undertaken to the maximum feasible extent so that safety and efficiency
10 increase and delays decrease;

11 (8) to ensure that nonaviation usage of the navigable airspace be ac-
12 commodated but not allowed to decrease the safety and capacity of the
13 airspace and airport system;

14 (9) that artificial restrictions on airport capacity—

15 (A) are not in the public interest;

16 (B) should be imposed to alleviate air traffic delays only after
17 other reasonably available and less burdensome alternatives have
18 been tried; and

19 (C) should not discriminate unjustly between categories and class-
20 es of aircraft; and

21 (10) that special emphasis should be placed on converting appropriate
22 former military air bases to civil use and identifying and improving ad-
23 ditional joint-use facilities.

24 (b) NATIONAL TRANSPORTATION POLICY.—(1) It is a goal of the United
25 States to develop a national intermodal transportation system that transports
26 passengers and property in an efficient manner. The future economic direc-
27 tion of the United States depends on its ability to confront directly the enor-
28 mous challenges of the global economy, declining productivity growth, energy
29 vulnerability, air pollution, and the need to rebuild the infrastructure of the
30 United States.

31 (2) United States leadership in the world economy, the expanding wealth
32 of the United States, the competitiveness of the industry of the United States,
33 the standard of living, and the quality of life are at stake.

34 (3) A national intermodal transportation system is a coordinated, flexible
35 network of diverse but complementary forms of transportation that transports
36 passengers and property in the most efficient manner. By reducing transpor-
37 tation costs, these intermodal systems will enhance the ability of the industry
38 of the United States to compete in the global marketplace.

39 (4) All forms of transportation, including aviation and other transpor-
40 tation systems of the future, will be full partners in the effort to reduce energy
41 consumption and air pollution while promoting economic development.

1 (5) *An intermodal transportation system consists of transportation hubs*
2 *that connect different forms of appropriate transportation and provides users*
3 *with the most efficient means of transportation and with access to commercial*
4 *centers, business locations, population centers, and the vast rural areas of the*
5 *United States, as well as providing links to other forms of transportation and*
6 *to intercity connections.*

7 (6) *Intermodality and flexibility are paramount issues in the process of de-*
8 *veloping an integrated system that will obtain the optimum yield of United*
9 *States resources.*

10 (7) *The United States transportation infrastructure must be reshaped to*
11 *provide the economic underpinnings for the United States to compete in the*
12 *21st century global economy. The United States can no longer rely on the*
13 *sheer size of its economy to dominate international economic rivals and must*
14 *recognize fully that its economy is no longer a separate entity but is part*
15 *of the global marketplace. The future economic prosperity of the United States*
16 *depends on its ability to compete in an international marketplace that is*
17 *teeming with competitors but in which a full one-quarter of the economic ac-*
18 *tivity of the United States takes place.*

19 (8) *The United States must make a national commitment to rebuild its in-*
20 *frastructure through development of a national intermodal transportation sys-*
21 *tem. The United States must provide the foundation for its industries to im-*
22 *prove productivity and their ability to compete in the global economy with*
23 *a system that will transport passengers and property in an efficient manner.*

24 (c) *CAPACITY EXPANSION AND NOISE ABATEMENT.*—*It is in the public in-*
25 *terest to recognize the effects of airport capacity expansion projects on aircraft*
26 *noise. Efforts to increase capacity through any means can have an impact*
27 *on surrounding communities. Noncompatible land uses around airports must*
28 *be reduced and efforts to mitigate noise must be given a high priority.*

29 (d) *CONSISTENCY WITH AIR COMMERCE AND SAFETY POLICIES.*—*Each*
30 *airport and airway program should be carried out consistently with section*
31 *40101(a), (b), (d), and (f) of this title to foster competition, prevent unfair*
32 *methods of competition in air transportation, maintain essential air trans-*
33 *portation, and prevent unjust and discriminatory practices, including as the*
34 *practices may be applied between categories and classes of aircraft.*

35 (e) *ADEQUACY OF NAVIGATION AIDS AND AIRPORT FACILITIES.*—*This sub-*
36 *chapter should be carried out to provide adequate navigation aids and airport*
37 *facilities for places at which scheduled commercial air service is provided. The*
38 *facilities provided may include—*

39 (1) *reliever airports; and*

1 (2) *heliports designated by the Secretary of Transportation to relieve*
2 *congestion at commercial service airports by diverting aircraft pas-*
3 *sengers from fixed-wing aircraft to helicopter carriers.*

4 (f) *MAXIMUM USE OF SAFETY FACILITIES.*—*This subchapter should be car-*
5 *ried out consistently with a comprehensive airspace system plan, giving high-*
6 *est priority to commercial service airports, to maximize the use of safety fa-*
7 *ilities, including installing, operating, and maintaining, to the extent pos-*
8 *sible with available money and considering other safety needs—*

9 (1) *electronic or visual vertical guidance on each runway;*

10 (2) *grooving or friction treatment of each primary and secondary run-*
11 *way;*

12 (3) *distance-to-go signs for each primary and secondary runway;*

13 (4) *a precision approach system, a vertical visual guidance system,*
14 *and a full approach light system for each primary runway;*

15 (5) *a nonprecision instrument approach for each secondary runway;*

16 (6) *runway end identifier lights on each runway that does not have*
17 *an approach light system;*

18 (7) *a surface movement radar system at each category III airport;*

19 (8) *a taxiway lighting and sign system;*

20 (9) *runway edge lighting and marking; and*

21 (10) *radar approach coverage for each airport terminal area.*

22 (g) *COOPERATION.*—*To carry out the policy of subsection (a)(5) of this sec-*
23 *tion, the Secretary of Transportation shall cooperate with State and local offi-*
24 *cial in developing airport plans and programs that are based on overall*
25 *transportation needs. The airport plans and programs shall be developed in*
26 *coordination with other transportation planning and considering comprehen-*
27 *sive long-range land-use plans and overall social, economic, environmental,*
28 *system performance, and energy conservation objectives. The process of devel-*
29 *oping airport plans and programs shall be continuing, cooperative, and com-*
30 *prehensive to the degree appropriate to the complexity of the transportation*
31 *problems.*

32 (h) *CONSULTATION.*—*To carry out the policy of subsection (a)(6) of this*
33 *section, the Secretary of Transportation shall consult with the Secretary of*
34 *the Interior and the Administrator of the Environmental Protection Agency*
35 *about any project included in a project grant application involving the loca-*
36 *tion of an airport or runway, or a major runway extension, that may have*
37 *a significant effect on—*

38 (1) *natural resources, including fish and wildlife;*

39 (2) *natural, scenic, and recreation assets;*

40 (3) *water and air quality; or*

41 (4) *another factor affecting the environment.*

1 **§47102. Definitions**

2 *In this subchapter—*

3 (1) *“air carrier airport” means a public airport regularly served by—*

4 (A) *an air carrier certificated by the Secretary of Transportation*
 5 *under section 41102 of this title (except a charter air carrier); or*

6 (B) *at least one air carrier—*

7 (i) *operating under an exemption from section 41101(a)(1)*
 8 *of this title that the Secretary grants; and*

9 (ii) *having at least 2,500 passenger boardings at the airport*
 10 *during the prior calendar year.*

11 (2) *“airport”—*

12 (A) *means—*

13 (i) *an area of land or water used or intended to be used for*
 14 *the landing and taking off of aircraft;*

15 (ii) *an appurtenant area used or intended to be used for air-*
 16 *port buildings or other airport facilities or rights of way; and*

17 (iii) *airport buildings and facilities located in any of those*
 18 *areas; and*

19 (B) *includes a heliport.*

20 (3) *“airport development” means the following activities, if under-*
 21 *taken by the sponsor, owner, or operator of a public-use airport:*

22 (A) *constructing, repairing, or improving a public-use airport,*
 23 *including—*

24 (i) *removing, lowering, relocating, marking, and lighting an*
 25 *airport hazard; and*

26 (ii) *preparing a plan or specification, including carrying*
 27 *out a field investigation.*

28 (B) *acquiring for, or installing at, a public-use airport—*

29 (i) *a navigation aid or another aid (including a precision*
 30 *approach system) used by aircraft for landing at or taking off*
 31 *from the airport, including preparing the site as required by*
 32 *the acquisition or installation;*

33 (ii) *safety or security equipment the Secretary requires by*
 34 *regulation for, or approves as contributing significantly to, the*
 35 *safety or security of individuals and property at the airport;*

36 (iii) *equipment to remove snow, to measure runway surface*
 37 *friction, or for aviation-related weather reporting;*

38 (iv) *firefighting and rescue equipment at an airport that*
 39 *serves scheduled passenger operations of air carrier aircraft de-*
 40 *signed for more than 20 passenger seats;*

1 (v) aircraft deicing equipment and structures (except air-
2 craft deicing fluids and storage facilities for the equipment and
3 fluids); and

4 (vi) interactive training systems.

5 (C) acquiring an interest in land or airspace, including land for
6 future airport development, that is needed—

7 (i) to carry out airport development described in subclause
8 (A) or (B) of this clause; or

9 (ii) to remove or mitigate an existing airport hazard or pre-
10 vent or limit the creation of a new airport hazard.

11 (D) acquiring land for, or constructing, a burn area training
12 structure on or off the airport to provide live fire drill training for
13 aircraft rescue and firefighting personnel required to receive the
14 training under regulations the Secretary prescribes, including basic
15 equipment and minimum structures to support the training under
16 standards the Administrator of the Federal Aviation Administra-
17 tion prescribes.

18 (E) relocating after December 31, 1991, an air traffic control
19 tower and any navigational aid (including radar) if the relocation
20 is necessary to carry out a project approved by the Secretary under
21 this subchapter.

22 (F) constructing, reconstructing, repairing, or improving an air-
23 port, or purchasing capital equipment for an airport, if paid for
24 by a grant under this subchapter and necessary for compliance with
25 the responsibilities of the operator or owner of the airport under the
26 Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.),
27 the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water
28 Pollution Control Act (33 U.S.C. 1251 et seq.), except constructing
29 or purchasing capital equipment that would benefit primarily a
30 revenue-producing area of the airport used by a nonaeronautical
31 business.

32 (G) acquiring land for, or work necessary to construct, a pad
33 suitable for deicing aircraft before takeoff at a commercial service
34 airport, including constructing or reconstructing paved areas,
35 drainage collection structures, treatment and discharge systems, ap-
36 propriate lighting, paved access for deicing vehicles and aircraft,
37 but not including acquiring aircraft deicing fluids or constructing
38 or reconstructing storage facilities for aircraft deicing equipment or
39 fluids.

40 (4) “airport hazard” means a structure or object of natural growth lo-
41 cated on or near a public-use airport, or a use of land near the airport,

1 that obstructs or otherwise is hazardous to the landing or taking off of
2 aircraft at or from the airport.

3 (5) “airport planning” means planning as defined by regulations the
4 Secretary prescribes and includes integrated airport system planning.

5 (6) “amount made available under section 48103 of this title” means
6 the amount authorized for grants under section 48103 of this title as re-
7 duced by any law enacted after September 3, 1982.

8 (7) “commercial service airport” means a public airport in a State
9 that the Secretary determines has at least 2,500 passenger boardings each
10 year and is receiving scheduled passenger aircraft service.

11 (8) “integrated airport system planning” means developing for plan-
12 ning purposes information and guidance to decide the extent, kind, loca-
13 tion, and timing of airport development needed in a specific area to es-
14 tablish a viable, balanced, and integrated system of public-use airports,
15 including—

16 (A) identifying system needs;

17 (B) developing an estimate of systemwide development costs;

18 (C) conducting studies, surveys, and other planning actions, in-
19 cluding those related to airport access, needed to decide which aero-
20 nautical needs should be met by a system of airports; and

21 (D) standards prescribed by a State, except standards for safety
22 of approaches, for airport development at nonprimary public-use
23 airports.

24 (9) “landed weight” means the weight of aircraft transporting only
25 cargo in intrastate, interstate, and foreign air transportation, as the Sec-
26 retary determines under regulations the Secretary prescribes.

27 (10) “passenger boardings”—

28 (A) means revenue passenger boardings on an aircraft in service
29 in air commerce as the Secretary determines under regulations the
30 Secretary prescribes; and

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

34 (11) “primary airport” means a commercial service airport the Sec-
35 retary determines to have more than 10,000 passenger boardings each
36 year.

37 (12) “project” means a project, separate projects included in one
38 project grant application, or all projects to be undertaken at an airport
39 in a fiscal year, to achieve airport development or airport planning.

40 (13) “project cost” means a cost involved in carrying out a project.

1 (14) “project grant” means a grant of money the Secretary makes to
2 a sponsor to carry out at least one project.

3 (15) “public agency” means—

4 (A) a State or political subdivision of a State;

5 (B) a tax-supported organization; or

6 (C) an Indian tribe or pueblo.

7 (16) “public airport” means an airport used or intended to be used
8 for public purposes—

9 (A) that is under the control of a public agency; and

10 (B) of which the area used or intended to be used for the landing,
11 taking off, or surface maneuvering of aircraft is publicly owned.

12 (17) “public-use airport” means—

13 (A) a public airport; or

14 (B) a privately-owned airport used or intended to be used for
15 public purposes that is—

16 (i) a reliever airport; or

17 (ii) determined by the Secretary to have at least 2,500 pas-
18 senger boardings each year and to receive scheduled passenger
19 aircraft service.

20 (18) “reliever airport” means an airport the Secretary designates to
21 relieve congestion at a commercial service airport and to provide more
22 general aviation access to the overall community.

23 (19) “sponsor” means—

24 (A) a public agency that submits to the Secretary under this sub-
25 chapter an application for financial assistance; and

26 (B) a private owner of a public-use airport that submits to the
27 Secretary under this subchapter an application for financial assist-
28 ance for the airport.

29 (20) “State” means a State of the United States, the District of Co-
30 lumbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern
31 Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

32 **§47103. National plan of integrated airport systems**

33 (a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—The Secretary of
34 Transportation shall maintain the plan for developing public-use airports in
35 the United States, named “the national plan of integrated airport systems”.
36 The plan shall include the kind and estimated cost of eligible airport develop-
37 ment the Secretary of Transportation considers necessary to provide a safe,
38 efficient, and integrated system of public-use airports adequate to anticipate
39 and meet the needs of civil aeronautics, to meet the national defense require-
40 ments of the Secretary of Defense, and to meet identified needs of the United
41 States Postal Service. Airport development included in the plan may not be

1 *limited to meeting the needs of any particular classes or categories of public-*
 2 *use airports. In maintaining the plan, the Secretary of Transportation shall*
 3 *consider the needs of each segment of civil aviation and the relationship of*
 4 *each airport to—*

5 *(1) the rest of the transportation system in the particular area;*

6 *(2) forecasted technological developments in aeronautics; and*

7 *(3) forecasted developments in other modes of intercity transportation.*

8 *(b) SPECIFIC REQUIREMENTS.—In maintaining the plan, the Secretary of*
 9 *Transportation shall—*

10 *(1) to the extent possible and as appropriate, consult with depart-*
 11 *ments, agencies, and instrumentalities of the United States Government,*
 12 *with public agencies, and with the aviation community;*

13 *(2) consider tall structures that reduce safety or airport capacity; and*

14 *(3) make every reasonable effort to address the needs of air cargo oper-*
 15 *ations, Short Takeoff and Landing/Very Short Takeoff and Landing air-*
 16 *craft operations, and rotary wing aircraft operations.*

17 *(c) AVAILABILITY OF DOMESTIC MILITARY AIRPORTS AND AIRPORT FACILI-*
 18 *TIES.—To the extent possible, the Secretary of Defense shall make domestic*
 19 *military airports and airport facilities available for civil use. In advising the*
 20 *Secretary of Transportation under subsection (a) of this section, the Secretary*
 21 *of Defense shall indicate the extent to which domestic military airports and*
 22 *airport facilities are available for civil use.*

23 *(d) PUBLICATION.—The Secretary of Transportation shall publish the sta-*
 24 *tus of the plan every 2 years.*

25 **§ 47104. Project grant authority**

26 *(a) GENERAL AUTHORITY.—To maintain a safe and efficient nationwide*
 27 *system of public-use airports that meets the present and future needs of civil*
 28 *aeronautics, the Secretary of Transportation may make project grants under*
 29 *this subchapter from the Airport and Airway Trust Fund.*

30 *(b) INCURRING OBLIGATIONS.—The Secretary may incur obligations to*
 31 *make grants from amounts made available under section 48103 of this title*
 32 *as soon as the amounts are apportioned under section 47114(c) and (d)(2)*
 33 *of this title.*

34 *(c) EXPIRATION OF AUTHORITY.—After September 30, 1993, the Secretary*
 35 *may not incur obligations under subsection (b) of this section, except for obli-*
 36 *gations of amounts remaining available after that date under section*
 37 *47117(b) of this title.*

38 **§ 47105. Project grant applications**

39 *(a) SUBMISSION AND CONSULTATION.—(1) An application for a project*
 40 *grant under this subchapter may be submitted to the Secretary of Transpor-*
 41 *tation by—*

1 (A) a sponsor; or

2 (B) a State, as the only sponsor, for an airport development project
3 benefitting at least 2 airports in the State or for airport planning for
4 similar projects for at least 2 airports in the State if—

5 (i) the sponsor of each airport gives written consent that the State
6 be the applicant;

7 (ii) the Secretary is satisfied there is administrative merit and
8 aeronautical benefit in the State being the sponsor; and

9 (iii) an acceptable agreement exists that ensures that the State
10 will comply with appropriate grant conditions and other assurances
11 the Secretary requires.

12 (2) Before deciding to undertake an airport development project at an air-
13 port under this subchapter, a sponsor shall consult with the airport users that
14 will be affected by the project.

15 (3) This subsection does not authorize a public agency that is subject to
16 the laws of a State to apply for a project grant in violation of a law of the
17 State.

18 (b) CONTENTS AND FORM.—An application for a project grant under this
19 subchapter—

20 (1) shall describe the project proposed to be undertaken;

21 (2) may propose a project only for a public-use airport included in
22 the current national plan of integrated airport systems;

23 (3) may propose airport development only if the development complies
24 with standards the Secretary prescribes or approves, including standards
25 for site location, airport layout, site preparation, paving, lighting, and
26 safety of approaches; and

27 (4) shall be in the form and contain other information the Secretary
28 prescribes.

29 (c) STATE STANDARDS FOR AIRPORT DEVELOPMENT.—The Secretary may
30 approve standards (except standards for safety of approaches) that a State
31 prescribes for airport development at nonprimary public-use airports in the
32 State. On approval under this subsection, a State's standards apply to the
33 nonprimary public-use airports in the State instead of the comparable stand-
34 ards prescribed by the Secretary under subsection (b)(3) of this section. The
35 Secretary, or the State with the approval of the Secretary, may revise stand-
36 ards approved under this subsection.

37 (d) CERTIFICATION OF COMPLIANCE.—The Secretary may require a spon-
38 sor to certify that the sponsor will comply with this subchapter in carrying
39 out the project. The Secretary may rescind the acceptance of a certification
40 at any time. This subsection does not affect an obligation or responsibility
41 of the Secretary under another law of the United States.

1 (e) NOTIFICATION.—The sponsor of an airport for which an amount is ap-
 2 portioned under section 47114(c) of this title shall notify the Secretary of the
 3 fiscal year in which the sponsor intends to submit a project grant application
 4 for the apportioned amount. The notification shall be given by the time and
 5 contain the information the Secretary prescribes.

6 **§47106. Project grant application approval conditioned on**
 7 **satisfaction of project requirements**

8 (a) PROJECT GRANT APPLICATION APPROVAL.—The Secretary of Transpor-
 9 tation may approve an application under this subchapter for a project grant
 10 only if the Secretary is satisfied that—

11 (1) the project is consistent with plans (existing at the time the project
 12 is approved) of public agencies authorized by the State in which the air-
 13 port is located to plan for the development of the area surrounding the
 14 airport;

15 (2) the project will contribute to carrying out this subchapter;

16 (3) enough money is available to pay the project costs that will not
 17 be paid by the United States Government under this subchapter;

18 (4) the project will be completed without unreasonable delay; and

19 (5) the sponsor has authority to carry out the project as proposed.

20 (b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.—
 21 The Secretary may approve an application under this subchapter for an air-
 22 port development project grant for an airport only if the Secretary is satisfied
 23 that—

24 (1) the sponsor, a public agency, or the Government holds good title
 25 to the areas of the airport used or intended to be used for the landing,
 26 taking off, or surface maneuvering of aircraft, or that good title will be
 27 acquired;

28 (2) the interests of the community in or near which the project may
 29 be located have been given fair consideration; and

30 (3) the application provides touchdown zone and centerline runway
 31 lighting, high intensity runway lighting, or land necessary for installing
 32 approach light systems that the Secretary, considering the category of the
 33 airport and the kind and volume of traffic using it, decides is necessary
 34 for safe and efficient use of the airport by aircraft.

35 (c) ENVIRONMENTAL REQUIREMENTS.—(1) The Secretary may approve an
 36 application under this subchapter for an airport development project involv-
 37 ing the location of an airport or runway or a major runway extension—

38 (A) only if the sponsor certifies to the Secretary that—

39 (i) an opportunity for a public hearing was given to consider the
 40 economic, social, and environmental effects of the location and the

1 location's consistency with the objectives of any planning that the
2 community has carried out; and

3 (ii) the airport management board has voting representation from
4 the communities in which the project is located or has advised the
5 communities that they have the right to petition the Secretary about
6 a proposed project;

7 (B) only if the chief executive officer of the State in which the project
8 will be located certifies in writing to the Secretary that there is reason-
9 able assurance that the project will be located, designed, constructed, and
10 operated in compliance with applicable air and water quality standards,
11 except that the Administrator of the Environmental Protection Agency
12 shall make the certification instead of the chief executive officer if—

13 (i) the State has not approved any applicable State or local
14 standards; and

15 (ii) the Administrator has prescribed applicable standards; and

16 (C) if the application is found to have a significant adverse effect on
17 natural resources, including fish and wildlife, natural, scenic, and recre-
18 ation assets, water and air quality, or another factor affecting the envi-
19 ronment, only after finding that no possible and prudent alternative to
20 the project exists and that every reasonable step has been taken to mini-
21 mize the adverse effect.

22 (2) The Secretary may approve an application under this subchapter for
23 an airport development project that does not involve the location of an airport
24 or runway, or a major runway extension, at an existing airport without re-
25 quiring an environmental impact statement related to noise for the project
26 if—

27 (A) completing the project would allow operations at the airport in-
28 volving aircraft complying with the noise standards prescribed for "stage
29 2" aircraft in section 36.1 of title 14, Code of Federal Regulations, to
30 replace existing operations involving aircraft that do not comply with
31 those standards; and

32 (B) the project meets the other requirements under this subchapter.

33 (3) At the Secretary's request, the sponsor shall give the Secretary a copy
34 of the transcript of any hearing held under paragraph (1)(A) of this sub-
35 section.

36 (4)(A) Notice of certification or of refusal to certify under paragraph (1)(B)
37 of this subsection shall be provided to the Secretary not later than 60 days
38 after the Secretary receives the application.

39 (B) The Secretary shall condition approval of the application on compli-
40 ance with the applicable standards during construction and operation.

1 (5) *The Secretary may make a finding under paragraph (1)(C) of this sub-*
 2 *section only after completely reviewing the matter. The review and finding*
 3 *must be a matter of public record.*

4 (d) *GENERAL AVIATION AIRPORT PROJECT GRANT APPLICATION AP-*
 5 *PROVAL.—(1) In this subsection, “general aviation airport” means a public*
 6 *airport that is not an air carrier airport.*

7 (2) *The Secretary may approve an application under this subchapter for*
 8 *an airport development project included in a project grant application involv-*
 9 *ing the construction or extension of a runway at a general aviation airport*
 10 *located on both sides of a boundary line separating 2 counties within a State*
 11 *only if, before the application is submitted to the Secretary, the project is ap-*
 12 *proved by the governing body of each village incorporated under the laws of*
 13 *the State and located entirely within 5 miles of the nearest boundary of the*
 14 *airport.*

15 (e) *WITHHOLDING APPROVAL.—(1) The Secretary may withhold approval*
 16 *of an application under this subchapter for amounts apportioned under sec-*
 17 *tion 47114(c) and (e) of this title for violating an assurance or requirement*
 18 *of this subchapter only if—*

19 (A) *the Secretary provides the sponsor an opportunity for a hearing;*
 20 *and*

21 (B) *not later than 180 days after the later of the date of the applica-*
 22 *tion or the date the Secretary discovers the noncompliance, the Secretary*
 23 *finds that a violation has occurred.*

24 (2) *The 180-day period may be extended by—*

25 (A) *agreement between the Secretary and the sponsor; or*

26 (B) *the hearing officer if the officer decides an extension is necessary*
 27 *because the sponsor did not follow the schedule the officer established.*

28 (3) *A person adversely affected by an order of the Secretary withholding*
 29 *approval may obtain review of the order by filing a petition in the United*
 30 *States Court of Appeals for the District of Columbia Circuit or in the court*
 31 *of appeals of the United States for the circuit in which the project is located.*
 32 *The action must be brought not later than 60 days after the order is served*
 33 *on the petitioner.*

34 **§47107. Project grant application approval conditioned on**
 35 **assurances about airport operations**

36 (a) *GENERAL WRITTEN ASSURANCES.—The Secretary of Transportation*
 37 *may approve a project grant application under this subchapter for an airport*
 38 *development project only if the Secretary receives written assurances, satisfac-*
 39 *tory to the Secretary, that—*

40 (1) *the airport will be available for public use on reasonable condi-*
 41 *tions and without unjust discrimination;*

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

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

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

7 (i) tenants and nontenants; and

8 (ii) signatory and nonsignatory carriers;

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

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

17 (A) the right would be unreasonably costly, burdensome, or im-
18 practical for more than one fixed-base operator to provide the serv-
19 ices; and

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

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

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

29 (7) the airport and facilities on or connected with the airport will be
30 operated and maintained suitably, with consideration given to climatic
31 and flood conditions;

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

34 (9) appropriate action will be taken to ensure that terminal airspace
35 required to protect instrument and visual operations to the airport (in-
36 cluding operations at established minimum flight altitudes) will be
37 cleared and protected by mitigating existing, and preventing future, air-
38 port hazards;

39 (10) appropriate action, including the adoption of zoning laws, has
40 been or will be taken to the extent reasonable to restrict the use of land

1 *next to or near the airport to uses that are compatible with normal air-*
2 *port operations;*

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

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

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

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

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

24 (14) *the project accounts and records will be kept using a standard*
25 *system of accounting that the Secretary, after consulting with appro-*
26 *priate public agencies, prescribes;*

27 (15) *the airport owner or operator will submit any annual or special*
28 *airport financial and operations reports to the Secretary that the Sec-*
29 *retary reasonably requests;*

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

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

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

35 (C) *the owner or operator will not make or allow any alteration*
36 *in the airport or any of its facilities if the alteration does not com-*
37 *ply with the plan the Secretary approves, and the Secretary is of*
38 *the opinion that the alteration may affect adversely the safety, util-*
39 *ity, or efficiency of the airport; and*

40 (D) *when an alteration in the airport or its facility is made that*
41 *does not conform to the approved plan and that the Secretary de-*

1 *cides adversely affects the safety, utility, or efficiency of any prop-*
2 *erty on or off the airport that is owned, leased, or financed by the*
3 *Government, the owner or operator, if requested by the Secretary,*
4 *will—*

5 *(i) eliminate the adverse effect in a way the Secretary ap-*
6 *proves; or*

7 *(ii) bear all cost of relocating the property or its replacement*
8 *to a site acceptable to the Secretary and of restoring the prop-*
9 *erty or its replacement to the level of safety, utility, efficiency,*
10 *and cost of operation that existed before the alteration was*
11 *made;*

12 *(17) each contract and subcontract for program management, con-*
13 *struction management, planning studies, feasibility studies, architectural*
14 *services, preliminary engineering, design, engineering, surveying, map-*
15 *ping, and related services will be awarded in the same way that a con-*
16 *tract for architectural and engineering services is negotiated under title*
17 *IX of the Federal Property and Administrative Services Act of 1949 (40*
18 *U.S.C. 541 et seq.) or an equivalent qualifications-based requirement*
19 *prescribed for or by the sponsor; and*

20 *(18) the airport and each airport record will be available for inspec-*
21 *tion by the Secretary on reasonable request, and a report of the airport*
22 *budget will be available to the public at reasonable times and places.*

23 *(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of*
24 *Transportation may approve a project grant application under this sub-*
25 *chapter for an airport development project only if the Secretary receives writ-*
26 *ten assurances, satisfactory to the Secretary, that local taxes on aviation fuel*
27 *(except taxes in effect on December 30, 1987) and the revenues generated by*
28 *a public airport will be expended for the capital or operating costs of—*

29 *(A) the airport;*

30 *(B) the local airport system; or*

31 *(C) other local facilities owned or operated by the airport owner or*
32 *operator and directly and substantially related to the air transportation*
33 *of passengers or property.*

34 *(2) Paragraph (1) of this subsection does not apply if a provision enacted*
35 *not later than September 2, 1982, in a law controlling financing by the air-*
36 *port owner or operator, or a covenant or assurance in a debt obligation issued*
37 *not later than September 2, 1982, by the owner or operator, provides that the*
38 *revenues, including local taxes on aviation fuel at public airports, from any*
39 *of the facilities of the owner or operator, including the airport, be used to sup-*
40 *port not only the airport but also the general debt obligations or other facili-*
41 *ties of the owner or operator.*

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

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

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

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

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

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

21 (A) if the land was or will be acquired for a noise compatibility pur-
22 pose—

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

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

30 (iii) the part of the proceeds from disposing of the land that is
31 proportional to the Government's share of the cost of acquiring the
32 land will be paid to the Secretary for deposit in the Airport and
33 Airway Trust Fund established under section 9502 of the Internal
34 Revenue Code of 1986 (26 U.S.C. 9502) or, as the Secretary pre-
35 scribes, reinvested in an approved noise compatibility project; or

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

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

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

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

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

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

21 (e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CON-
22 CERNS.—(1) The Secretary of Transportation may approve a project grant
23 application under this subchapter for an airport development project only if
24 the Secretary receives written assurances, satisfactory to the Secretary, that
25 the airport owner or operator will take necessary action to ensure, to the max-
26 imum extent practicable, that at least 10 percent of all businesses at the air-
27 port selling consumer products or providing consumer services to the public
28 are small business concerns (as defined by regulations of the Secretary) owned
29 and controlled by a socially and economically disadvantaged individual (as
30 defined in section 47113(a) of this title).

31 (2) An airport owner or operator may meet the percentage goal of para-
32 graph (1) of this subsection by including any business operated through a
33 management contract or subcontract. The dollar amount of a management
34 contract or subcontract with a disadvantaged business enterprise shall be
35 added to the total participation by disadvantaged business enterprises in air-
36 port concessions and to the base from which the airport's percentage goal is
37 calculated. The dollar amount of a management contract or subcontract with
38 a non-disadvantaged business enterprise and the gross revenue of business ac-
39 tivities to which the management contract or subcontract pertains may not
40 be added to this base.

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

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

12 (B) An airport owner or operator may require a car rental firm to meet
13 a requirement under paragraph (1) of this subsection by purchasing or leas-
14 ing goods or services from a disadvantaged business enterprise. If an owner
15 or operator requires such a purchase or lease, a car rental firm shall be per-
16 mitted to meet the requirement by including purchases or leases of vehicles
17 from any vendor that qualifies as a small business concern owned and con-
18 trolled by a socially and economically disadvantaged individual.

19 (C) This subsection does not require a car rental firm to change its cor-
20 porate structure to provide for direct ownership arrangements to meet the re-
21 quirements of this subsection.

22 (5) This subsection does not preempt—

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

25 (B) the authority of a State or local government or airport owner or
26 operator to adopt or enforce a law, regulation, or policy related to dis-
27 advantaged business enterprises.

28 (6) An airport owner or operator may provide opportunities for a small
29 business concern owned and controlled by a socially and economically dis-
30 advantaged individual to participate through direct contractual agreement
31 with that concern.

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

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

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

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

4 (2) subsection (c)(2)(B)(iii) of this section is available to the Sec-
5 retary—

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

8 (B) for use under section 47114(d)(2) of this title at another air-
9 port in the State in which the land was disposed of under subsection
10 (c)(2)(B)(ii) of this section; and

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

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

16 (A) shall prescribe requirements for sponsors that the Secretary consid-
17 ers necessary; and

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

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

22 (h) *MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDI-*
23 *TIONAL ASSURANCES.*—Before modifying an assurance required of a person
24 receiving a grant under this subchapter and in effect after December 29, 1987,
25 or to require compliance with an additional assurance from the person, the
26 Secretary of Transportation must—

27 (1) publish notice of the proposed modification in the Federal Register;
28 and

29 (2) provide an opportunity for comment on the proposal.

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

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

39 (A) “duty-free merchandise” and “duty-free sales enterprise” have the
40 same meanings given those terms in section 555(b)(8) of the Tariff Act
41 of 1930 (19 U.S.C. 1555(b)(8)).

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

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

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

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

19 (4) If a fee imposed or collected for rent, landing, or service from an air-
20 craft operator by an airport operated by Hawaii is increased during the pe-
21 riod from May 4, 1990, through December 31, 1994, by more than the per-
22 centage change in the Consumer Price Index of All Urban Consumers for
23 Honolulu, Hawaii, that the Secretary of Labor publishes during that period
24 and if revenue derived from the fee increases because the fee increased, the
25 amount under paragraph (3)(B) of this subsection shall be reduced by the
26 amount of the projected revenue increase in the period less the part of the in-
27 crease attributable to changes in the Index in the period.

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

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

38 (7)(A) This subsection applies only to revenue from sales referred to in
39 paragraph (2) of this subsection from May 5, 1990, through December 30,
40 1994, and to amounts in the Airport Revenue Fund of Hawaii that are at-

1 tributable to revenue before May 4, 1990, on sales referred to in paragraph
2 (2).

3 (B) Revenue from sales referred to in paragraph (2) of this subsection from
4 May 5, 1990, through December 30, 1994, may be used under paragraph (2)
5 in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning
6 after December 31, 1994.

7 **§ 47108. Project grant agreements**

8 (a) OFFER AND ACCEPTANCE.—On approving a project grant application
9 under this subchapter, the Secretary of Transportation shall offer the sponsor
10 a grant to pay the United States Government's share of the project costs al-
11 lowable under section 47110 of this title. The Secretary may impose terms
12 on the offer that the Secretary considers necessary to carry out this subchapter
13 and regulations prescribed under this subchapter. An offer shall state the obli-
14 gations to be assumed by the sponsor and the maximum amount the Govern-
15 ment will pay for the project from the amounts authorized under chapter 481
16 of this title (except sections 48102(e), 48106, 48107, and 48110). At the re-
17 quest of the sponsor, an offer of a grant for a project that will not be com-
18 pleted in one fiscal year shall provide for the obligation of amounts appor-
19 tioned or to be apportioned to a sponsor under section 47114(c) of this title
20 for the fiscal years necessary to pay the Government's share of the cost of the
21 project. An offer that is accepted in writing by the sponsor is an agreement
22 binding on the Government and the sponsor. The Government may pay or
23 be obligated to pay a project cost only after a grant agreement for the project
24 is signed.

25 (b) INCREASING GOVERNMENT'S SHARE UNDER THIS SUBCHAPTER OR
26 CHAPTER 475.—(1) When an offer has been accepted in writing, the amount
27 stated in the offer as the maximum amount the Government will pay may
28 be increased only as provided in paragraphs (2) and (3) of this subsection.

29 (2)(A) For a project receiving assistance under a grant approved under the
30 Airport and Airway Improvement Act of 1982 before October 1, 1987, the
31 amount may be increased by not more than—

32 (i) 10 percent for an airport development project, except a project for
33 acquiring an interest in land; and

34 (ii) 50 percent of the total increase in allowable project costs attrib-
35 utable to acquiring an interest in land, based on current creditable ap-
36 praisals.

37 (B) An increase under subparagraph (A) of this paragraph may be paid
38 only from amounts the Government recovers from other grants made under
39 this subchapter.

1 (3) For a project receiving assistance under a grant approved under the
2 Act, this subchapter, or chapter 475 of this title after September 30, 1987,
3 the amount may be increased—

4 (A) for an airport development project, by not more than 15 percent;
5 and

6 (B) for a grant after September 30, 1992, to acquire an interest in
7 land for an airport (except a primary airport), by not more than the
8 greater of the following, based on current creditable appraisals or a court
9 award in a condemnation proceeding:

10 (i) 15 percent; or

11 (ii) 25 percent of the total increase in allowable project costs at-
12 tributable to acquiring an interest in land.

13 (c) *INCREASING GOVERNMENT'S SHARE UNDER AIRPORT AND AIRWAY DE-*
14 *VELOPMENT ACT OF 1970.*—For a project receiving assistance under a grant
15 made under the Airport and Airway Development Act of 1970, the maximum
16 amount the Government will pay may be increased by not more than 10 per-
17 cent. An increase under this subsection may be paid only from amounts the
18 Government recovers from other grants made under the Act.

19 (d) *CHANGING WORKSCOPE.*—With the consent of the sponsor, the Secretary
20 may amend a grant agreement made under this subchapter to change the
21 workscope of a project financed under the grant if the amendment does not
22 result in an increase in the maximum amount the Government may pay
23 under subsection (b) of this section.

24 **§47109. United States Government's share of project costs**

25 (a) *GENERAL.*—Except as provided in subsections (b) and (c) of this sec-
26 tion, the United States Government's share of allowable project costs is—

27 (1) 75 percent for a project at a primary airport having at least .25
28 percent of the total number of passenger boardings each year at all com-
29 mercial service airports; and

30 (2) 90 percent for a project at any other airport.

31 (b) *INCREASED GOVERNMENT SHARE.*—If, under subsection (a) of this sec-
32 tion, the Government's share of allowable costs of a project in a State contain-
33 ing unappropriated and unreserved public lands and nontaxable Indian
34 lands (individual and tribal) of more than 5 percent of the total area of all
35 lands in the State, is less than the share applied on June 30, 1975, under
36 section 17(b) of the Airport and Airway Development Act of 1970, the Govern-
37 ment's share under subsection (a) of this section shall be increased by the less-
38 er of—

39 (1) 25 percent;

1 (2) one-half of the percentage that the area of unappropriated and un-
2 reserved public lands and nontaxable Indian lands in the State is of the
3 total area of the State; or

4 (3) the percentage necessary to increase the Government's share to the
5 percentage that applied on June 30, 1975, under section 17(b) of the Act.

6 (c) *LIMITATION.*—Notwithstanding subsections (a) and (b) of this section,
7 the Government's share of project costs allowable under section 47110(d) of
8 this title may not be more than 75 percent, except that the Government's
9 share shall be 85 percent for a project at a commercial service airport that
10 does not have more than .05 percent of the total annual passenger boardings
11 in the United States.

12 **§47110. Allowable project costs**

13 (a) *GENERAL AUTHORITY.*—Except as provided in section 47111 of this
14 title, the United States Government may pay or be obligated to pay, from
15 amounts appropriated to carry out this subchapter, a cost incurred in carry-
16 ing out a project under this subchapter only if the Secretary of Transpor-
17 tation decides the cost is allowable.

18 (b) *ALLOWABLE COST STANDARDS.*—A project cost is allowable—

19 (1) if the cost necessarily is incurred in carrying out the project in
20 compliance with the grant agreement made for the project under this
21 subchapter, including any cost a sponsor incurs related to an audit the
22 Secretary requires under section 47121(b) or (d) of this title;

23 (2) if the cost is incurred—

24 (A) after the grant agreement is executed and is for airport devel-
25 opment or airport planning carried out after the grant agreement
26 is executed; or

27 (B) after June 1, 1989, by the airport operator (regardless of
28 when the grant agreement is executed) as part of a Government-ap-
29 proved noise compatibility program (including project formulation
30 costs) and is consistent with all applicable statutory and adminis-
31 trative requirements;

32 (3) to the extent the cost is reasonable in amount;

33 (4) if the cost is not incurred in a project for airport development or
34 airport planning for which other Government assistance has been grant-
35 ed; and

36 (5) if the total costs allowed for the project are not more than the
37 amount stated in the grant agreement as the maximum the Government
38 will pay (except as provided in section 47108(b) of this title).

39 (c) *CERTAIN PRIOR COSTS AS ALLOWABLE COSTS.*—The Secretary may de-
40 cide that a project cost under subsection (b)(2)(A) of this section incurred

1 after May 13, 1946, and before the date the grant agreement is executed is
2 allowable if it is—

3 (1) necessarily incurred in formulating an airport development
4 project, including costs incurred for field surveys, plans and specifica-
5 tions, property interests in land or airspace, and administration or other
6 incidental items that would not have been incurred except for the project;
7 or

8 (2) necessarily and directly incurred in developing the work scope of
9 an airport planning project.

10 (d) *TERMINAL DEVELOPMENT COSTS.*—(1) The Secretary may decide that
11 the cost of terminal development (including multi-modal terminal develop-
12 ment) in a nonrevenue-producing public-use area of a commercial service air-
13 port is allowable for an airport development project at the airport—

14 (A) if the sponsor certifies that the airport, on the date the grant ap-
15 plication is submitted to the Secretary, has—

16 (i) all the safety equipment required for certification of the air-
17 port under section 44706 of this title;

18 (ii) all the security equipment required by regulation; and

19 (iii) provided for access, to the area of the airport for passengers
20 for boarding or exiting aircraft, to those passengers boarding or
21 exiting aircraft, except air carrier aircraft;

22 (B) if the cost is directly related to moving passengers and baggage
23 in air commerce within the airport, including vehicles for moving pas-
24 sengers between terminal facilities and between terminal facilities and
25 aircraft; and

26 (C) under terms necessary to protect the interests of the Government.

27 (2) In making a decision under paragraph (1) of this subsection, the Sec-
28 retary may approve as allowable costs the expenses of terminal development
29 in a revenue-producing area and construction, reconstruction, repair, and im-
30 provement in a nonrevenue-producing parking lot if—

31 (A) the airport does not have more than .05 percent of the total an-
32 nual passenger boardings in the United States; and

33 (B) the sponsor certifies that any needed airport development project
34 affecting safety, security, or capacity will not be deferred because of the
35 Secretary's approval.

36 (e) *LETTERS OF INTENT.*—(1) The Secretary may issue a letter of intent
37 to the sponsor stating an intention to obligate from future budget authority
38 an amount, not more than the Government's share of allowable project costs,
39 for an airport development project (including costs of formulating the project)
40 at a primary or reliever airport. The letter shall establish a schedule under
41 which the Secretary will reimburse the sponsor for the Government's share of

1 allowable project costs, as amounts become available, if the sponsor, after the
2 Secretary issues the letter, carries out the project without receiving amounts
3 under this subchapter.

4 (2) Paragraph (1) of this subsection applies to a project—

5 (A) about which the sponsor notifies the Secretary, before the project
6 begins, of the sponsor's intent to carry out the project;

7 (B) that will comply with all statutory and administrative require-
8 ments that would apply to the project if it were carried out with
9 amounts made available under this subchapter; and

10 (C) the Secretary decides will enhance system-wide airport capacity
11 significantly and meets the criteria of section 47115(d) of this title.

12 (3) A letter of intent issued under paragraph (1) of this subsection is not
13 an obligation of the Government under section 1501 of title 31, and the letter
14 is not deemed to be an administrative commitment for financing. An obliga-
15 tion or administrative commitment may be made only as amounts are pro-
16 vided in authorization and appropriation laws.

17 (4) The total estimated amount of future Government obligations covered
18 by all outstanding letters of intent under paragraph (1) of this subsection
19 may not be more than the amount authorized to carry out section 48103 of
20 this title, less an amount reasonably estimated by the Secretary to be needed
21 for grants under section 48103 that are not covered by a letter.

22 (5) A letter of intent issued under paragraph (1) of this subsection may
23 not condition the obligation of amounts on the imposition of a passenger fa-
24 cility fee.

25 (f) *NONALLOWABLE COSTS.*—Except as provided in subsection (d) of this
26 section and section 47118(f) of this title, a cost is not an allowable airport
27 development project cost if it is for—

28 (1) constructing a public parking facility for passenger automobiles;

29 (2) constructing, altering, or repairing part of an airport building, ex-
30 cept to the extent the building will be used for facilities or activities di-
31 rectly related to the safety of individuals at the airport;

32 (3) decorative landscaping; or

33 (4) providing or installing sculpture or art works.

34 **§47111. Payments under project grant agreements**

35 (a) *GENERAL AUTHORITY.*—After making a project grant agreement under
36 this subchapter and consulting with the sponsor, the Secretary of Transpor-
37 tation may decide when and in what amounts payments under the agreement
38 will be made. Payments totaling not more than 90 percent of the United
39 States Government's share of the project's estimated allowable costs may be
40 made before the project is completed if the sponsor certifies to the Secretary
41 that the total amount expended from the advance payments at any time will

1 *not be more than the cost of the airport development work completed on the*
 2 *project at that time.*

3 (b) *RECOVERING PAYMENTS.—If the Secretary determines that the total*
 4 *amount of payments made under a grant agreement under this subchapter*
 5 *is more than the Government's share of the total allowable project costs, the*
 6 *Government may recover the excess amount. If the Secretary finds that a*
 7 *project for which an advance payment was made has not been completed*
 8 *within a reasonable time, the Government may recover any part of the ad-*
 9 *advance payment for which the Government received no benefit.*

10 (c) *PAYMENT DEPOSITS.—A payment under a project grant agreement*
 11 *under this subchapter may be made only to an official or depository des-*
 12 *ignated by the sponsor and authorized by law to receive public money.*

13 (d) *WITHHOLDING PAYMENTS.—(1) The Secretary may withhold a pay-*
 14 *ment under a grant agreement under this subchapter for more than 180 days*
 15 *after the payment is due only if the Secretary—*

16 (A) *notifies the sponsor and provides an opportunity for a hearing;*
 17 *and*

18 (B) *finds that the sponsor has violated the agreement.*

19 (2) *The 180-day period may be extended by—*

20 (A) *agreement of the Secretary and the sponsor; or*

21 (B) *the hearing officer if the officer decides an extension is necessary*
 22 *because the sponsor did not follow the schedule the officer established.*

23 (3) *A person adversely affected by an order of the Secretary withholding*
 24 *a payment may apply for review of the order by filing a petition in the Unit-*
 25 *ed States Court of Appeals for the District of Columbia Circuit or in the court*
 26 *of appeals of the United States for the circuit in which the project is located.*
 27 *The petition must be filed not later than 60 days after the order is served*
 28 *on the petitioner.*

29 **§ 47112. Carrying out airport development projects**

30 (a) *CONSTRUCTION WORK.—The Secretary of Transportation may inspect*
 31 *and approve construction work for an airport development project carried out*
 32 *under a grant agreement under this subchapter. The construction work must*
 33 *be carried out in compliance with regulations the Secretary prescribes. The*
 34 *regulations shall require the sponsor to make necessary cost and progress re-*
 35 *ports on the project. The regulations may amend or modify a contract related*
 36 *to the project only if the contract was made with actual notice of the regula-*
 37 *tions.*

38 (b) *PREVAILING WAGES.—A contract for more than \$2,000 involving labor*
 39 *for an airport development project carried out under a grant agreement under*
 40 *this subchapter must require contractors to pay labor minimum wage rates*
 41 *as determined by the Secretary of Labor under the Act of March 3, 1931*

1 *(known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). The minimum*
2 *rates must be included in the bids for the work and in the invitation for those*
3 *bids.*

4 *(c) VETERANS' PREFERENCE.—(1) In this subsection—*

5 *(A) “disabled veteran” has the same meaning given that term in sec-*
6 *tion 2108 of title 5.*

7 *(B) “Vietnam-era veteran” means an individual who served on active*
8 *duty (as defined in section 101 of title 38) in the armed forces for more*
9 *than 180 consecutive days, any part of which occurred after August 4,*
10 *1964, and before May 8, 1975, and who was separated from the armed*
11 *forces under honorable conditions.*

12 *(2) A contract involving labor for carrying out an airport development*
13 *project under a grant agreement under this subchapter must require that pref-*
14 *erence in the employment of labor (except in executive, administrative, and*
15 *supervisory positions) be given to Vietnam-era veterans and disabled veterans*
16 *when they are available and qualified for the employment.*

17 **§ 47113. Minority and disadvantaged business participation**

18 *(a) DEFINITIONS.—In this section—*

19 *(1) “small business concern”—*

20 *(A) has the same meaning given that term in section 3 of the*
21 *Small Business Act (15 U.S.C. 632); but*

22 *(B) does not include a concern, or group of concerns controlled*
23 *by the same socially and economically disadvantaged individual,*
24 *that has average annual gross receipts over the prior 3 fiscal years*
25 *of more than \$16,015,000, as adjusted by the Secretary of Transpor-*
26 *tation for inflation.*

27 *(2) “socially and economically disadvantaged individual” has the*
28 *same meaning given that term in section 8(c) of the Act (15 U.S.C.*
29 *637(c)) and relevant subcontracting regulations prescribed under section*
30 *8(c), except that women are presumed to be socially and economically*
31 *disadvantaged.*

32 *(b) GENERAL REQUIREMENT.—Except to the extent the Secretary decides*
33 *otherwise, at least 10 percent of amounts available in a fiscal year under sec-*
34 *tion 48103 of this title shall be expended with small business concerns owned*
35 *and controlled by socially and economically disadvantaged individuals.*

36 *(c) UNIFORM CRITERIA.—The Secretary shall establish minimum uniform*
37 *criteria for State governments and airport sponsors to use in certifying*
38 *whether a small business concern qualifies under this section. The criteria*
39 *shall include on-site visits, personal interviews, licenses, analyses of stock*
40 *ownership and bonding capacity, listings of equipment and work completed,*
41 *resumes of principal owners, financial capacity, and type of work preferred.*

1 (d) *SURVEYS AND LISTS.*—Each State or airport sponsor annually shall
2 survey and compile a list of small business concerns referred to in subsection
3 (b) of this section and the location of each concern in the State.

4 **§47114. Apportionments**

5 (a) *DEFINITION.*—In this section, “amount subject to apportionment”
6 means the amount newly made available under section 48103 of this title for
7 a fiscal year.

8 (b) *APPORTIONMENT DATE.*—On the first day of each fiscal year, the Sec-
9 retary of Transportation shall apportion the amount subject to apportionment
10 for that fiscal year as provided in this section.

11 (c) *AMOUNTS APPORTIONED TO SPONSORS.*—(1)(A) The Secretary shall ap-
12 portion to the sponsor of each primary airport for each fiscal year an amount
13 equal to—

14 (i) \$7.80 for each of the first 50,000 passenger boardings at the airport
15 during the prior calendar year;

16 (ii) \$5.20 for each of the next 50,000 passenger boardings at the air-
17 port during the prior calendar year;

18 (iii) \$2.60 for each of the next 400,000 passenger boardings at the air-
19 port during the prior calendar year; and

20 (iv) \$.65 for each additional passenger boarding at the airport during
21 the prior calendar year.

22 (B) Not less than \$400,000 nor more than \$22,000,000 may be apportioned
23 under subparagraph (A) of this paragraph to an airport sponsor for a pri-
24 mary airport for each fiscal year.

25 (2)(A) The Secretary shall apportion to the sponsors of airports served by
26 aircraft providing air transportation of only cargo with a total annual land-
27 ed weight of more than 100,000,000 pounds for each fiscal year an amount
28 equal to 3.5 percent of the amount subject to apportionment each year, allo-
29 cated among those airports in the proportion that the total annual landed
30 weight of those aircraft landing at each of those airports bears to the total
31 annual landed weight of those aircraft landing at all those airports. However,
32 not more than 8 percent of the amount apportioned under this paragraph
33 may be apportioned for any one airport.

34 (B) Landed weight under subparagraph (A) of this paragraph is the landed
35 weight of aircraft landing at each of those airports and all those airports dur-
36 ing the prior calendar year.

37 (3) The total of all amounts apportioned under paragraphs (1) and (2) of
38 this subsection may not be more than 44 percent of the amount subject to ap-
39 portionment for a fiscal year. If this paragraph requires reduction of an
40 amount that otherwise would be apportioned under this subsection, the Sec-
41 retary shall reduce proportionately the amount apportioned to each sponsor

1 of an airport under paragraphs (1) and (2) until the 44 percent limit is
2 achieved.

3 (d) AMOUNTS APPORTIONED TO STATES.—(1) In this subsection—

4 (A) “area” includes land and water.

5 (B) “population” means the population stated in the latest decennial
6 census of the United States.

7 (2) The Secretary shall apportion to the States 12 percent of the amount
8 subject to apportionment for each fiscal year as follows:

9 (A) one percent of the apportioned amount to Guam, American
10 Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific
11 Islands, and the Virgin Islands.

12 (B) except as provided in paragraph (3) of this subsection, 49.5 per-
13 cent of the apportioned amount for airports, except primary airports
14 and airports described in section 47117(e)(1)(C) of this title, in States
15 not named in clause (A) of this paragraph in the proportion that the
16 population of each of those States bears to the total population of all of
17 those States.

18 (C) except as provided in paragraph (3) of this subsection, 49.5 per-
19 cent of the apportioned amount for airports, except primary airports
20 and airports described in section 47117(e)(1)(C) of this title, in States
21 not named in clause (A) of this paragraph in the proportion that the
22 area of each of those States bears to the total area of all of those States.

23 (3) An amount apportioned under paragraph (2) of this subsection for an
24 airport in—

25 (A) Alaska may be made available by the Secretary for a public air-
26 port described in section 47117(e)(1)(C)(ii) of this title to which section
27 15(a)(3)(A)(II) of the Airport and Airway Development Act of 1970 ap-
28 plied during the fiscal year that ended September 30, 1981; and

29 (B) Puerto Rico may be made available by the Secretary for a pri-
30 mary airport and an airport described in section 47117(e)(1)(C) of this
31 title.

32 (e) ALTERNATIVE APPORTIONMENT FOR ALASKA.—(1) Instead of appor-
33 tioning amounts for airports in Alaska under subsections (c) and (d) of this
34 section, the Secretary may apportion amounts for those airports in the way
35 in which amounts were apportioned in the fiscal year ending September 30,
36 1980, under section 15(a) of the Act. However, in apportioning amounts for
37 a fiscal year under this subsection, the Secretary shall apportion—

38 (A) for each primary airport at least as much as would be appor-
39 tioned for the airport under subsection (c)(1) of this section; and

1 (B) a total amount at least equal to the minimum amount required
2 to be apportioned to airports in Alaska in the fiscal year ending Septem-
3 ber 30, 1980, under section 15(a)(3)(A) of the Act.

4 (2) This subsection does not prohibit the Secretary from making project
5 grants for airports in Alaska from the discretionary fund under section 47115
6 of this title.

7 (3) Airports referred to in this subsection include those public airports that
8 received scheduled service as of September 3, 1982, but were not apportioned
9 amounts in the fiscal year ending September 30, 1980, under section 15(a)
10 of the Act because the airports were not under the control of a State or local
11 public agency.

12 (f) *REDUCING APPORTIONMENTS.*—An amount that would be apportioned
13 under this section (except subsection (c)(2)) in a fiscal year to the sponsor
14 of an airport having at least .25 percent of the total number of boardings each
15 year in the United States and for which a fee is imposed in the fiscal year
16 under section 40117 of this title shall be reduced by an amount equal to 50
17 percent of the projected revenues from the fee in the fiscal year but not by
18 more than 50 percent of the amount that otherwise would be apportioned
19 under this section.

20 **§47115. Discretionary fund**

21 (a) *EXISTENCE AND AMOUNTS IN FUND.*—The Secretary of Transportation
22 has a discretionary fund. The fund consists of—

23 (1) amounts subject to apportionment for a fiscal year that are not
24 apportioned under section 47114(c)–(e) of this title; and

25 (2) 25 percent of amounts not apportioned under section 47114 of this
26 title because of section 47114(f).

27 (b) *AVAILABILITY OF AMOUNTS.*—Subject to subsection (c) of this section
28 and section 47117(e) of this title, the fund is available for making grants for
29 any purpose for which amounts are made available under section 48103 of
30 this title that the Secretary considers most appropriate to carry out this sub-
31 chapter. However, 50 percent of amounts not apportioned under section 47114
32 of this title because of section 47114(f) and added to the fund is available for
33 making grants for projects at small hub airports (as defined in section 41731
34 of this title).

35 (c) *MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.*—At
36 least 75 percent of the amount in the fund and distributed by the Secretary
37 in a fiscal year shall be used for making grants—

38 (1) to preserve and enhance capacity, safety, and security at primary
39 and reliever airports; and

40 (2) to carry out airport noise compatibility planning and programs
41 at primary and reliever airports.

1 (d) *CONSIDERATIONS.*—In selecting a project for a grant to preserve and
2 enhance capacity as described in subsection (c)(1) of this section, the Sec-
3 retary shall consider—

4 (1) the effect the project will have on the overall national air transpor-
5 tation system capacity;

6 (2) the project benefit and cost; and

7 (3) the financial commitment from non-United States Government
8 sources to preserve or enhance airport capacity.

9 (e) *WAIVING PERCENTAGE REQUIREMENT.*—If the Secretary decides the
10 Secretary cannot comply with the percentage requirement of subsection (c) of
11 this section in a fiscal year because there are insufficient qualified grant ap-
12 plications to meet that percentage, the amount the Secretary determines will
13 not be distributed as required by subsection (c) is available for obligation dur-
14 ing the fiscal year without regard to the requirement.

15 **§47116. Small airport fund**

16 (a) *EXISTENCE AND AMOUNTS IN FUND.*—The Secretary of Transportation
17 has a small airport fund. The fund consists of 75 percent of amounts not ap-
18 portioned under section 47114 of this title because of section 47114(f).

19 (b) *DISTRIBUTION OF AMOUNTS.*—The Secretary may distribute amounts
20 in the fund in each fiscal year for any purpose for which amounts are made
21 available under section 48103 of this title as follows:

22 (1) one-third for grants to sponsors of public-use airports (except com-
23 mercial service airports).

24 (2) two-thirds for grants to sponsors of each commercial service air-
25 port that each year has less than .05 percent of the total boardings in
26 the United States in that year.

27 (c) *AUTHORITY TO RECEIVE GRANT NOT DEPENDENT ON PARTICIPATION*
28 *IN BLOCK GRANT PILOT PROGRAM.*—An airport in a State participating in
29 the State block grant pilot program under section 47128 of this title may re-
30 ceive a grant under this section to the same extent the airport may receive
31 a grant if the State were not participating in the program.

32 **§47117. Use of apportioned amounts**

33 (a) *GRANT PURPOSE.*—Except as provided in this section, an amount ap-
34 portioned under section 47114(c)(1) or (d)(2) of this title is available for
35 making grants for any purpose for which amounts are made available under
36 section 48103 of this title.

37 (b) *PERIOD OF AVAILABILITY.*—An amount apportioned under section
38 47114 of this title is available to be obligated for grants under the appor-
39 tionment only during the fiscal year for which the amount was apportioned and
40 the 2 fiscal years immediately after that year. If the amount is not obligated

1 under the apportionment within that time, it shall be added to the discre-
2 tionary fund.

3 (c) *PRIMARY AIRPORTS.*—(1) An amount apportioned to a sponsor of a
4 primary airport under section 47114(c)(1) of this title is available for grants
5 for any public-use airport of the sponsor included in the national plan of in-
6 tegrated airport systems.

7 (2) A sponsor of a primary airport may make an agreement with the Sec-
8 retary of Transportation waiving any part of the amount apportioned for the
9 airport under section 47114(c)(1) of this title if the Secretary makes the
10 waived amount available for a grant for another public-use airport in the
11 same State or geographical area as the primary airport.

12 (d) *STATE USE.*—An amount apportioned to a State under—

13 (1) section 47114(d)(2)(A) of this title is available for grants for air-
14 ports located in the State; and

15 (2) section 47114(d)(2)(B) or (C) of this title is available for grants
16 for airports described in section 47114(d)(2)(B) or (C) and located in
17 the State.

18 (e) *SPECIAL APPORTIONMENT CATEGORIES.*—(1) The Secretary shall use
19 amounts made available under section 48103 of this title for each fiscal year
20 as follows:

21 (A) at least 10 percent for grants for reliever airports.

22 (B) at least 12.5 percent for grants for airport noise compatibility
23 planning under section 47505(a)(2) of this title and for carrying out
24 noise compatibility programs under section 47504(c)(1) of this title.

25 (C) at least 2.5 percent for grants for—

26 (i) nonprimary commercial service airports; and

27 (ii) public airports (except commercial service airports) that were
28 eligible for United States Government assistance from amounts ap-
29 portioned under section 15(a)(3) of the Airport and Airway Devel-
30 opment Act of 1970, and to which section 15(a)(3)(A)(I) or (II) of
31 the Act applied during the fiscal year that ended September 30,
32 1981.

33 (D) at least .5 percent for integrated airport system planning grants
34 to planning agencies designated by the Secretary and authorized by the
35 laws of a State or political subdivision of a State to do planning for
36 an area of the State or subdivision in which a grant under this chapter
37 is to be used.

38 (E) at least 2.25 percent for the fiscal year ending September 30,
39 1993, and at least 2.5 percent for each of the fiscal years ending Septem-
40 ber 30, 1994, and 1995, to sponsors of current or former military air-
41 ports designated by the Secretary under section 47118(a) of this title for

1 grants for developing current and former military airports to improve
2 the capacity of the national air transportation system.

3 (2) A grant from the amount apportioned under section 47114(e) of this
4 title may not be included as part of the 2.5 percent required to be used for
5 grants under paragraph (1)(C) of this subsection.

6 (3) If the Secretary decides that an amount required to be used for grants
7 under paragraph (1) of this subsection cannot be used for a fiscal year be-
8 cause there are insufficient qualified grant applications, the amount the Sec-
9 retary determines cannot be used is available during the fiscal year for grants
10 for other airports or for other purposes for which amounts are authorized for
11 grants under section 48103 of this title.

12 (f) *LIMITATION FOR COMMERCIAL SERVICE AIRPORT IN ALASKA.*—The Sec-
13 retary may not make a grant for a commercial service airport in Alaska of
14 more than 110 percent of the amount apportioned for the airport for a fiscal
15 year under section 47114(e) of this title.

16 (g) *DISCRETIONARY USE OF APPORTIONMENTS.*—(1) Subject to paragraph
17 (2) of this subsection, if the Secretary finds, based on the notices the Secretary
18 receives under section 47105(e) of this title or otherwise, that an amount ap-
19 portioned under section 47114 of this title will not be used for grants during
20 a fiscal year, the Secretary may use an equal amount for grants during that
21 fiscal year for any of the purposes for which amounts are authorized for
22 grants under section 48103 of this title.

23 (2) The Secretary may make a grant under paragraph (1) of this sub-
24 section only if the Secretary decides that—

25 (A) the total amount used for grants for the fiscal year under section
26 48103 of this title will not be more than the amount made available
27 under section 48103 for that fiscal year; and

28 (B) the amounts authorized for grants under section 48103 of this title
29 for later fiscal years are sufficient for grants of the apportioned amounts
30 that were not used for grants under the apportionment during the fiscal
31 year and that remain available under subsection (b) of this section.

32 (h) *LIMITING AUTHORITY OF SECRETARY.*—The authority of the Secretary
33 to make grants during a fiscal year from amounts that were apportioned for
34 a prior fiscal year and remain available for approved airport development
35 project grants under subsection (b) of this section may be impaired only by
36 a law enacted after September 3, 1982, that expressly limits that authority.

37 **§47118. Designating current and former military airports**

38 (a) *GENERAL REQUIREMENTS.*—The Secretary of Transportation shall des-
39 ignate not more than 12 current or former military airports for which grants
40 may be made under section 47117(e)(1)(E) of this title.

1 (b) *SURVEY.*—Not later than September 30, 1991, the Secretary shall com-
2 plete a survey of current and former military airports to identify which air-
3 ports have the greatest potential to improve the capacity of the national air
4 transportation system. The survey shall identify the capital development needs
5 of those airports to make them part of the system and which of those qualify
6 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 flight
12 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) of
21 this title, not more than \$5,000,000 for each airport from amounts the Sec-
22 retary distributes under section 47115 of this title for a fiscal year is avail-
23 able to the sponsor of a current or former military airport the Secretary des-
24 ignates under this section to construct, improve, or repair a terminal building
25 facility, including terminal gates used for revenue passengers getting on or
26 off aircraft. A gate constructed, improved, or repaired under this subsection—

27 (1) may not be leased for more than 10 years; and

28 (2) is not subject to majority in interest clauses.

29 (f) *PARKING LOTS, FUEL FARMS, AND UTILITIES.*—Not more than a total
30 of \$4,000,000 for each airport from amounts the Secretary distributes under
31 section 47115 of this title for the fiscal years ending September 30, 1993–
32 1995, is available to the sponsor of a current or former military airport the
33 Secretary designates under this section to construct, improve, or repair air-
34 port surface parking lots, fuel farms, and utilities.

35 **§ 47119. Terminal development costs**

36 (a) *REPAYING BORROWED MONEY.*—An amount apportioned under section
37 47114 of this title and made available to the sponsor of an air carrier airport
38 at which terminal development was carried out after June 30, 1970, and be-
39 fore July 12, 1976, is available to repay immediately money borrowed and
40 used to pay the costs for terminal development at the airport, if those costs
41 would be allowable project costs under section 47110(d) of this title if they

1 had been incurred after September 3, 1982. An amount is available for a
2 grant under this subsection—

3 (1) only if—

4 (A) the sponsor submits the certification required under section
5 47110(d) of this title;

6 (B) the Secretary of Transportation decides that using the
7 amount to repay the borrowed money will not defer an airport de-
8 velopment project outside the terminal area at that airport; and

9 (C) amounts available for airport development under this sub-
10 chapter will not be used for additional terminal development
11 projects at the airport for at least 3 years beginning on the date
12 the grant is used to repay the borrowed money; and

13 (2) subject to the limitations in subsection (b)(1) and (2) of this sec-
14 tion.

15 (b) AVAILABILITY OF AMOUNTS.—In a fiscal year, the Secretary may make
16 available—

17 (1) to a sponsor of a primary airport, any part of amounts appor-
18 tioned to the sponsor for the fiscal year under section 47114(c)(1) of this
19 title to pay project costs allowable under section 47110(d) of this title;

20 (2) to a sponsor of a nonprimary commercial service airport, not more
21 than \$200,000 of the amount that may be distributed for the fiscal year
22 from the discretionary fund to pay project costs allowable under section
23 47110(d) of this title; or

24 (3) not more than \$25,000,000 to pay project costs allowable for the
25 fiscal year under section 47110(d) of this title for projects at commercial
26 service airports that were not eligible for assistance for terminal develop-
27 ment during the fiscal year ending September 30, 1980, under section
28 20(b) of the Airport and Airway Development Act of 1970.

29 **§47120. Grant priority**

30 In making a grant under this subchapter, the Secretary of Transportation
31 may give priority to a project that is consistent with an integrated airport
32 system plan.

33 **§47121. Records and audits**

34 (a) RECORDS.—A sponsor shall keep the records the Secretary of Transpor-
35 tation requires. The Secretary may require records—

36 (1) that disclose—

37 (A) the amount and disposition by the sponsor of the proceeds of
38 the grant;

39 (B) the total cost of the plan or program for which the grant is
40 given or used; and

1 (C) the amounts and kinds of costs of the plan or program pro-
2 vided by other sources; and

3 (2) that make it easier to carry out an audit.

4 (b) *AUDITS AND EXAMINATIONS.*—The Secretary and the Comptroller Gen-
5 eral may audit and examine records of a sponsor that are related to a grant
6 made under this subchapter.

7 (c) *AUTHORITY OF COMPTROLLER GENERAL.*—When an independent audit
8 is made of the accounts of a sponsor under this subchapter related to the dis-
9 position of the proceeds of the grant or related to the plan or program for
10 which the grant was given or used, the sponsor shall submit a certified copy
11 of the audit to the Comptroller General not more than 6 months after the end
12 of the fiscal year for which the audit was made. Not later than April 15 of
13 each year, the Comptroller General shall report to Congress describing the re-
14 sults of each audit conducted or reviewed by the Comptroller General under
15 this section during the prior fiscal year. The Comptroller General shall pre-
16 scribe regulations necessary to carry out this subsection.

17 (d) *AUDIT REQUIREMENT.*—The Secretary may require a sponsor to con-
18 duct an appropriate audit as a condition for receiving a grant under this
19 subchapter.

20 (e) *ANNUAL REVIEW.*—The Secretary shall review annually the record-
21 keeping and reporting requirements under this subchapter to ensure that they
22 are the minimum necessary to carry out this subchapter.

23 (f) *WITHHOLDING INFORMATION FROM CONGRESS.*—This section does not
24 authorize the Secretary or the Comptroller General to withhold information
25 from a committee of Congress authorized to have the information.

26 **§ 47122. Administrative**

27 (a) *GENERAL.*—The Secretary of Transportation may take action the Sec-
28 retary considers necessary to carry out this subchapter, including conducting
29 investigations and public hearings, prescribing regulations and procedures,
30 and issuing orders.

31 (b) *CONDUCTING INVESTIGATIONS AND PUBLIC HEARINGS.*—In conducting
32 an investigation or public hearing under this subchapter, the Secretary has
33 the same authority the Secretary has under section 46104 of this title. An ac-
34 tion of the Secretary in exercising that authority is governed by the proce-
35 dures specified in section 46104 and shall be enforced as provided in section
36 46104.

37 **§ 47123. Nondiscrimination**

38 The Secretary of Transportation shall take affirmative action to ensure that
39 an individual is not excluded because of race, creed, color, national origin,
40 or sex from participating in an activity carried out with money received
41 under a grant under this subchapter. The Secretary shall prescribe regulations

1 *necessary to carry out this section. The regulations shall be similar to those*
2 *in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et*
3 *seq.). This section is in addition to title VI of the Act.*

4 **§47124. Agreements for State and local operation of airport**
5 **facilities**

6 (a) *GOVERNMENT RELIEF FROM LIABILITY.*—*The Secretary of Transporta-*
7 *tion shall ensure that an agreement under this subchapter with a State or*
8 *a political subdivision of a State to allow the State or subdivision to operate*
9 *an airport facility in the State or subdivision relieves the United States Gov-*
10 *ernment from any liability arising out of, or related to, acts or omissions of*
11 *employees of the State or subdivision in operating the airport facility.*

12 (b) *AIR TRAFFIC CONTROL CONTRACT PROGRAM.*—(1) *The Secretary shall*
13 *continue the low activity (Visual Flight Rules) level I air traffic control tower*
14 *contract program established under subsection (a) of this section for towers*
15 *existing on December 30, 1987, and extend the program to other towers as*
16 *practicable.*

17 (2) *The Secretary may make a contract, on a sole source basis, with a State*
18 *or a political subdivision of a State to allow the State or subdivision to oper-*
19 *ate an airport traffic control tower classified as a level I (Visual Flight Rules)*
20 *tower if the Secretary decides that the State or subdivision has the capability*
21 *to comply with the requirements of this paragraph. The contract shall require*
22 *that the State or subdivision comply with applicable safety regulations in op-*
23 *erating the facility and with applicable competition requirements in making*
24 *a subcontract to perform work to carry out the contract.*

25 **§47125. Conveyances of United States Government land**

26 (a) *CONVEYANCES TO PUBLIC AGENCIES.*—*Except as provided in sub-*
27 *section (b) of this section, the Secretary of Transportation shall request the*
28 *head of the department, agency, or instrumentality of the United States Gov-*
29 *ernment owning or controlling land or airspace to convey a property interest*
30 *in the land or airspace to the public agency sponsoring the project or owning*
31 *or controlling the airport when necessary to carry out a project under this*
32 *subchapter at a public airport, to operate a public airport, or for the future*
33 *development of an airport under the national plan of integrated airport sys-*
34 *tems. The head of the department, agency, or instrumentality shall decide*
35 *whether the requested conveyance is consistent with the needs of the depart-*
36 *ment, agency, or instrumentality and shall notify the Secretary of that deci-*
37 *sion not later than 4 months after receiving the request. If the head of the*
38 *department, agency, or instrumentality decides that the requested conveyance*
39 *is consistent with its needs, the head of the department, agency, or instrumen-*
40 *tality, with the approval of the Attorney General and without cost to the Gov-*
41 *ernment, shall make the conveyance. A conveyance may be made only on the*

1 condition that the property interest conveyed reverts to the Government, at
 2 the option of the Secretary, to the extent it is not developed for an airport
 3 purpose or used consistently with the conveyance.

4 (b) *NONAPPLICATION.*—Except as specifically provided by law, subsection
 5 (a) of this section does not apply to land or airspace owned or controlled by
 6 the Government within—

7 (1) a national park, national monument, national recreation area, or
 8 similar area under the administration of the National Park Service;

9 (2) a unit of the National Wildlife Refuge System or similar area
 10 under the jurisdiction of the United States Fish and Wildlife Service; or

11 (3) a national forest or Indian reservation.

12 **§47126. Criminal penalties for false statements**

13 A person (including an officer, agent, or employee of the United States
 14 Government or a public agency) shall be fined under title 18, imprisoned for
 15 not more than 5 years, or both, if the person, with intent to defraud the Gov-
 16 ernment, knowingly makes—

17 (1) a false statement about the kind, quantity, quality, or cost of the
 18 material used or to be used, or the quantity, quality, or cost of work per-
 19 formed or to be performed, in connection with the submission of a plan,
 20 map, specification, contract, or estimate of project cost for a project in-
 21 cluded in a grant application submitted to the Secretary of Transport-
 22 ation for approval under this subchapter;

23 (2) a false statement or claim for work or material for a project in-
 24 cluded in a grant application approved by the Secretary under this sub-
 25 chapter; or

26 (3) a false statement in a report or certification required under this
 27 subchapter.

28 **§47127. Ground transportation demonstration projects**

29 (a) *GENERAL AUTHORITY.*—To improve the airport and airway system of
 30 the United States consistent with regional airport system plans financed
 31 under section 13(b) of the Airport and Airway Development Act of 1970, the
 32 Secretary of Transportation may carry out ground transportation demonstra-
 33 tion projects to improve ground access to air carrier airport terminals. The
 34 Secretary may carry out a demonstration project independently or by grant
 35 or contract, including an agreement with another department, agency, or in-
 36 strumentality of the United States Government.

37 (b) *PRIORITY.*—In carrying out this section, the Secretary shall give prior-
 38 ity to a demonstration project that—

39 (1) affects an airport in an area with an operating regional rapid
 40 transit system with existing facilities reasonably near the airport;

41 (2) includes connection of the airport terminal to that system;

1 (3) is consistent with and supports a regional airport system plan
2 adopted by the planning agency for the region and submitted to the Sec-
3 retary; and

4 (4) improves access to air transportation for individuals residing or
5 working in the region by encouraging the optimal balance of use of air-
6 ports in the region.

7 **§ 47128. State block grant pilot program**

8 (a) *GENERAL REQUIREMENTS.*—The Secretary of Transportation shall pre-
9 scribe regulations to carry out a State block grant pilot program. The regula-
10 tions shall provide that the Secretary may designate not more than 7 quali-
11 fied States to assume administrative responsibility for all airport grant
12 amounts available under this subchapter, except for amounts designated for
13 use at primary airports.

14 (b) *APPLICATIONS AND SELECTION.*—(1) A State wishing to participate in
15 the program must submit an application to the Secretary. The Secretary shall
16 select a State on the basis of its application only after—

17 (A) deciding the State has an organization capable of effectively ad-
18 ministering a block grant made under this section;

19 (B) deciding the State uses a satisfactory airport system planning
20 process;

21 (C) deciding the State uses a programming process acceptable to the
22 Secretary;

23 (D) finding that the State has agreed to comply with United States
24 Government standard requirements for administering the block grant;
25 and

26 (E) finding that the State has agreed to provide the Secretary with
27 program information the Secretary requires.

28 (2) For the fiscal years ending September 30, 1993–1996, the States selected
29 shall include Illinois, Missouri, and North Carolina.

30 (c) *SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.*—Before decid-
31 ing whether a planning process is satisfactory or a programming process is
32 acceptable under subsection (b)(2) or (3) of this section, the Secretary shall
33 ensure that the process provides for meeting critical safety and security needs
34 and that the programming process ensures that the needs of the national air-
35 port system will be addressed in deciding which projects will receive money
36 from the Government.

37 (d) *ENDING EFFECTIVE DATE AND REPORT.*—This section is effective only
38 through September 30, 1996.

1 **§47129. Annual report**

2 *Not later than April 1 of each year, the Secretary of Transportation shall*
 3 *submit to Congress a report on activities carried out under this subchapter*
 4 *during the prior fiscal year. The report shall include—*

- 5 *(1) a detailed statement of airport development completed;*
 6 *(2) the status of each project undertaken;*
 7 *(3) the allocation of appropriations; and*
 8 *(4) an itemized statement of expenditures and receipts.*

9 *SUBCHAPTER II—SURPLUS PROPERTY FOR PUBLIC AIRPORTS*

10 **§47151. Authority to transfer an interest in surplus property**

11 *(a) GENERAL AUTHORITY.—Subject to sections 47152 and 47153 of this*
 12 *title, a department, agency, or instrumentality of the executive branch of the*
 13 *United States Government or a wholly owned Government corporation may*
 14 *give a State, political subdivision of a State, or tax-supported organization*
 15 *any interest in surplus property—*

- 16 *(1) that the Secretary of Transportation decides is—*
 17 *(A) desirable for developing, improving, operating, or maintain-*
 18 *ing a public airport (as defined in section 47102 of this title);*
 19 *(B) reasonably necessary to fulfill the immediate and foreseeable*
 20 *future requirements for developing, improving, operating, or main-*
 21 *taining a public airport; or*
 22 *(C) needed for developing sources of revenue from nonaviation*
 23 *businesses at a public airport; and*

24 *(2) if the Administrator of General Services approves the gift and de-*
 25 *clides the interest is not best suited for industrial use.*

26 *(b) ENSURING COMPLIANCE.—Only the Secretary may ensure compliance*
 27 *with an instrument giving an interest in surplus property under this sub-*
 28 *chapter. The Secretary may amend the instrument to correct the instrument*
 29 *or to make the gift comply with law.*

30 *(c) DISPOSING OF INTERESTS NOT GIVEN UNDER THIS SUBCHAPTER.—An*
 31 *interest in surplus property that could be used at a public airport but that*
 32 *is not given under this subchapter shall be disposed of under other applicable*
 33 *law.*

34 **§47152. Terms of gifts**

35 *Except as provided in section 47153 of this title, the following terms apply*
 36 *to a gift of an interest in surplus property under this subchapter:*

- 37 *(1) A State, political subdivision of a State, or tax-supported organi-*
 38 *zation receiving the interest may use, lease, salvage, or dispose of the in-*
 39 *terest for other than airport purposes only after the Secretary of Trans-*
 40 *portation gives written consent that the interest can be used, leased,*
 41 *salvaged, or disposed of without materially and adversely affecting the*

1 *development, improvement, operation, or maintenance of the airport at*
2 *which the property is located.*

3 *(2) The interest shall be used and maintained for public use and bene-*
4 *fit without unreasonable discrimination.*

5 *(3) A right may not be vested in a person, excluding others in the*
6 *same class from using the airport at which the property is located—*

7 *(A) to conduct an aeronautical activity requiring the operation*
8 *of aircraft; or*

9 *(B) to engage in selling or supplying aircraft, aircraft accessories,*
10 *equipment, or supplies (except gasoline and oil), or aircraft services*
11 *necessary to operate aircraft (including maintaining and repairing*
12 *aircraft, aircraft engines, propellers, and appliances).*

13 *(4) The State, political subdivision, or tax-supported organization ac-*
14 *cepting the interest shall clear and protect the aerial approaches to the*
15 *airport by mitigating existing, and preventing future, airport hazards.*

16 *(5) During a national emergency declared by the President or Con-*
17 *gress, the United States Government is entitled to use, control, or possess,*
18 *without charge, any part of the public airport at which the property is*
19 *located. However, the Government shall—*

20 *(A) pay the entire cost of maintaining the part of the airport it*
21 *exclusively uses, controls, or possesses during the emergency;*

22 *(B) contribute a reasonable share, consistent with the Govern-*
23 *ment's use, of the cost of maintaining the property it uses*
24 *nonexclusively, or over which the Government has nonexclusive con-*
25 *trol or possession, during the emergency; and*

26 *(C) pay a fair rental for use, control, or possession of improve-*
27 *ments to the airport made without Government assistance.*

28 *(6) The Government is entitled to the nonexclusive use, without charge,*
29 *of the landing area of an airport at which the property is located. The*
30 *Secretary may limit the use of the landing area if necessary to prevent*
31 *unreasonable interference with use by other authorized aircraft. However,*
32 *the Government shall—*

33 *(A) contribute a reasonable share, consistent with the Govern-*
34 *ment's use, of the cost of maintaining and operating the landing*
35 *area; and*

36 *(B) pay for damages caused by its use of the landing area if its*
37 *use of the landing area is substantial.*

38 *(7) The State, political subdivision, or tax-supported organization ac-*
39 *cepting the interest shall release the Government from all liability for*
40 *damages arising under an agreement that provides for Government use*
41 *of any part of an airport owned, controlled, or operated by the State,*

1 *political subdivision, or tax-supported organization on which, adjacent*
 2 *to which, or in connection with which, the property is located.*

3 *(8) When a term under this section is not satisfied, any part of the*
 4 *interest in the property reverts to the Government, at the option of the*
 5 *Government, as the property then exists.*

6 **§47153. Waiving and adding terms**

7 *(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation may*
 8 *waive, without charge, a term of a gift of an interest in property under this*
 9 *subchapter if the Secretary decides that—*

10 *(A) the property no longer serves the purpose for which it was given;*

11 *or*

12 *(B) the waiver will not prevent carrying out the purpose for which*
 13 *the gift was made and is necessary to advance the civil aviation interests*
 14 *of the United States.*

15 *(2) The Secretary of Transportation shall waive a term under paragraph*
 16 *(1) of this subsection on terms the Secretary considers necessary to protect or*
 17 *advance the civil aviation interests of the United States.*

18 *(b) WAIVERS AND INCLUSION OF ADDITIONAL TERMS ON REQUEST.—On*
 19 *request of the Secretary of Transportation or the Secretary of a military de-*
 20 *partment, a department, agency, or instrumentality of the executive branch*
 21 *of the United States Government or a wholly owned Government corporation*
 22 *may waive a term required by section 47152 of this title or add another term*
 23 *if the appropriate Secretary decides it is necessary to protect or advance the*
 24 *interests of the United States in civil aviation or for national defense.*

25 **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.

26 **§47301. Definitions**

27 *In this chapter—*

28 *(1) “airport property” means an interest in property used or useful*
 29 *in operating and maintaining an airport.*

30 *(2) “airway property” means an interest in property used or useful*
 31 *in operating and maintaining a ground installation, facility, or equip-*
 32 *ment desirable for the orderly and safe operation of air traffic, including*
 33 *air navigation, air traffic control, airway communication, and meteoro-*
 34 *logical facilities.*

35 *(3) “foreign territory” means an area—*

1 (A) over which no government or a government of a foreign coun-
2 try has sovereignty;

3 (B) temporarily under military occupation by the United States
4 Government; or

5 (C) occupied or administered by the Government or a government
6 of a foreign country under an international agreement.

7 (4) "territory outside the continental United States" means territory
8 outside the 48 contiguous States and the District of Columbia.

9 **§47302. Providing airport and airway property in foreign**
10 **territories**

11 (a) *GENERAL AUTHORITY.*—Subject to the concurrence of the Secretary of
12 State and the consideration of objectives of the International Civil Aviation
13 Organization—

14 (1) the Secretary of Transportation may acquire, establish, and con-
15 struct airport property and airway property (except meteorological fa-
16 cilities) in foreign territory; and

17 (2) the Secretary of Commerce may acquire, establish, and construct
18 meteorological facilities in foreign territory.

19 (b) *SPECIFIC APPROPRIATIONS REQUIRED.*—Except for airport property
20 transferred under section 47304(b) of this title, an airport (as defined in sec-
21 tion 40102(a) of this title) may be acquired, established, or constructed under
22 subsection (a) of this section only if amounts have been appropriated specifi-
23 cally for the airport.

24 (c) *ACCEPTING FOREIGN PAYMENTS.*—The Secretary of Transportation or
25 Commerce, as appropriate, may accept payment from a government of a for-
26 eign country or international organization for facilities or services sold or
27 provided the government or organization under this chapter. The amount re-
28 ceived may be credited to the appropriation current when the expenditures
29 are or were paid, the appropriation current when the amount is received, or
30 both.

31 **§47303. Training foreign citizens**

32 Subject to the concurrence of the Secretary of State, the Secretary of Trans-
33 portation or Commerce, as appropriate, may train a foreign citizen in a sub-
34 ject related to aeronautics and essential to the orderly and safe operation of
35 civil aircraft. The training may be provided—

36 (1) directly by the appropriate Secretary or jointly with another de-
37 partment, agency, or instrumentality of the United States Government;

38 (2) through a public or private agency of the United States (including
39 a State or municipal educational institution); or

40 (3) through an international organization.

1 **§47304. Transfer of airport and airway property**

2 (a) *GENERAL AUTHORITY.*—When requested by the government of a foreign
3 country or an international organization, the Secretary of Transportation or
4 Commerce, as appropriate, may transfer to the government or organization
5 airport property and airway property operated and maintained under this
6 chapter by the appropriate Secretary in foreign territory. The transfer shall
7 be on terms the appropriate Secretary considers proper, including consider-
8 ation agreed on through negotiations with the government or organization.

9 (b) *PROPERTY INSTALLED OR CONTROLLED BY MILITARY.*—Subject to
10 terms to which the parties agree, the Secretary of a military department may
11 transfer without charge to the Secretary of Transportation airport property
12 and airway property (except meteorological facilities), and to the Secretary
13 of Commerce meteorological facilities, that the Secretary of the military de-
14 partment installed or controls in territory outside the continental United
15 States. The transfer may be made if consistent with the needs of national de-
16 fense and—

17 (1) the Secretary of the military department finds that the property
18 or facility is no longer required exclusively for military purposes; and

19 (2) the Secretary of Transportation or Commerce, as appropriate, de-
20 cides that the transfer is or may be necessary to carry out this chapter.

21 (c) *REPUBLIC OF PANAMA.*—(1) The Secretary of Transportation may pro-
22 vide, operate, and maintain facilities and services for air navigation, airway
23 communications, and air traffic control in the Republic of Panama subject
24 to—

25 (A) the approval of the Secretary of Defense; and

26 (B) each obligation assumed by the United States Government under
27 an agreement between the Government and the Republic of Panama.

28 (2) The Secretary of a military department may transfer without charge
29 to the Secretary of Transportation property located in the Republic of Pan-
30 ama when the Secretary of Transportation decides that the transfer may be
31 useful in carrying out this chapter.

32 (3) Subsection (b) of this section (related to the Secretary of Transpor-
33 tation) and section 47302(a) and (b) of this title do not apply in carrying
34 out this subsection.

35 (d) *RETAKING PROPERTY FOR MILITARY REQUIREMENT.*—(1) When nec-
36 essary for a military requirement, the Secretary of a military department im-
37 mediately may retake property (with any improvements to it) transferred by
38 the Secretary under subsection (b) or (c) of this section. The Secretary shall
39 pay reasonable compensation to each person (or its successor in interest) that
40 made an improvement to the property that was not made at the expense of

1 *the Government. The Secretary or a delegate of the Secretary shall decide on*
2 *the amount of compensation.*

3 *(2) On the recommendation of the Secretary of Transportation or Com-*
4 *merce, as appropriate, the Secretary of a military department may decide not*
5 *to act under paragraph (1) of this subsection.*

6 **§47305. Administrative**

7 *(a) GENERAL AUTHORITY.—The Secretary of Transportation shall consoli-*
8 *date, operate, protect, maintain, and improve airport property and airway*
9 *property (except meteorological facilities), and the Secretary of Commerce*
10 *may consolidate, operate, protect, maintain, and improve meteorological fa-*
11 *cilities, that the appropriate Secretary has acquired and that are located in*
12 *territory outside the continental United States. In carrying out this section,*
13 *the appropriate Secretary may—*

14 *(1) adapt the property or facility to the needs of civil aeronautics;*

15 *(2) lease the property or facility for not more than 20 years;*

16 *(3) make a contract, or provide directly, for facilities and services;*

17 *(4) make reasonable charges for aeronautical services; and*

18 *(5) acquire an interest in property.*

19 *(b) CREDITING APPROPRIATIONS.—Money received from the direct sale or*
20 *charge that the Secretary of Transportation or Commerce, as appropriate, de-*
21 *cedes is equivalent to the cost of facilities and services sold or provided under*
22 *subsection (a)(3) and (4) of this section is credited to the appropriation from*
23 *which the cost was paid. The balance shall be deposited in the Treasury as*
24 *miscellaneous receipts.*

25 *(c) USING OTHER GOVERNMENT FACILITIES AND SERVICES.—To carry out*
26 *this chapter and to use personnel and facilities of the United States Govern-*
27 *ment most advantageously and without unnecessary duplication, the Sec-*
28 *retary of Transportation or Commerce, as appropriate, shall request, when*
29 *practicable, to use a facility or service of an appropriate department, agency,*
30 *or instrumentality of the Government on a reimbursable basis. A department,*
31 *agency, or instrumentality receiving a request under this section may provide*
32 *the facility or service.*

33 *(d) ADVERTISING NOT REQUIRED.—Section 3709 of the Revised Statutes*
34 *(41 U.S.C. 5) does not apply to a lease or contract made by the Secretary*
35 *of Transportation or Commerce under this chapter.*

36 **§47306. Criminal penalty**

37 *A person that knowingly and willfully violates a regulation prescribed by*
38 *the Secretary of Transportation to carry out this chapter shall be fined under*
39 *title 18, imprisoned for not more than 6 months, or both.*

1

CHAPTER 475—NOISE

SUBCHAPTER I—NOISE ABATEMENT

Sec.

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 47505. *Airport noise compatibility planning grants.*
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2

SUBCHAPTER I—NOISE ABATEMENT

3

§ 47501. Definitions

4

In this subchapter—

5

(1) “airport” means a public-use airport as defined in section 47102

6

of this title.

7

(2) “airport operator” means—

8

(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

9

10

(B) for any other airport, the person operating the airport.

11

12

§ 47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure

13

14

After consultation with the Administrator of the Environmental Protection Agency and United States Government, State, and interstate agencies that the Secretary of Transportation considers appropriate, the Secretary shall by regulation—

15

16

17

18

(1) establish a single system of measuring noise that—

19

(A) has a highly reliable relationship between projected noise exposure and surveyed reactions of individuals to noise; and

20

21

(B) is applied uniformly in measuring noise at airports and the surrounding area;

22

1 (2) establish a single system for determining the exposure of individ-
2 uals to noise resulting from airport operations, including noise intensity,
3 duration, frequency, and time of occurrence; and

4 (3) identify land uses normally compatible with various exposures of
5 individuals to noise.

6 **§47503. Noise exposure maps**

7 (a) *SUBMISSION AND PREPARATION.*—An airport operator may submit to
8 the Secretary of Transportation a noise exposure map showing the
9 noncompatible uses in each area of the map on the date the map is submitted,
10 a description of estimated aircraft operations during 1985, and how those op-
11 erations will affect the map. The map shall—

12 (1) be prepared in consultation with public agencies and planning au-
13 thorities in the area surrounding the airport; and

14 (2) comply with regulations prescribed under section 47502 of this
15 title.

16 (b) *REVISED MAPS.*—If a change in the operation of an airport will estab-
17 lish a substantial new noncompatible use in an area surrounding the airport,
18 the airport operator shall submit a revised noise exposure map to the Sec-
19 retary showing the new noncompatible use.

20 **§47504. Noise compatibility programs**

21 (a) *SUBMISSIONS.*—(1) An airport operator that submitted a noise expo-
22 sure map and related information under section 47503(a) of this title may
23 submit a noise compatibility program to the Secretary of Transportation
24 after—

25 (A) consulting with public agencies and planning authorities in the
26 area surrounding the airport, United States Government officials having
27 local responsibility for the airport, and air carriers using the airport;
28 and

29 (B) notice and an opportunity for a public hearing.

30 (2) A program submitted under paragraph (1) of this subsection shall state
31 the measures the operator has taken or proposes to take to reduce existing
32 noncompatible uses and prevent introducing additional noncompatible uses in
33 the area covered by the map. The measures may include—

34 (A) establishing a preferential runway system;

35 (B) restricting the use of the airport by a type or class of aircraft be-
36 cause of the noise characteristics of the aircraft;

37 (C) constructing barriers and acoustical shielding and soundproofing
38 public buildings;

39 (D) using flight procedures to control the operation of aircraft to re-
40 duce exposure of individuals to noise in the area surrounding the air-
41 port; and

1 (E) acquiring land, air rights, easements, development rights, and
2 other interests to ensure that the property will be used in ways compat-
3 ible with airport operations.

4 (b) APPROVALS.—(1) The Secretary shall approve or disapprove a program
5 submitted under subsection (a) of this section (except as the program is relat-
6 ed to flight procedures referred to in subsection (a)(2)(D) of this section) not
7 later than 180 days after receiving it. The Secretary shall approve the pro-
8 gram (except as the program is related to flight procedures referred to in sub-
9 section (a)(2)(D)) if the program—

10 (A) does not place an unreasonable burden on interstate or foreign
11 commerce;

12 (B) is reasonably consistent with achieving the goal of reducing
13 noncompatible uses and preventing the introduction of additional
14 noncompatible uses; and

15 (C) provides for necessary revisions because of a revised map submit-
16 ted under section 47503(b) of this title.

17 (2) A program (except as the program is related to flight procedures re-
18 ferred to in subsection (a)(2)(D) of this section) is deemed to be approved if
19 the Secretary does not act within the 180-day period.

20 (3) The Secretary shall submit any part of a program related to flight pro-
21 cedures referred to in subsection (a)(2)(D) of this section to the Administrator
22 of the Federal Aviation Administration. The Administrator shall approve or
23 disapprove that part of the program.

24 (c) GRANTS.—(1) The Secretary may incur obligations to make grants from
25 amounts available under section 48103 of this title to carry out a project
26 under a part of a noise compatibility program approved under subsection (b)
27 of this section. A grant may be made to—

28 (A) an airport operator submitting the program;

29 (B) a unit of local government in the area surrounding the airport,
30 if the Secretary decides the unit is able to carry out the project;

31 (C) an airport operator or unit of local government referred to in
32 clause (A) or (B) of this paragraph to carry out any part of a program
33 developed before February 18, 1980, or before implementing regulations
34 were prescribed, if the Secretary decides the program is substantially
35 consistent with reducing existing noncompatible uses and preventing the
36 introduction of additional noncompatible uses and the purposes of this
37 chapter will be furthered by promptly carrying out the program; and

38 (D) an airport operator or unit of local government referred to in
39 clause (A) or (B) of this paragraph to soundproof a building in the noise
40 impact area surrounding the airport that is used primarily for edu-

1 cational or medical purposes and that the Secretary decides is adversely
2 affected by airport noise.

3 (2) An airport operator may agree to make a grant made under paragraph
4 (1)(A) of this subsection available to a public agency in the area surrounding
5 the airport if the Secretary decides the agency is able to carry out the project.

6 (3) The Government's share of a project for which a grant is made under
7 paragraph (1) of this subsection is the greater of—

8 (A) 80 percent of the cost of the project; or

9 (B) the Government's share that would apply if the amounts available
10 for the project were made available under subchapter I of chapter 471
11 of this title for a project at the airport.

12 (4) The provisions of subchapter I of chapter 471 of this title related to
13 grants apply to a grant made under this chapter, except—

14 (A) section 47109(a) and (b) of this title; and

15 (B) any provision that the Secretary decides is inconsistent with, or
16 unnecessary to carry out, this chapter.

17 (d) *GOVERNMENT RELIEF FROM LIABILITY.*—The Government is not liable
18 for damages from aviation noise because of action taken under this section.

19 **§ 47505. Airport noise compatibility planning grants**

20 (a) *GENERAL AUTHORITY.*—The Secretary of Transportation may make a
21 grant to a sponsor of an airport to develop, for planning purposes, informa-
22 tion necessary to prepare and submit—

23 (1) a noise exposure map and related information under section 47503
24 of this title, including the cost of obtaining the information; or

25 (2) a noise compatibility program under section 47504 of this title.

26 (b) *AVAILABILITY OF AMOUNTS AND GOVERNMENT'S SHARE OF COSTS.*—
27 A grant under subsection (a) of this section may be made from amounts
28 available under section 48103 of this title. The United States Government's
29 share of the grant is the percent for which a project for airport development
30 at an airport would be eligible under section 47109(a) and (b) of this title.

31 **§ 47506. Limitations on recovering damages for noise**

32 (a) *GENERAL LIMITATIONS.*—A person acquiring an interest in property
33 after February 18, 1980, in an area surrounding an airport for which a noise
34 exposure map has been submitted under section 47503 of this title and having
35 actual or constructive knowledge of the existence of the map may recover dam-
36 ages for noise attributable to the airport only if, in addition to any other ele-
37 ments for recovery of damages, the person shows that—

38 (1) after acquiring the interest, there was a significant—

39 (A) change in the type or frequency of aircraft operations at the
40 airport;

41 (B) change in the airport layout;

1 (C) change in flight patterns; or

2 (D) increase in nighttime operations; and

3 (2) the damages resulted from the change or increase.

4 (b) *CONSTRUCTIVE KNOWLEDGE*.—Constructive knowledge of the existence
5 of a map under subsection (a) of this section shall be imputed, at a mini-
6 mum, to a person if—

7 (1) before the person acquired the interest, notice of the existence of
8 the map was published at least 3 times in a newspaper of general cir-
9 culation in the county in which the property is located; or

10 (2) the person is given a copy of the map when acquiring the interest.

11 **§ 47507. Nonadmissibility of noise exposure map and related**
12 **information as evidence**

13 No part of a noise exposure map or related information described in section
14 47503 of this title that is submitted to, or prepared by, the Secretary of
15 Transportation and no part of a list of land uses the Secretary identifies as
16 normally compatible with various exposures of individuals to noise may be
17 admitted into evidence or used for any other purpose in a civil action asking
18 for relief for noise resulting from the operation of an airport.

19 **§ 47508. Noise standards for air carriers and foreign air car-**
20 **riers providing foreign air transportation**

21 (a) *GENERAL REQUIREMENTS*.—The Secretary of Transportation shall re-
22 quire each air carrier and foreign air carrier providing foreign air transpor-
23 tation to comply with noise standards—

24 (1) the Secretary prescribed for new subsonic aircraft in regulations
25 of the Secretary in effect on January 1, 1977; or

26 (2) of the International Civil Aviation Organization that are substan-
27 tially compatible with standards of the Secretary for new subsonic air-
28 craft in regulations of the Secretary at parts 36 and 91 of title 14, Code
29 of Federal Regulations, prescribed between January 2, 1977, and Janu-
30 ary 1, 1982.

31 (b) *COMPLIANCE AT PHASED RATE*.—The Secretary shall require each air
32 carrier and foreign air carrier providing foreign air transportation to comply
33 with the noise standards at a phased rate similar to the rate for aircraft reg-
34 istered in the United States.

35 (c) *NONDISCRIMINATION*.—The requirement for air carriers providing for-
36 eign air transportation may not be more stringent than the requirement for
37 foreign air carriers.

38 *SUBCHAPTER II—NATIONAL AVIATION NOISE POLICY*

39 **§ 47521. Findings**

40 Congress finds that—

1 (1) aviation noise management is crucial to the continued increase in
2 airport capacity;

3 (2) community noise concerns have led to uncoordinated and incon-
4 sistent restrictions on aviation that could impede the national air trans-
5 portation system;

6 (3) a noise policy must be carried out at the national level;

7 (4) local interest in aviation noise management shall be considered in
8 determining the national interest;

9 (5) community concerns can be alleviated through the use of new tech-
10 nology aircraft and the use of revenues, including those available from
11 passenger facility fees, for noise management;

12 (6) revenues controlled by the United States Government can help re-
13 solve noise problems and carry with them a responsibility to the national
14 airport system;

15 (7) revenues derived from a passenger facility fee may be applied to
16 noise management and increased airport capacity; and

17 (8) a precondition to the establishment and collection of a passenger
18 facility fee is the prescribing by the Secretary of Transportation of a reg-
19 ulation establishing procedures for reviewing airport noise and access re-
20 strictions on operations of stage 2 and stage 3 aircraft.

21 **§47522. Definitions**

22 *In this subchapter—*

23 (1) “air carrier”, “air transportation”, and “United States” have the
24 same meanings given those terms in section 40102(a) of this title.

25 (2) “stage 3 noise levels” means the stage 3 noise levels in part 36
26 of title 14, Code of Federal Regulations, in effect on November 5, 1990.

27 **§47523. National aviation noise policy**

28 (a) *GENERAL REQUIREMENTS.*—Not later than July 1, 1991, the Secretary
29 of Transportation shall establish by regulation a national aviation noise pol-
30 icy that considers this subchapter, including the phaseout and nonaddition
31 of stage 2 aircraft as provided in this subchapter and dates for carrying out
32 that policy and reporting requirements consistent with this subchapter and
33 law existing as of November 5, 1990.

34 (b) *DETAILED ECONOMIC ANALYSIS.*—The policy shall be based on a de-
35 tailed economic analysis of the impact of the phaseout date for stage 2 air-
36 craft on competition in the airline industry, including—

37 (1) the ability of air carriers to achieve capacity growth consistent
38 with the projected rate of growth for the airline industry;

39 (2) the impact of competition in the airline and air cargo industries;

40 (3) the impact on nonhub and small community air service; and

41 (4) the impact on new entry into the airline industry.

1 **§47524. Airport noise and access restriction review program**

2 (a) *GENERAL REQUIREMENTS.*—The national aviation noise policy estab-
3 lished under section 47523 of this title shall provide for establishing by regu-
4 lation a national program for reviewing airport noise and access restrictions
5 on the operation of stage 2 and stage 3 aircraft. The program shall provide
6 for adequate public notice and opportunity for comment on the restrictions.

7 (b) *STAGE 2 AIRCRAFT.*—Except as provided in subsection (d) of this sec-
8 tion, an airport noise or access restriction may include a restriction on the
9 operation of stage 2 aircraft proposed after October 1, 1990, only if the air-
10 port operator publishes the proposed restriction and prepares and makes
11 available for public comment at least 180 days before the effective date of the
12 proposed restriction—

13 (1) an analysis of the anticipated or actual costs and benefits of the
14 existing or proposed restriction;

15 (2) a description of alternative restrictions;

16 (3) a description of the alternative measures considered that do not
17 involve aircraft restrictions; and

18 (4) a comparison of the costs and benefits of the alternative measures
19 to the costs and benefits of the proposed restriction.

20 (c) *STAGE 3 AIRCRAFT.*—(1) Except as provided in subsection (d) of this
21 section, an airport noise or access restriction on the operation of stage 3 air-
22 craft not in effect on October 1, 1990, may become effective only if the restric-
23 tion has been agreed to by the airport proprietor and all aircraft operators
24 or has been submitted to and approved by the Secretary of Transportation
25 after an airport or aircraft operator's request for approval as provided by the
26 program established under this section. Restrictions to which this paragraph
27 applies include—

28 (A) a restriction on noise levels generated on either a single event or
29 cumulative basis;

30 (B) a restriction on the total number of stage 3 aircraft operations;

31 (C) a noise budget or noise allocation program that would include
32 stage 3 aircraft;

33 (D) a restriction on hours of operations; and

34 (E) any other restriction on stage 3 aircraft.

35 (2) Not later than 180 days after the Secretary receives an airport or air-
36 craft operator's request for approval of an airport noise or access restriction
37 on the operation of a stage 3 aircraft, the Secretary shall approve or dis-
38 approve the restriction. The Secretary may approve the restriction only if the
39 Secretary finds on the basis of substantial evidence that—

40 (A) the restriction is reasonable, nonarbitrary, and nondiscrim-
41 inatory;

1 (B) the restriction does not create an unreasonable burden on inter-
2 state or foreign commerce;

3 (C) the restriction is not inconsistent with maintaining the safe and
4 efficient use of the navigable airspace;

5 (D) the restriction does not conflict with a law or regulation of the
6 United States;

7 (E) an adequate opportunity has been provided for public comment
8 on the restriction; and

9 (F) the restriction does not create an unreasonable burden on the na-
10 tional aviation system.

11 (3) Paragraphs (1) and (2) of this subsection do not apply if the Adminis-
12 trator of the Federal Aviation Administration, before November 5, 1990, has
13 formed a working group (outside the process established by part 150 of title
14 14, Code of Federal Regulations) with a local airport operator to examine the
15 noise impact of air traffic control procedure changes at the airport. However,
16 if an agreement on noise reductions at that airport is made between the air-
17 port proprietor and one or more air carriers or foreign air carriers that con-
18 stitute a majority of the carrier use of the airport, this paragraph applies
19 only to a local action to enforce the agreement.

20 (4) The Secretary may reevaluate an airport noise or access restriction pre-
21 viously agreed to or approved under this subsection on request of an aircraft
22 operator able to demonstrate to the satisfaction of the Secretary that there has
23 been a change in the noise environment of the affected airport that justifies
24 a reevaluation. The Secretary shall establish by regulation procedures for con-
25 ducting a reevaluation. A reevaluation—

26 (A) shall be based on the criteria in paragraph (2) of this subsection;
27 and

28 (B) may be conducted only after 2 years after a decision under para-
29 graph (2) of this subsection has been made.

30 (d) *NONAPPLICATION.*—Subsections (b) and (c) of this section do not apply
31 to—

32 (1) a local action to enforce a negotiated or executed airport noise or
33 access agreement between the airport operator and the aircraft operators
34 in effect on November 5, 1990;

35 (2) a local action to enforce a negotiated or executed airport noise or
36 access restriction agreed to by the airport operator and the aircraft oper-
37 ators before November 5, 1990;

38 (3) an intergovernmental agreement including an airport noise or ac-
39 cess restriction in effect on November 5, 1990;

1 (4) a subsequent amendment to an airport noise or access agreement
2 or restriction in effect on November 5, 1990, that does not reduce or limit
3 aircraft operations or affect aircraft safety;

4 (5)(A) an airport noise or access restriction adopted by an airport op-
5 erator not later than October 1, 1990, and stayed as of October 1, 1990,
6 by a court order or as a result of litigation, if any part of the restriction
7 is subsequently allowed by a court to take effect; or

8 (B) a new restriction imposed by an airport operator to replace any
9 part of a restriction described in subclause (A) of this clause that is dis-
10 allowed by a court, if the new restriction would not prohibit aircraft op-
11 erations in effect on November 5, 1990; or

12 (6) a local action that represents the adoption of the final part of a
13 program of a staged airport noise or access restriction if the initial part
14 of the program was adopted during 1988 and was in effect on November
15 5, 1990.

16 (e) *GRANT LIMITATIONS.*—Beginning on the 91st day after the Secretary
17 prescribes a regulation under subsection (a) of this section, a sponsor of a fa-
18 cility operating under an airport noise or access restriction on the operation
19 of stage 3 aircraft that first became effective after October 1, 1990, is eligible
20 for a grant under section 47104 of this title and is eligible to impose a pas-
21 senger facility fee under section 40117 of this title only if the restriction has
22 been—

23 (1) agreed to by the airport proprietor and aircraft operators;

24 (2) approved by the Secretary as required by subsection (c)(1) of this
25 section; or

26 (3) rescinded.

27 **§47525. Decision about airport noise and access restrictions**
28 **on certain stage 2 aircraft**

29 The Secretary of Transportation shall conduct a study and decide on the
30 application of section 47524(a)–(d) of this title to airport noise and access
31 restrictions on the operation of stage 2 aircraft with a maximum weight of
32 not more than 75,000 pounds. In making the decision, the Secretary shall
33 consider—

34 (1) noise levels produced by those aircraft relative to other aircraft;

35 (2) the benefits to general aviation and the need for efficiency in the
36 national air transportation system;

37 (3) the differences in the nature of operations at airports and the
38 areas immediately surrounding the airports;

39 (4) international standards and agreements on aircraft noise; and

40 (5) other factors the Secretary considers necessary.

1 **§47526. Limitations for noncomplying airport noise and ac-**
2 **cess restrictions**

3 *Unless the Secretary of Transportation is satisfied that an airport is not*
4 *imposing an airport noise or access restriction not in compliance with this*
5 *subchapter, the airport may not—*

6 *(1) receive money under subchapter I of chapter 471 of this title; or*

7 *(2) impose a passenger facility fee under section 40117 of this title.*

8 **§47527. Liability of the United States Government for noise**
9 **damages**

10 *When a proposed airport noise or access restriction is disapproved under*
11 *this subchapter, the United States Government shall assume liability for noise*
12 *damages only to the extent that a taking has occurred as a direct result of*
13 *the disapproval. The United States Court of Federal Claims has exclusive ju-*
14 *risdiction of a civil action under this section.*

15 **§47528. Prohibition on operating certain aircraft not com-**
16 **plying with stage 3 noise levels**

17 *(a) PROHIBITION.—Except as provided in subsection (b) of this section and*
18 *section 47530 of this title, a person may operate after December 31, 1999,*
19 *a civil subsonic turbojet with a maximum weight of more than 75,000 pounds*
20 *to or from an airport in the United States only if the Secretary of Transpor-*
21 *tation finds that the aircraft complies with the stage 3 noise levels.*

22 *(b) WAIVERS.—(1) If, not later than July 1, 1999, at least 85 percent of*
23 *the aircraft used by an air carrier to provide air transportation comply with*
24 *the stage 3 noise levels, the carrier may apply for a waiver of subsection (a)*
25 *of this section for the remaining aircraft used by the carrier to provide air*
26 *transportation. The application must be filed with the Secretary not later*
27 *than January 1, 1999, and must include a plan with firm orders for making*
28 *all aircraft used by the carrier to provide air transportation comply with the*
29 *noise levels not later than December 31, 2003.*

30 *(2) The Secretary may grant a waiver under this subsection if the Sec-*
31 *retary finds it would be in the public interest. In making the finding, the*
32 *Secretary shall consider the effect of granting the waiver on competition in*
33 *the air carrier industry and on small community air service.*

34 *(3) A waiver granted under this subsection may not permit the operation*
35 *of stage 2 aircraft in the United States after December 31, 2003.*

36 *(c) SCHEDULE FOR PHASED-IN COMPLIANCE.—The Secretary shall estab-*
37 *lish by regulation a schedule for phased-in compliance with subsection (a) of*
38 *this section. The phase-in period shall begin on November 5, 1990, and end*
39 *before December 31, 1999. The regulations shall establish interim compliance*
40 *dates. The schedule for phased-in compliance shall be based on—*

1 (1) a detailed economic analysis of the impact of the phaseout date
2 for stage 2 aircraft on competition in the airline industry, including—

3 (A) the ability of air carriers to achieve capacity growth consist-
4 ent with the projected rate of growth for the airline industry;

5 (B) the impact of competition in the airline and air cargo indus-
6 tries;

7 (C) the impact on nonhub and small community air service; and

8 (D) the impact on new entry into the airline industry; and

9 (2) an analysis of the impact of aircraft noise on individuals residing
10 near airports.

11 (d) ANNUAL REPORT.—Beginning with calendar year 1992—

12 (1) each air carrier shall submit to the Secretary an annual report
13 on the progress the carrier is making toward complying with the require-
14 ments of this section and regulations prescribed under this section; and

15 (2) the Secretary shall submit to Congress an annual report on the
16 progress being made toward that compliance.

17 (e) HAWAIIAN OPERATIONS.—(1) In this subsection, “turnaround service”
18 means a flight between places only in Hawaii.

19 (2)(A) An air carrier or foreign air carrier may not operate in Hawaii,
20 or between a place in Hawaii and a place outside the 48 contiguous States,
21 a greater number of stage 2 aircraft with a maximum weight of more than
22 75,000 pounds than it operated in Hawaii, or between a place in Hawaii
23 and a place outside the 48 contiguous States, on November 5, 1990.

24 (B) An air carrier that provided turnaround service in Hawaii on Novem-
25 ber 5, 1990, using stage 2 aircraft with a maximum weight of more than
26 75,000 pounds may include in the number of aircraft authorized under sub-
27 paragraph (A) of this paragraph all stage 2 aircraft with a maximum weight
28 of more than 75,000 pounds that were owned or leased by that carrier on that
29 date, whether or not the aircraft were operated by the carrier on that date.

30 (3) An air carrier may provide turnaround service in Hawaii using stage
31 2 aircraft with a maximum weight of more than 75,000 pounds only if the
32 carrier provided the service on November 5, 1990.

33 **§47529. Nonaddition rule**

34 (a) GENERAL LIMITATIONS.—Except as provided in subsection (b) of this
35 section and section 47530 of this title, a person may operate a civil subsonic
36 turbojet aircraft with a maximum weight of more than 75,000 pounds that
37 is imported into the United States after November 4, 1990, only if the air-
38 craft—

39 (1) complies with the stage 3 noise levels; or

1 (2) was purchased by the person importing the aircraft into the Unit-
2 ed States under a legally binding contract made before November 5,
3 1990.

4 (b) *EXEMPTIONS.*—The Secretary of Transportation may provide an ex-
5 emption from subsection (a) of this section to permit a person to obtain modi-
6 fications to an aircraft to meet the stage 3 noise levels.

7 (c) *AIRCRAFT DEEMED NOT IMPORTED.*—In this section, an aircraft is
8 deemed not to have been imported into the United States if the aircraft—

9 (1) was owned on November 5, 1990, by—

10 (A) a corporation, trust, or partnership organized under the laws
11 of the United States or a State (including the District of Columbia);

12 (B) an individual who is a citizen of the United States; or

13 (C) an entity that is owned or controlled by a corporation, trust,
14 partnership, or individual described in subclause (A) or (B) of this
15 clause; and

16 (2) enters the United States not later than 6 months after the expira-
17 tion of a lease agreement (including any extension) between an owner
18 described in clause (1) of this subsection and a foreign carrier.

19 **§ 47530. Nonapplication of sections 47528(a)–(d) and 47529 to**
20 **aircraft outside the 48 contiguous States**

21 Sections 47528(a)–(d) and 47529 of this title do not apply to aircraft used
22 only to provide air transportation outside the 48 contiguous States. A civil
23 subsonic turbojet aircraft with a maximum weight of more than 75,000
24 pounds that is imported into a noncontiguous State or a territory or posses-
25 sion of the United States after November 4, 1990, may be used to provide air
26 transportation in the 48 contiguous States only if the aircraft complies with
27 the stage 3 noise levels.

28 **§ 47531. Penalties for violating sections 47528–47530**

29 A person violating sections 47528, 47529, or 47530 of this title or a regula-
30 tion prescribed under those sections is subject to the same civil penalties and
31 procedures under chapter 463 of this title as a person violating section
32 44701(a) or (b) or 44702–44716 of this title.

33 **§ 47532. Judicial review**

34 An action taken by the Secretary of Transportation under sections 47528–
35 47531 of this title is subject to judicial review as provided under section
36 46110 of this title.

37 **§ 47533. Relationship to other laws**

38 Except as provided by section 47524 of this title, this subchapter does not
39 affect—

40 (1) law in effect on November 5, 1990, on airport noise or access re-
41 strictions by local authorities;

1 (2) any proposed airport noise or access restriction at a general avia-
2 tion airport if the airport proprietor has formally initiated a regulatory
3 or legislative process before October 2, 1990; or

4 (3) the authority of the Secretary of Transportation to seek and obtain
5 legal remedies the Secretary considers appropriate, including injunctive
6 relief.

7 PART C—FINANCING

8 **CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND**
9 **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.

10 **§48101. Air navigation facilities**

11 (a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Not more than a
12 total of the following amounts may be appropriated to the Secretary of Trans-
13 portation out of the Airport and Airway Trust Fund established under section
14 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to acquire, estab-
15 lish, and improve air navigation facilities under section 44502(a)(1)(A) of
16 this title:

17 (1) for the fiscal years ending September 30, 1991–1993,
18 \$8,200,000,000.

19 (2) for the fiscal years ending September 30, 1991–1994,
20 \$11,100,000,000.

21 (3) for the fiscal years ending September 30, 1991–1995,
22 \$14,000,000,000.

23 (b) MAJOR AIRWAY CAPITAL INVESTMENT PLAN CHANGES.—If the Sec-
24 retary decides that it is necessary to augment or substantially modify ele-
25 ments of the Airway Capital Investment Plan referred to in section 44501(b)
26 of this title (including a decision that it is necessary to establish more than
27 23 area control facilities), not more than \$100,000,000 may be appropriated
28 to the Secretary out of the Fund for the fiscal year ending September 30,
29 1994, to carry out the augmentation or modification.

30 (c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section
31 remain available until expended.

1 **§48102. Research and development**

2 (a) *AUTHORIZATION OF APPROPRIATIONS.*—Not more than the following
3 amounts may be appropriated to the Secretary of Transportation out of the
4 Airport and Airway Trust Fund established under section 9502 of the Inter-
5 nal Revenue Code of 1986 (26 U.S.C. 9502) to carry out sections 44504,
6 44505, 44507, 44509, and 44511–44513 of this title:

7 (1) for the fiscal year ending September 30, 1993—

8 (A) \$14,700,000 only for management and analysis projects and
9 activities.

10 (B) \$87,000,000 only for capacity and air traffic management
11 technology projects and activities.

12 (C) \$28,000,000 only for communications, navigation, and sur-
13 veillance projects and activities.

14 (D) \$7,700,000 only for weather projects and activities.

15 (E) \$6,800,000 only for airport technology projects and activities.

16 (F) \$44,000,000 only for aircraft safety technology projects and
17 activities.

18 (G) \$41,100,000 only for system security technology projects and
19 activities.

20 (H) \$31,000,000 only for human factors and aviation medicine
21 projects and activities.

22 (I) \$4,500,000 for environment and energy projects and activities.

23 (J) \$5,200,000 for innovative and cooperative research projects
24 and activities.

25 (2) for the fiscal year ending September 30, 1994, \$297,000,000.

26 (b) *AVAILABILITY FOR RESEARCH.*—(1) At least 15 percent of the amount
27 appropriated under subsection (a) of this section shall be for long-term re-
28 search projects.

29 (2) At least 3 percent of the amount appropriated under subsection (a) of
30 this section shall be available to the Administrator of the Federal Aviation
31 Administration to make grants under section 44511 of this title.

32 (c) *TRANSFERS BETWEEN CATEGORIES.*—(1) Not more than 10 percent of
33 the net amount authorized for a category of projects and activities in a fiscal
34 year under subsection (a) of this section may be transferred to or from that
35 category in that fiscal year.

36 (2) The Secretary may transfer more than 10 percent of an authorized
37 amount to or from a category only after—

38 (A) submitting a written explanation of the proposed transfer to the
39 Committees on Science, Space, and Technology and Appropriations of
40 the House of Representatives and the Committees on Commerce, Science,
41 and Transportation and Appropriations of the Senate; and

1 (B) 30 days have passed after the explanation is submitted or each
2 Committee notifies the Secretary in writing that it does not object to the
3 proposed transfer.

4 (d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—(1) Of the
5 amounts made available under subsection (a) of this section, at least
6 \$25,000,000 may be appropriated each fiscal year for research and develop-
7 ment under section 44505(a) and (c) of this title on preserving and enhancing
8 airport capacity, including research and development on improvements to
9 airport design standards, maintenance, safety, operations, and environmental
10 concerns.

11 (2) The Administrator shall submit to the Committees on Science, Space,
12 and Technology and Public Works and Transportation of the House of Rep-
13 resentatives and the Committee on Commerce, Science, and Transportation of
14 the Senate a report on expenditures made under paragraph (1) of this sub-
15 section for each fiscal year. The report shall be submitted not later than 60
16 days after the end of the fiscal year.

17 (e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary
18 amounts may be appropriated to the Secretary out of amounts in the Fund
19 available for research and development to conduct research under section
20 44506(a) and (b) of this title.

21 (f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection
22 (a) of this section remain available until expended.

23 **§ 48103. Airport planning and development and noise com-**
24 **patibility planning and programs**

25 Not more than a total of \$15,966,700,000 is available to the Secretary of
26 Transportation for the fiscal years ending September 30, 1982–1993, out of
27 the Airport and Airway Trust Fund established under section 9502 of the In-
28 ternal Revenue Code of 1986 (26 U.S.C. 9502) to make grants for airport
29 planning and airport development under section 47104 of this title, airport
30 noise compatibility planning under section 47505(a)(2) of this title, and car-
31 rying out noise compatibility programs under section 47504(c) of this title.

32 **§ 48104. Certain direct costs and joint air navigation serv-**
33 **ices**

34 (a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in this sec-
35 tion, the balance of the money available in the Airport and Airway Trust
36 Fund established under section 9502 of the Internal Revenue Code of 1986
37 (26 U.S.C. 9502) may be appropriated to the Secretary of Transportation out
38 of the Fund for—

39 (1) direct costs the Secretary incurs to flight check, operate, and main-
40 tain air navigation facilities referred to in section 44502(a)(1)(A) of this
41 title safely and efficiently; and

1 (2) the costs of services provided under international agreements relat-
2 ed to the joint financing of air navigation services assessed against the
3 United States Government.

4 (b) *LIMITATION.*—The amount that may be appropriated out of the Fund
5 for each of the fiscal years ending September 30, 1993–1995, may not be more
6 than an amount equal to—

7 (1) 75 percent of the amount made available under sections 106(k)
8 and 48101–48103 of this title for that fiscal year; less

9 (2) the amount made available under sections 48101–48103 of this
10 title for that fiscal year.

11 **§ 48105. Weather reporting services**

12 To reimburse the Secretary of Commerce for the cost incurred by the Na-
13 tional Oceanic and Atmospheric Administration of providing weather report-
14 ing services to the Federal Aviation Administration, the Secretary of Trans-
15 portation may expend from amounts available under section 48104 of this
16 title not more than the following amounts:

17 (1) for the fiscal year ending September 30, 1993, \$35,596,000.

18 (2) for the fiscal year ending September 30, 1994, \$37,800,000.

19 (3) for the fiscal year ending September 30, 1995, \$39,000,000.

20 **§ 48106. Airway science curriculum grants**

21 Amounts are available from the Airport and Airway Trust Fund estab-
22 lished under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C.
23 9502) to carry out section 44510 of this title. The amounts remain available
24 until expended.

25 **§ 48107. Civil aviation security research and development**

26 After the review under section 44912(b) of this title is completed, necessary
27 amounts may be appropriated to the Secretary of Transportation out of the
28 Airport and Airway Trust Fund established under section 9502 of the Inter-
29 nal Revenue Code of 1986 (26 U.S.C. 9502) to make grants under section
30 44912(a)(4)(A).

31 **§ 48108. Availability and uses of amounts**

32 (a) *AVAILABILITY OF AMOUNTS.*—Amounts equal to the amounts authorized
33 under sections 48101–48105 of this title remain in the Airport and Airway
34 Trust Fund established under section 9502 of the Internal Revenue Code of
35 1986 (26 U.S.C. 9502) until appropriated for the purposes of sections 48101–
36 48105.

37 (b) *LIMITATIONS ON USES.*—(1) Amounts in the Fund may be appro-
38 priated only to carry out a program or activity referred to in this chapter.

39 (2) Amounts in the Fund may be appropriated for administrative expenses
40 of the Department of Transportation or a component of the Department only
41 to the extent authorized by section 48104 of this title.

1 (c) *LIMITATION ON OBLIGATING OR EXPENDING AMOUNTS.*—In a fiscal
 2 year beginning after September 30, 1995, the Secretary of Transportation
 3 may obligate or expend an amount appropriated out of the Fund under sec-
 4 tion 48104 of this title only if a law expressly amends section 48104.

5 **§48109. Submission of budget information and legislative**
 6 **recommendations and comments**

7 When the Administrator of the Federal Aviation Administration submits
 8 to the Secretary of Transportation, the President, or the Director of the Office
 9 of Management and Budget any budget information, legislative recommenda-
 10 tion, or comment on legislation about amounts authorized in section 48101
 11 or 48102 of this title, the Administrator concurrently shall submit a copy of
 12 the information, recommendation, or comment to the Speaker of the House
 13 of Representatives, the Committees on Public Works and Transportation and
 14 Appropriations of the House, the President of the Senate, and the Committees
 15 on Commerce, Science, and Transportation and Appropriations of the Senate.

16 **§48110. Facilities for advanced training of maintenance**
 17 **technicians for air carrier aircraft**

18 For the fiscal years ending September 30, 1993–1995, amounts necessary
 19 to carry out section 44515 of this title may be appropriated to the Secretary
 20 of Transportation out of the Airport and Airway Trust Fund established
 21 under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502).
 22 The amounts remain available until expended.

23 *PART D—MISCELLANEOUS*

24 **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.*

25 **§49101. Buying goods produced in the United States**

26 (a) *PREFERENCE.*—The Secretary of Transportation may obligate an
 27 amount that may be appropriated to carry out section 106(k), 44502(a)(2),
 28 or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127),
 29 or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this
 30 title for a project only if steel and manufactured goods used in the project
 31 are produced in the United States.

32 (b) *WAIVER.*—The Secretary may waive subsection (a) of this section if the
 33 Secretary finds that—

34 (1) applying subsection (a) would be inconsistent with the public in-
 35 terest;

1 (2) the steel and goods produced in the United States are not produced
2 in a sufficient and reasonably available amount or are not of a satisfac-
3 tory quality;

4 (3) when procuring a facility or equipment under section 44502(a)(2)
5 or 44509, subchapter I of chapter 471 (except sections 47106(d) and
6 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and
7 48110) of this title—

8 (A) the cost of components and subcomponents produced in the
9 United States is more than 60 percent of the cost of all components
10 of the facility or equipment; and

11 (B) final assembly of the facility or equipment has occurred in
12 the United States; or

13 (4) including domestic material will increase the cost of the overall
14 project by more than 25 percent.

15 (c) LABOR COSTS.—In this section, labor costs involved in final assembly
16 are not included in calculating the cost of components.

17 **§ 49102. Restricting contract awards because of discrimina-**
18 **tion against United States goods or services**

19 A person or enterprise domiciled or operating under the laws of a foreign
20 country may not make a contract or subcontract under section 106(k),
21 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d)
22 and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and
23 48110) of this title or subtitle B of title IX of the Omnibus Budget Reconcili-
24 ation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353) if the govern-
25 ment of that country unfairly maintains, in government procurement, a sig-
26 nificant and persistent pattern of discrimination against United States goods
27 or services that results in identifiable harm to United States businesses, that
28 the President identifies under section 305(g)(1)(A) of the Trade Agreements
29 Act of 1979 (19 U.S.C. 2515(g)(1)(A)).

30 **§ 49103. Contract preference for domestic firms**

31 (a) DEFINITIONS.—In this section—

32 (1) “domestic firm” means a business entity incorporated, and con-
33 ducting business, in the United States.

34 (2) “foreign firm” means a business entity not described in clause (1)
35 of this subsection.

36 (b) PREFERENCE.—Subject to subsections (c) and (d) of this section, the
37 Administrator of the Federal Aviation Administration may make, with a do-
38 mestic firm, a contract related to a grant made under section 44511, 44512,
39 or 44513 of this title that, under competitive procedures, would be made with
40 a foreign firm, if—

1 (1) the Administrator decides, and the Secretary of Commerce and the
2 United States Trade Representative concur, that the public interest re-
3 quires making the contract with the domestic firm, considering United
4 States international obligations and trade relations;

5 (2) the difference between the bids submitted by the foreign firm and
6 the domestic firm is not more than 6 percent;

7 (3) the final product of the domestic firm will be assembled completely
8 in the United States; and

9 (4) at least 51 percent of the final product of the domestic firm will
10 be produced in the United States.

11 (c) *NONAPPLICATION.*—Subsection (b) of this section does not apply if—

12 (1) compelling national security considerations require that subsection
13 (b) of this section not apply; or

14 (2) the Trade Representative decides that making the contract would
15 violate the General Agreement on Tariffs and Trade or an international
16 agreement to which the United States is a party.

17 (d) *APPLICATION TO CERTAIN GRANTS.*—This section applies only to a con-
18 tract related to a grant made under section 44511, 44512, or 44513 of this
19 title for which—

20 (1) an amount is authorized by section 48102(a), (b), or (d) of this
21 title to be made available for the fiscal years ending September 30, 1991,
22 and September 30, 1992; and

23 (2) a solicitation for bid is issued after November 5, 1990.

24 (e) *REPORT.*—The Administrator shall submit a report to Congress on—

25 (1) contracts to which this section applies that are made with foreign
26 firms in the fiscal years ending September 30, 1991, and September 30,
27 1992;

28 (2) the number of contracts that meet the requirements of subsection
29 (b) of this section, but that the Trade Representative decides would vio-
30 late the General Agreement on Tariffs and Trade or an international
31 agreement to which the United States is a party; and

32 (3) the number of contracts made under this section.

33 **§49104. Restriction on airport projects using products or**
34 **services of foreign countries denying fair market**
35 **opportunities**

36 (a) *DEFINITION AND RULES FOR CONSTRUING SECTION.*—In this section—

37 (1) “project” has the same meaning given that term in section 47102
38 of this title.

39 (2) each foreign instrumentality and each territory and possession of
40 a foreign country administered separately for customs purposes is a sep-
41 arate foreign country.

1 (3) an article substantially produced or manufactured in a foreign
2 country is a product of the country.

3 (4) a service provided by a person that is a national of a foreign coun-
4 try or that is controlled by a national of a foreign country is a service
5 of the country.

6 (b) *LIMITATION ON USE OF AVAILABLE AMOUNTS.*—(1) An amount made
7 available under subchapter I of chapter 471 of this title (except sections
8 47106(d) and 47127) may not be used for a project that uses a product or
9 service of a foreign country during any period the country is on the list
10 maintained by the United States Trade Representative under subsection
11 (d)(1) of this section.

12 (2) Paragraph (1) of this subsection does not apply when the Secretary of
13 Transportation decides that—

14 (A) applying paragraph (1) to the product, service, or project is not
15 in the public interest;

16 (B) a product or service of the same class or type and of satisfactory
17 quality is not produced or offered in the United States, or in a foreign
18 country not listed under subsection (d)(1) of this section, in a sufficient
19 and reasonably available amount; and

20 (C) the project cost will increase by more than 20 percent if the prod-
21 uct or service is excluded.

22 (c) *DECISIONS ON DENIAL OF FAIR MARKET OPPORTUNITIES.*—Not later
23 than 30 days after a report is submitted to Congress under section 181(b) of
24 the Trade Act of 1974 (19 U.S.C. 2241(b)), the Trade Representative, for a
25 construction project of more than \$500,000 for which the government of a for-
26 eign country supplies any part of the amount, shall decide whether the foreign
27 country denies fair market opportunities for products and suppliers of the
28 United States in procurement or for United States bidders. In making the
29 decision, the Trade Representative shall consider information obtained in pre-
30 paring the report and other information the Trade Representative considers
31 relevant.

32 (d) *LIST OF COUNTRIES DENYING FAIR MARKET OPPORTUNITIES.*—(1)
33 The Trade Representative shall maintain a list of each foreign country the
34 Trade Representative finds under subsection (c) of this section is denying fair
35 market opportunities. The country shall remain on the list until the Trade
36 Representative decides the country provides fair market opportunities.

37 (2) The Trade Representative shall publish in the Federal Register—

38 (A) annually the list required under paragraph (1) of this subsection;
39 and

40 (B) any modification of the list made before the next list is published.

1 **§49105. Fraudulent use of “Made in America” label**

2 *If the Secretary of Transportation decides that a person intentionally af-*
 3 *fixed a “Made in America” label to goods sold in or shipped to the United*
 4 *States that are not made in the United States, the Secretary shall declare the*
 5 *person ineligible, for not less than 3 nor more than 5 years, to receive a con-*
 6 *tract or grant from the United States Government related to a contract made*
 7 *under section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (ex-*
 8 *cept sections 47106(d) and 47127), or chapter 481 (except sections 48102(e),*
 9 *48106, 48107, and 48110) of this title or subtitle B of title IX of the Omnibus*
 10 *Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388-*
 11 *353). The Secretary may bring a civil action to enforce this section in any*
 12 *district court of the United States.*

13 **SUBTITLE VIII—PIPELINES**

CHAPTER	Sec.
601. SAFETY	60101
603. USER FEES	60301
605. INTERSTATE COMMERCE REGULATION	60501

14 **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.

15 **§60101. Definitions**

16 (a) *In this chapter—*

17 (1) *“existing liquefied natural gas facility”—*

18 (A) *means a liquefied natural gas facility for which an applica-*
 19 *tion to approve the site, construction, or operation of the facility*
 20 *was filed before March 1, 1978, with—*

- 1 (i) the Federal Energy Regulatory Commission (or any
2 predecessor); or
- 3 (ii) the appropriate State or local authority, if the facility
4 is not subject to the jurisdiction of the Commission under the
5 Natural Gas Act (15 U.S.C. 717 et seq.); but
- 6 (B) does not include a facility on which construction is begun
7 after November 29, 1979, without the approval.
- 8 (2) “gas” means natural gas, flammable gas, or toxic or corrosive gas.
- 9 (3) “gas pipeline facility” includes a pipeline, a right of way, a facil-
10 ity, a building, or equipment used in transporting gas or treating gas
11 during its transportation.
- 12 (4) “hazardous liquid” means—
- 13 (A) petroleum or a petroleum product; and
- 14 (B) a substance the Secretary of Transportation decides may pose
15 an unreasonable risk to life or property when transported by a haz-
16 ardous liquid pipeline facility in a liquid state (except for liquefied
17 natural gas).
- 18 (5) “hazardous liquid pipeline facility” includes a pipeline, a right
19 of way, a facility, a building, or equipment used or intended to be used
20 in transporting hazardous liquid.
- 21 (6) “interstate gas pipeline facility”—
- 22 (A) means a gas pipeline facility—
- 23 (i) used to transport gas; and
- 24 (ii) subject to the jurisdiction of the Commission under the
25 Natural Gas Act (15 U.S.C. 717 et seq.); but
- 26 (B) does not include a gas pipeline facility transporting gas from
27 an interstate gas pipeline in a State to a direct sales customer in
28 that State buying gas for its own consumption.
- 29 (7) “interstate hazardous liquid pipeline facility” means a hazardous
30 liquid pipeline facility used to transport hazardous liquid in interstate
31 or foreign commerce.
- 32 (8) “interstate or foreign commerce”—
- 33 (A) related to gas, means commerce—
- 34 (i) between a place in a State and a place outside that
35 State; or
- 36 (ii) that affects any commerce described in subclause (A)(i)
37 of this clause; and
- 38 (B) related to hazardous liquid, means commerce between—
- 39 (i) a place in a State and a place outside that State; or
- 40 (ii) places in the same State through a place outside the
41 State.

- 1 (9) “intrastate gas pipeline facility” means—
2 (A) a gas pipeline facility and transportation of gas within a
3 State not subject to the jurisdiction of the Commission under the
4 Natural Gas Act (15 U.S.C. 717 et seq.); and
5 (B) a gas pipeline facility transporting gas from an interstate
6 gas pipeline in a State to a direct sales customer in that State buy-
7 ing gas for its own consumption.
- 8 (10) “intrastate hazardous liquid pipeline facility” means a hazardous
9 liquid pipeline facility that is not an interstate hazardous liquid pipe-
10 line facility.
- 11 (11) “liquefied natural gas” means natural gas in a liquid or semi-
12 solid state.
- 13 (12) “liquefied natural gas accident” means a release, burning, or ex-
14 plosion of liquefied natural gas from any cause, except a release, burn-
15 ing, or explosion that, under regulations prescribed by the Secretary,
16 does not pose a threat to public health or safety, property, or the environ-
17 ment.
- 18 (13) “liquefied natural gas conversion” means conversion of natural
19 gas into liquefied natural gas or conversion of liquefied natural gas into
20 natural gas.
- 21 (14) “liquefied natural gas pipeline facility”—
22 (A) means a gas pipeline facility used for transporting or storing
23 liquefied natural gas, or for liquefied natural gas conversion, in
24 interstate or foreign commerce; but
25 (B) does not include any part of a structure or equipment located
26 in navigable waters (as defined in section 3 of the Federal Power
27 Act (16 U.S.C. 796)).
- 28 (15) “municipality” means a political subdivision of a State.
- 29 (16) “new liquefied natural gas pipeline facility” means a liquefied
30 natural gas pipeline facility except an existing liquefied natural gas
31 pipeline facility.
- 32 (17) “person”, in addition to its meaning under section 1 of title 1
33 (except as to societies), includes a State, a municipality, and a trustee,
34 receiver, assignee, or personal representative of a person.
- 35 (18) “pipeline facility” means a gas pipeline facility and a hazardous
36 liquid pipeline facility.
- 37 (19) “pipeline transportation” means transporting gas and transport-
38 ing hazardous liquid.
- 39 (20) “State” means a State of the United States, the District of Co-
40 lumbia, and Puerto Rico.
- 41 (21) “transporting gas”—

1 (A) means the gathering, transmission, or distribution of gas by
2 pipeline, or the storage of gas, in interstate or foreign commerce; but

3 (B) does not include gathering gas in a rural area outside a pop-
4 ulated area designated by the Secretary as a nonrural area.

5 (22) “transporting hazardous liquid”—

6 (A) means the movement of hazardous liquid by pipeline, or the
7 storage of hazardous liquid incidental to the movement of hazardous
8 liquid by pipeline, in or affecting interstate or foreign commerce;
9 but

10 (B) does not include moving hazardous liquid through—

11 (i) gathering lines in a rural area;

12 (ii) onshore production, refining, or manufacturing facili-
13 ties; or

14 (iii) storage or in-plant piping systems associated with on-
15 shore production, refining, or manufacturing facilities.

16 (b) GATHERING LINES.—(1)(A) Not later than October 24, 1994, the Sec-
17 retary shall define by regulation the term “gathering line”.

18 (B) In defining “gathering line” for gas, the Secretary—

19 (i) shall consider functional and operational characteristics of the
20 lines to be included in the definition; and

21 (ii) is not bound by a classification the Commission establishes under
22 the Natural Gas Act (15 U.S.C. 717 et seq.).

23 (2)(A) Not later than October 24, 1995, the Secretary shall define by regu-
24 lation the term “regulated gathering line”. In defining the term, the Secretary
25 shall consider factors such as location, length of line from the well site, operat-
26 ing pressure, throughput, and the composition of the transported gas or haz-
27 ardous liquid, as appropriate, in deciding on the types of lines that function-
28 ally are gathering but should be regulated under this chapter because of spe-
29 cific physical characteristics.

30 (B)(i) The Secretary also shall consider diameter when defining “regulated
31 gathering line” for hazardous liquid.

32 (ii) The definition of “regulated gathering line” for hazardous liquid may
33 not include a crude oil gathering line that has a nominal diameter of not
34 more than 6 inches, is operated at low pressure, and is located in a rural
35 area that is not unusually sensitive to environmental damage.

36 **§60102. General authority**

37 (a)(1) MINIMUM SAFETY STANDARDS.—The Secretary of Transportation
38 shall prescribe minimum safety standards for pipeline transportation and for
39 pipeline facilities. The standards—

40 (A) apply to transporters of gas and hazardous liquid and to owners
41 and operators of pipeline facilities;

1 (B) may apply to the design, installation, inspection, emergency plans
2 and procedures, testing, construction, extension, operation, replacement,
3 and maintenance of pipeline facilities; and

4 (C) shall include a requirement that all individuals responsible for the
5 operation and maintenance of pipeline facilities be tested for qualifica-
6 tions and certified to operate and maintain those facilities.

7 (2) As the Secretary considers appropriate, the operator of a pipeline facil-
8 ity may make the certification under paragraph (1)(C) of this subsection.
9 Testing and certification under paragraph (1)(C) shall address the ability to
10 recognize and react appropriately to abnormal operating conditions that may
11 indicate a dangerous situation or a condition exceeding design limits.

12 (b) *PRACTICABILITY AND SAFETY NEEDS STANDARDS.*—A standard pre-
13 scribed under subsection (a) of this section shall be practicable and designed
14 to meet the need for gas pipeline safety, for safely transporting hazardous liq-
15 uid, and for protecting the environment. Except as provided in section 60103
16 of this title, when prescribing the standard the Secretary shall consider—

17 (1) relevant available—

18 (A) gas pipeline safety information; or

19 (B) hazardous liquid pipeline information;

20 (2) the appropriateness of the standard for the particular type of pipe-
21 line transportation or facility;

22 (3) the reasonableness of the standard; and

23 (4) the extent to which the standard will contribute to public safety
24 and the protection of the environment.

25 (c) *PUBLIC SAFETY PROGRAM REQUIREMENTS.*—(1) The Secretary shall
26 include in the standards prescribed under subsection (a) of this section a re-
27 quirement that an operator of a gas pipeline facility participate in a public
28 safety program that—

29 (A) notifies an operator of proposed demolition, excavation, tunneling,
30 or construction near or affecting the facility;

31 (B) requires an operator to identify a pipeline facility that may be
32 affected by the proposed demolition, excavation, tunneling, or construc-
33 tion, to prevent damaging the facility; and

34 (C) the Secretary decides will protect a facility adequately against a
35 hazard caused by demolition, excavation, tunneling, or construction.

36 (2) To the extent a public safety program referred to in paragraph (1) of
37 this subsection is not available, the Secretary shall prescribe standards requir-
38 ing an operator to take action the Secretary prescribes to provide services
39 comparable to services that would be available under a public safety program.

40 (3) The Secretary may include in the standards prescribed under subsection
41 (a) of this section a requirement that an operator of a hazardous liquid pipe-

1 *line facility participate in a public safety program meeting the requirements*
 2 *of paragraph (1) of this subsection or maintain and carry out a damage pre-*
 3 *vention program that provides services comparable to services that would be*
 4 *available under a public safety program.*

5 *(d) FACILITY OPERATION INFORMATION STANDARDS.—The Secretary shall*
 6 *prescribe minimum standards requiring an operator of a pipeline facility*
 7 *subject to this chapter to maintain, to the extent practicable, information re-*
 8 *lated to operating the facility and, when requested, to provide the information*
 9 *to the Secretary and an appropriate State official. The information shall in-*
 10 *clude—*

11 *(1) the business name, address, and telephone number, including an*
 12 *operations emergency telephone number, of the operator;*

13 *(2) accurate maps and a supplementary geographic description, in-*
 14 *cluding an identification of areas described in regulations prescribed*
 15 *under section 60109 of this title, that show the location in the State of—*

16 *(A) major gas pipeline facilities of the operator, including trans-*
 17 *mission lines and significant distribution lines; and*

18 *(B) major hazardous liquid pipeline facilities of the operator;*

19 *(3) a description of—*

20 *(A) the characteristics of the operator's pipelines in the State;*
 21 *and*

22 *(B) products transported through the operator's pipelines in the*
 23 *State;*

24 *(4) the manual that governs operating and maintaining pipeline fa-*
 25 *cilities in the State;*

26 *(5) an emergency response plan describing the operator's procedures*
 27 *for responding to and containing releases, including—*

28 *(A) identifying specific action the operator will take on discover-*
 29 *ing a release;*

30 *(B) liaison procedures with State and local authorities for emer-*
 31 *gency response; and*

32 *(C) communication and alert procedures for immediately notify-*
 33 *ing State and local officials at the time of a release; and*

34 *(6) other information the Secretary considers useful to inform a State*
 35 *of the presence of pipeline facilities and operations in the State.*

36 *(e) PIPE INVENTORY STANDARDS.—The Secretary shall prescribe minimum*
 37 *standards requiring an operator of a pipeline facility subject to this chapter*
 38 *and, to the extent the Secretary considers necessary, an operator of a gather-*
 39 *ing line that is not a regulated gathering line (as defined under section*
 40 *60101(b)(2) of this title), to maintain for the Secretary, to the extent prac-*
 41 *ticable, an inventory with appropriate information about the types of pipe*

1 used for the transmission of gas or hazardous liquid, as appropriate, in the
2 operator's system and additional information, including the material's his-
3 tory and the leak history of the pipe. The inventory—

4 (1) for a gas pipeline facility, shall include an identification of each
5 facility passing through an area described in regulations prescribed
6 under section 60109 of this title but shall exclude equipment used with
7 the compression of gas; and

8 (2) for a hazardous liquid pipeline facility, shall include an identi-
9 fication of each facility and gathering line passing through an area de-
10 scribed in regulations prescribed under section 60109 of this title, wheth-
11 er the facility or gathering line otherwise is subject to this chapter, but
12 shall exclude equipment associated only with the pipeline pumps or stor-
13 age facilities.

14 (f) *STANDARDS AS ACCOMMODATING "SMART PIGS"*.—(1) The Secretary
15 shall prescribe minimum safety standards requiring that the design and con-
16 struction of a new gas pipeline transmission facility or hazardous liquid
17 pipeline facility, and the required replacement of an existing gas pipeline
18 transmission facility, hazardous liquid pipeline facility, or equipment, be car-
19 ried out, to the extent practicable, in a way that accommodates the passage
20 through the facility of an instrumented internal inspection device (commonly
21 referred to as a "smart pig"). The Secretary may apply the standard to an
22 existing gas or hazardous liquid transmission facility and require the facility
23 to be changed to allow the facility to be inspected with an instrumented inter-
24 nal inspection device if the basic construction of the facility will accommodate
25 the device.

26 (2) Not later than October 24, 1995, the Secretary shall prescribe regula-
27 tions requiring the periodic inspection of each pipeline the operator of the
28 pipeline identifies under section 60109 of this title. The regulations shall in-
29 clude any circumstances under which an inspection shall be conducted with
30 an instrumented internal inspection device and, if the device is not required,
31 use of an inspection method that is at least as effective as using the device
32 in providing for the safety of the pipeline.

33 (g) *EFFECTIVE DATES*.—A standard prescribed under this section and sec-
34 tion 60110 of this title is effective on the 30th day after the Secretary pre-
35 scribes the standard. However, the Secretary for good cause may prescribe a
36 different effective date when required because of the time reasonably necessary
37 to comply with the standard. The different date must be specified in the regu-
38 lation prescribing the standard.

39 (h) *SAFETY CONDITION REPORTS*.—(1) The Secretary shall prescribe regu-
40 lations requiring each operator of a pipeline facility (except a master meter)
41 to submit to the Secretary a written report on any—

1 (A) condition that is a hazard to life, property, or the environment;
2 and

3 (B) safety-related condition that causes or has caused a significant
4 change or restriction in the operation of a pipeline facility.

5 (2) The Secretary must receive the report not later than 5 working days
6 after a representative of a person to which this section applies first establishes
7 that the condition exists. Notice of the condition shall be given concurrently
8 to appropriate State authorities.

9 (i) *CARBON DIOXIDE REGULATION.*—The Secretary shall regulate carbon
10 dioxide transported by a hazardous liquid pipeline facility. The Secretary
11 shall prescribe regulations related to hazardous liquid to ensure the safe trans-
12 portation of carbon dioxide by such a facility.

13 (j) *EMERGENCY FLOW RESTRICTING DEVICES.*—(1) Not later than October
14 24, 1994, the Secretary shall survey and assess the effectiveness of emergency
15 flow restricting devices (including remotely controlled valves and check valves)
16 and other procedures, systems, and equipment used to detect and locate haz-
17 ardous liquid pipeline ruptures and minimize product releases from hazard-
18 ous liquid pipeline facilities.

19 (2) Not later than 2 years after the survey and assessment are completed,
20 the Secretary shall prescribe regulations on the circumstances under which an
21 operator of a hazardous liquid pipeline facility must use an emergency flow
22 restricting device or other procedure, system, or equipment described in para-
23 graph (1) of this subsection on the facility.

24 (k) *PROHIBITION AGAINST LOW INTERNAL STRESS EXCEPTION.*—The Sec-
25 retary may not provide an exception to this chapter for a hazardous liquid
26 pipeline facility only because the facility operates at low internal stress.

27 **§60103. Standards for liquefied natural gas pipeline facili-**
28 **ties**

29 (a) *LOCATION STANDARDS.*—The Secretary of Transportation shall pre-
30 scribe minimum safety standards for deciding on the location of a new lique-
31 fied natural gas pipeline facility. In prescribing a standard, the Secretary
32 shall consider the—

33 (1) kind and use of the facility;

34 (2) existing and projected population and demographic characteristics
35 of the location;

36 (3) existing and proposed land use near the location;

37 (4) natural physical aspects of the location;

38 (5) medical, law enforcement, and fire prevention capabilities near the
39 location that can cope with a risk caused by the facility; and

40 (6) need to encourage remote siting.

1 (b) *DESIGN, INSTALLATION, CONSTRUCTION, INSPECTION, AND TESTING*
2 *STANDARDS.*—The Secretary of Transportation shall prescribe minimum safe-
3 ty standards for designing, installing, constructing, initially inspecting, and
4 initially testing a new liquefied natural gas pipeline facility. When prescrib-
5 ing a standard, the Secretary shall consider—

6 (1) the characteristics of material to be used in constructing the facil-
7 ity and of alternative material;

8 (2) design factors;

9 (3) the characteristics of the liquefied natural gas to be stored or con-
10 verted at, or transported by, the facility; and

11 (4) the public safety factors of the design and of alternative designs,
12 particularly the ability to prevent and contain a liquefied natural gas
13 spill.

14 (c) *NONAPPLICATION.*—(1) Except as provided in paragraph (2) of this
15 subsection, a design, location, installation, construction, initial inspection, or
16 initial testing standard prescribed under this chapter after March 1, 1978,
17 does not apply to an existing liquefied natural gas pipeline facility if the
18 standard is to be applied because of authority given—

19 (A) under this chapter; or

20 (B) under another law, and the standard is not prescribed at the time
21 the authority is applied.

22 (2)(A) Any design, installation, construction, initial inspection, or initial
23 testing standard prescribed under this chapter after March 1, 1978, may pro-
24 vide that the standard applies to any part of a replacement component of a
25 liquefied natural gas pipeline facility if the component or part is placed in
26 service after the standard is prescribed and application of the standard—

27 (i) does not make the component or part incompatible with other com-
28 ponents or parts; or

29 (ii) is not impracticable otherwise.

30 (B) Any location standard prescribed under this chapter after March 1,
31 1978, does not apply to any part of a replacement component of an existing
32 liquefied natural gas pipeline facility.

33 (3) A design, installation, construction, initial inspection, or initial testing
34 standard does not apply to a liquefied natural gas pipeline facility existing
35 when the standard is adopted.

36 (d) *OPERATION AND MAINTENANCE STANDARDS.*—The Secretary of Trans-
37 portation shall prescribe minimum operating and maintenance standards for
38 a liquefied natural gas pipeline facility. In prescribing a standard, the Sec-
39 retary shall consider—

40 (1) the conditions, features, and type of equipment and structures that
41 make up or are used in connection with the facility;

- 1 (2) the fire prevention and containment equipment at the facility;
- 2 (3) security measures to prevent an intentional act that could cause
- 3 a liquefied natural gas accident;
- 4 (4) maintenance procedures and equipment;
- 5 (5) the training of personnel in matters specified by this subsection;
- 6 and
- 7 (6) other factors and conditions related to the safe handling of lique-
- 8 fied natural gas.

9 (e) *EFFECTIVE DATES.*—A standard prescribed under this section is effec-

10 tive on the 30th day after the Secretary of Transportation prescribes the

11 standard. However, the Secretary for good cause may prescribe a different ef-

12 fective date when required because of the time reasonably necessary to comply

13 with the standard. The different date must be specified in the regulation pre-

14 scribing the standard.

15 (f) *CONTINGENCY PLANS.*—A new liquefied natural gas pipeline facility

16 may be operated only after the operator submits an adequate contingency

17 plan that states the action to be taken if a liquefied natural gas accident oc-

18 curs. The Secretary of Energy or appropriate State or local authority shall

19 decide if the plan is adequate.

20 (g) *EFFECT ON OTHER STANDARDS.*—This section does not preclude apply-

21 ing a standard prescribed under section 60102 of this title to a gas pipeline

22 facility (except a liquefied natural gas pipeline facility) associated with a liq-

23 uefied natural gas pipeline facility.

24 **§60104. Requirements and limitations**

25 (a) *OPPORTUNITY TO PRESENT VIEWS.*—The Secretary of Transportation

26 shall give an interested person an opportunity to make oral and written pres-

27 entations of information, views, and arguments when prescribing a standard

28 under this chapter.

29 (b) *NONAPPLICATION.*—A design, installation, construction, initial inspec-

30 tion, or initial testing standard does not apply to a pipeline facility existing

31 when the standard is adopted.

32 (c) *PREEMPTION.*—A State authority that has submitted a current certifi-

33 cation under section 60105(a) of this title may adopt additional or more

34 stringent safety standards for intrastate pipeline facilities and intrastate

35 pipeline transportation only if those standards are compatible with the mini-

36 mum standards prescribed under this chapter. A State authority may not

37 adopt or continue in force safety standards for interstate pipeline facilities

38 or interstate pipeline transportation.

39 (d) *CONSULTATION.*—(1) When continuity of gas service is affected by pre-

40 scribing a standard or waiving compliance with standards under this chap-

41 ter, the Secretary of Transportation shall consult with and advise the Federal

1 *Energy Regulatory Commission or a State authority having jurisdiction over*
 2 *the affected gas pipeline facility before prescribing the standard or waiving*
 3 *compliance. The Secretary shall delay the effective date of the standard or*
 4 *waiver until the Commission or State authority has a reasonable opportunity*
 5 *to grant an authorization it considers necessary.*

6 *(2) In a proceeding under section 3 or 7 of the Natural Gas Act (15 U.S.C.*
 7 *717b or 717f), each applicant for authority to import natural gas or to estab-*
 8 *lish, construct, operate, or extend a gas pipeline facility subject to an applica-*
 9 *ble safety standard shall certify that it will design, install, inspect, test, con-*
 10 *struct, operate, replace, and maintain a gas pipeline facility under those*
 11 *standards and plans for inspection and maintenance under section 60108 of*
 12 *this title. The certification is binding on the Secretary of Energy and the*
 13 *Commission except when an appropriate enforcement agency has given timely*
 14 *written notice to the Commission that the applicant has violated a standard*
 15 *prescribed under this chapter.*

16 *(e) LOCATION AND ROUTING OF FACILITIES.—This chapter does not author-*
 17 *ize the Secretary of Transportation to prescribe the location or routing of a*
 18 *pipeline facility.*

19 **§60105. State certifications**

20 *(a) GENERAL REQUIREMENTS AND SUBMISSION.—Except as provided in*
 21 *this section and sections 60114 and 60121 of this title, the Secretary of Trans-*
 22 *portation may not prescribe or enforce safety standards and practices for an*
 23 *intrastate pipeline facility or intrastate pipeline transportation to the extent*
 24 *that the safety standards and practices are regulated by a State authority*
 25 *(including a municipality if the standards and practices apply to intrastate*
 26 *gas pipeline transportation) that submits to the Secretary annually a certifi-*
 27 *cation for the facilities and transportation that complies with subsections (b)*
 28 *and (c) of this section.*

29 *(b) CONTENTS.—Each certification submitted under subsection (a) of this*
 30 *section shall state that the State authority—*

31 *(1) has regulatory jurisdiction over the standards and practices to*
 32 *which the certification applies;*

33 *(2) has adopted, by the date of certification, each applicable standard*
 34 *prescribed under this chapter or, if a standard under this chapter was*
 35 *prescribed not later than 120 days before certification, is taking steps to*
 36 *adopt that standard;*

37 *(3) is enforcing each adopted standard through ways that include in-*
 38 *spections conducted by State employees meeting the qualifications the*
 39 *Secretary prescribes under section 60107(d)(1)(C) of this title;*

1 (4) is encouraging and promoting programs designed to prevent dam-
2 age by demolition, excavation, tunneling, or construction activity to the
3 pipeline facilities to which the certification applies;

4 (5) may require record maintenance, reporting, and inspection sub-
5 stantially the same as provided under section 60117 of this title;

6 (6) may require that plans for inspection and maintenance under sec-
7 tion 60108 (a) and (b) of this title be filed for approval; and

8 (7) may enforce safety standards of the authority under a law of the
9 State by injunctive relief and civil penalties substantially the same as
10 provided under sections 60120 and 60122(a)(1) and (b)–(f) of this title.

11 (c) *REPORTS.*—(1) Each certification submitted under subsection (a) of this
12 section shall include a report that contains—

13 (A) the name and address of each person to whom the certification ap-
14 plies that is subject to the safety jurisdiction of the State authority;

15 (B) each accident or incident reported during the prior 12 months by
16 that person involving a fatality, personal injury requiring hospitaliza-
17 tion, or property damage or loss of more than an amount the Secretary
18 establishes (even if the person sustaining the fatality, personal injury, or
19 property damage or loss is not subject to the safety jurisdiction of the
20 authority), any other accident the authority considers significant, and a
21 summary of the investigation by the authority of the cause and cir-
22 cumstances surrounding the accident or incident;

23 (C) the record maintenance, reporting, and inspection practices con-
24 ducted by the authority to enforce compliance with safety standards pre-
25 scribed under this chapter to which the certification applies, including
26 the number of inspections of pipeline facilities the authority made dur-
27 ing the prior 12 months; and

28 (D) any other information the Secretary requires.

29 (2) The report included in the first certification submitted under subsection
30 (a) of this section is only required to state information available at the time
31 of certification.

32 (d) *APPLICATION.*—A certification in effect under this section does not
33 apply to safety standards prescribed under this chapter after the date of cer-
34 tification. This chapter applies to each applicable safety standard prescribed
35 after the date of certification until the State authority adopts the standard
36 and submits the appropriate certification to the Secretary under subsection
37 (a) of this section.

38 (e) *MONITORING.*—The Secretary may monitor a safety program estab-
39 lished under this section to ensure that the program complies with the certifi-
40 cation. A State authority shall cooperate with the Secretary under this sub-
41 section.

1 (f) *REJECTIONS OF CERTIFICATION.*—If after receiving a certification the
2 Secretary decides the State authority is not enforcing satisfactorily compli-
3 ance with applicable safety standards prescribed under this chapter, the Sec-
4 retary may reject the certification, assert United States Government jurisdic-
5 tion, or take other appropriate action to achieve adequate enforcement. The
6 Secretary shall give the authority notice and an opportunity for a hearing
7 before taking final action under this subsection. When notice is given, the bur-
8 den of proof is on the authority to demonstrate that it is enforcing satisfac-
9 torily compliance with the prescribed standards.

10 **§60106. State agreements**

11 (a) *GENERAL AUTHORITY.*—If the Secretary of Transportation does not re-
12 ceive a certification under section 60105 of this title, the Secretary may make
13 an agreement with a State authority (including a municipality if the agree-
14 ment applies to intrastate gas pipeline transportation) authorizing it to take
15 necessary action. Each agreement shall—

16 (1) establish an adequate program for record maintenance, reporting,
17 and inspection designed to assist compliance with applicable safety
18 standards prescribed under this chapter; and

19 (2) prescribe procedures for approval of plans of inspection and main-
20 tenance substantially the same as required under section 60108 (a) and
21 (b) of this title.

22 (b) *NOTIFICATION.*—Each agreement shall require the State authority to
23 notify the Secretary promptly of a violation or probable violation of an appli-
24 cable safety standard discovered as a result of action taken in carrying out
25 an agreement under this section.

26 (c) *MONITORING.*—The Secretary may monitor a safety program estab-
27 lished under this section to ensure that the program complies with the agree-
28 ment. A State authority shall cooperate with the Secretary under this sub-
29 section.

30 (d) *ENDING AGREEMENTS.*—The Secretary may end an agreement made
31 under this section when the Secretary finds that the State authority has not
32 complied with any provision of the agreement. The Secretary shall give the
33 authority notice and an opportunity for a hearing before ending an agree-
34 ment. The finding and decision to end the agreement shall be published in
35 the Federal Register and may not become effective for at least 15 days after
36 the date of publication.

37 **§60107. State grants**

38 (a) *GENERAL AUTHORITY.*—If a State authority files an application not
39 later than September 30 of a calendar year, the Secretary of Transportation
40 shall pay not more than 50 percent of the cost of the personnel, equipment,

1 and activities the authority reasonably requires during the next calendar
2 year—

3 (1) to carry out a safety program under a certification under section
4 60105 of this title or an agreement under section 60106 of this title; or

5 (2) to act as an agent of the Secretary on interstate gas pipeline
6 transmission facilities or interstate hazardous liquid pipeline facilities.

7 (b) *PAYMENTS.*—After notifying and consulting with a State authority, the
8 Secretary may withhold any part of a payment when the Secretary decides
9 that the authority is not carrying out satisfactorily a safety program or not
10 acting satisfactorily as an agent. The Secretary may pay an authority under
11 this section only when the authority ensures the Secretary that it will provide
12 the remaining costs of a safety program and that the total State amount
13 spent for a safety program (excluding grants of the United States Govern-
14 ment) will at least equal the average amount spent—

15 (1) for a gas safety program, for the fiscal years that ended June 30,
16 1967, and June 30, 1968; and

17 (2) for a hazardous liquid safety program, for the fiscal years that
18 ended September 30, 1978, and September 30, 1979.

19 (c) *APPORTIONMENT AND METHOD OF PAYMENT.*—The Secretary shall ap-
20 portion the amount appropriated to carry out this section among the States.
21 A payment may be made under this section in installments, in advance, or
22 on a reimbursable basis.

23 (d) *ADDITIONAL AUTHORITY AND CONSIDERATIONS.*—(1) The Secretary
24 may prescribe—

25 (A) the form of, and way of filing, an application under this section;

26 (B) reporting and fiscal procedures the Secretary considers necessary
27 to ensure the proper accounting of money of the Government; and

28 (C) qualifications for a State to meet to receive a payment under this
29 section, including qualifications for State employees who perform inspec-
30 tion activities under section 60105 or 60106 of this title.

31 (2) The qualifications prescribed under paragraph (1)(C) of this subsection
32 may—

33 (A) consider the experience and training of the employee;

34 (B) order training or other requirements; and

35 (C) provide for approval of qualifications on a conditional basis until
36 specified requirements are met.

37 **§60108. Inspection and maintenance**

38 (a) *PLANS.*—(1) Each person transporting gas or hazardous liquid or own-
39 ing or operating an intrastate gas pipeline facility or hazardous liquid pipe-
40 line facility shall carry out a current written plan (including any changes)
41 for inspection and maintenance of each facility used in the transportation

1 and owned or operated by the person. A copy of the plan shall be kept at
2 any office of the person the Secretary of Transportation considers appro-
3 priate. The Secretary also may require a person transporting gas or hazard-
4 ous liquid or owning or operating a pipeline facility subject to this chapter
5 to file a plan for inspection and maintenance for approval.

6 (2) If the Secretary or a State authority responsible for enforcing standards
7 prescribed under this chapter decides that a plan required under paragraph
8 (1) of this subsection is inadequate for safe operation, the Secretary or author-
9 ity shall require the person to revise the plan. Revision may be required only
10 after giving notice and an opportunity for a hearing. A plan required under
11 paragraph (1) must be practicable and designed to meet the need for pipeline
12 safety and must include terms designed to enhance the ability to discover safe-
13 ty-related conditions described in section 60102(h)(1) of this title. In deciding
14 on the adequacy of a plan, the Secretary or authority shall consider—

15 (A) relevant available pipeline safety information;

16 (B) the appropriateness of the plan for the particular kind of pipeline
17 transportation or facility;

18 (C) the reasonableness of the plan; and

19 (D) the extent to which the plan will contribute to public safety and
20 the protection of the environment.

21 (3) A plan required under this subsection shall be made available to the
22 Secretary or State authority on request under section 60117 of this title.

23 (b) INSPECTION AND TESTING.—(1) The Secretary shall inspect and require
24 appropriate testing of a pipeline facility subject to this chapter that is not
25 covered by a certification under section 60105 of this title or an agreement
26 under section 60106 of this title. The Secretary shall decide on the frequency
27 and type of inspection and testing under this subsection on a case-by-case
28 basis after considering the following:

29 (A) the location of the pipeline facility.

30 (B) the type, size, age, manufacturer, method of construction, and con-
31 dition of the pipeline facility.

32 (C) the nature and volume of material transported through the pipe-
33 line facility.

34 (D) the pressure at which that material is transported.

35 (E) climatic, geologic, and seismic characteristics (including soil char-
36 acteristics) and conditions of the area in which the pipeline facility is
37 located.

38 (F) existing and projected population and demographic characteristics
39 of the area in which the pipeline facility is located.

1 (G) for a hazardous liquid pipeline facility, the proximity of the area
2 in which the facility is located to an area that is unusually sensitive
3 to environmental damage.

4 (H) the frequency of leaks.

5 (I) other factors the Secretary decides are relevant to the safety of
6 pipeline facilities.

7 (2) To the extent and in amounts provided in advance in an appropriation
8 law, the Secretary shall decide on the frequency of inspection under para-
9 graph (1) of this subsection. However, an inspection must occur at least once
10 every 2 years. The Secretary may reduce the frequency of an inspection of
11 a master meter system.

12 (3) Testing under this subsection shall use the most appropriate technology
13 practicable.

14 (c) PIPELINE FACILITIES OFFSHORE AND IN NAVIGABLE WATERS.—(1) In
15 this subsection—

16 (A) “abandoned” means permanently removed from service.

17 (B) “pipeline facility” includes an underwater abandoned pipeline fa-
18 cility.

19 (C) if a pipeline facility has no operator, the most recent operator of
20 the facility is deemed to be the operator of the facility.

21 (2)(A) Not later than May 16, 1993, on the basis of experience with the
22 inspections under section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act
23 of 1968 or section 203(l)(1)(A) of the Hazardous Liquid Pipeline Safety Act
24 of 1979, as appropriate, and any other information available to the Sec-
25 retary, the Secretary shall establish a mandatory, systematic, and, where ap-
26 propriate, periodic inspection program of—

27 (i) all offshore pipeline facilities; and

28 (ii) any other pipeline facility crossing under, over, or through navi-
29 gable waters (as defined by the Secretary) if the Secretary decides that
30 the location of the facility in those navigable waters could pose a hazard
31 to navigation or public safety.

32 (B) In prescribing regulations to carry out subparagraph (A) of this para-
33 graph—

34 (i) the Secretary shall identify what is a hazard to navigation with
35 respect to an underwater abandoned pipeline facility; and

36 (ii) for an underwater pipeline facility abandoned after October 24,
37 1992, the Secretary shall include requirements that will lessen the poten-
38 tial that the facility will pose a hazard to navigation and shall consider
39 the relationship between water depth and navigational safety and factors
40 relevant to the local marine environment.

1 (3)(A) *The Secretary shall establish by regulation a program requiring an*
2 *operator of a pipeline facility described in paragraph (2) of this subsection*
3 *to report a potential or existing navigational hazard involving that pipeline*
4 *facility to the Secretary through the appropriate Coast Guard office.*

5 (B) *The operator of a pipeline facility described in paragraph (2) of this*
6 *subsection that discovers any part of the pipeline facility that is a hazard*
7 *to navigation shall mark the location of the hazardous part with a Coast-*
8 *Guard-approved marine buoy or marker and immediately shall notify the*
9 *Secretary as provided by the Secretary under subparagraph (A) of this para-*
10 *graph. A marine buoy or marker used under this subparagraph is deemed a*
11 *pipeline sign or right-of-way marker under section 60123(c) of this title.*

12 (4)(A) *The Secretary shall require by regulation that each pipeline facility*
13 *described in paragraph (2) of this subsection that is a hazard to navigation*
14 *is buried not later than 6 months after the date the condition of the facility*
15 *is reported to the Secretary. The Secretary may extend that 6-month period*
16 *for a reasonable period to ensure compliance with this paragraph.*

17 (B) *In prescribing regulations for subparagraph (A) of this paragraph for*
18 *an underwater pipeline facility abandoned after October 24, 1992, the Sec-*
19 *retary shall include requirements that will lessen the potential that the facil-*
20 *ity will pose a hazard to navigation and shall consider the relationship be-*
21 *tween water depth and navigational safety and factors relevant to the local*
22 *marine environment.*

23 (5)(A) *Not later than October 24, 1994, the Secretary shall establish stand-*
24 *ards on what is an exposed offshore pipeline facility and what is a hazard*
25 *to navigation under this subsection.*

26 (B) *Not later than 6 months after the Secretary establishes standards under*
27 *subparagraph (A) of this paragraph, or October 24, 1995, whichever occurs*
28 *first, the operator of each offshore pipeline facility not described in section*
29 *3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or section*
30 *203(l)(1)(A) of the Hazardous Liquid Pipeline Safety Act of 1979, as appro-*
31 *priate, shall inspect the facility and report to the Secretary on any part of*
32 *the facility that is exposed or is a hazard to navigation. This subparagraph*
33 *applies only to a facility that is between the high water mark and the point*
34 *at which the subsurface is under 15 feet of water, as measured from mean*
35 *low water. An inspection that occurred after October 3, 1989, may be used*
36 *for compliance with this subparagraph if the inspection conforms to the re-*
37 *quirements of this subparagraph.*

38 (C) *The Secretary may extend the time period specified in subparagraph*
39 *(B) of this paragraph for not more than 6 months if the operator of a facility*
40 *satisfies the Secretary that the operator has made a good faith effort, with*
41 *reasonable diligence, but has been unable to comply by the end of that period.*

1 (6)(A) *The operator of a pipeline facility abandoned after October 24, 1992,*
 2 *shall report the abandonment to the Secretary in a way that specifies whether*
 3 *the facility has been abandoned properly according to applicable United*
 4 *States Government and State requirements.*

5 (B) *Not later than October 24, 1995, the operator of a pipeline facility*
 6 *abandoned before October 24, 1992, shall report to the Secretary reasonably*
 7 *available information related to the facility, including information that a*
 8 *third party possesses. The information shall include the location, size, date,*
 9 *and method of abandonment, whether the facility has been abandoned prop-*
 10 *erly under applicable law, and other relevant information the Secretary may*
 11 *require. Not later than April 24, 1994, the Secretary shall specify how the*
 12 *information shall be reported. The Secretary shall ensure that the Government*
 13 *maintains the information in a way accessible to appropriate Government*
 14 *agencies and State authorities.*

15 (C) *The Secretary shall request that a State authority having information*
 16 *on a collision between a vessel and an underwater pipeline facility report the*
 17 *information to the Secretary in a timely way and make a reasonable effort*
 18 *to specify the location, date, and severity of the collision. Chapter 35 of title*
 19 *44 does not apply to this subparagraph.*

20 (7) *The Secretary may not exempt from this chapter an offshore hazardous*
 21 *liquid pipeline facility only because the pipeline facility transfers hazardous*
 22 *liquid in an underwater pipeline between a vessel and an onshore facility.*

23 (d) **REPLACING CAST IRON GAS PIPELINES.**—(1) *The Secretary shall pub-*
 24 *lish a notice on the availability of industry guidelines, developed by the Gas*
 25 *Piping Technology Committee, for replacing cast iron pipelines. Not later*
 26 *than 2 years after the guidelines become available, the Secretary shall conduct*
 27 *a survey of gas pipeline operators with cast iron pipe in their systems to es-*
 28 *tablish—*

29 (A) *the extent to which each operator has adopted a plan for the safe*
 30 *management and replacement of cast iron;*

31 (B) *the elements of the plan, including the anticipated rate of replace-*
 32 *ment; and*

33 (C) *the progress that has been made.*

34 (2) *Chapter 35 of title 44 does not apply to the conduct of the survey.*

35 (3) *This subsection does not prevent the Secretary from developing Govern-*
 36 *ment guidelines or regulations for cast iron gas pipelines as the Secretary*
 37 *considers appropriate.*

38 **§60109. High-density population areas and environmentally**
 39 **sensitive areas**

40 (a) **IDENTIFICATION REQUIREMENTS.**—*Not later than October 24, 1994, the*
 41 *Secretary of Transportation shall prescribe regulations that—*

1 (1) *establish criteria for identifying—*

2 (A) *by operators of gas pipeline facilities, each gas pipeline facil-*
 3 *ity (except a natural gas distribution line) located in a high-density*
 4 *population area; and*

5 (B) *by operators of hazardous liquid pipeline facilities and gath-*
 6 *ering lines—*

7 (i) *each hazardous liquid pipeline facility, whether otherwise*
 8 *subject to this chapter, that crosses a navigable waterway (as*
 9 *the Secretary defines by regulation) or that is located in an*
 10 *area described in the criteria as a high-density population*
 11 *area; and*

12 (ii) *each hazardous liquid pipeline facility and gathering*
 13 *line, whether otherwise subject to this chapter, located in an*
 14 *area that the Secretary, in consultation with the Administrator*
 15 *of the Environmental Protection Agency, describes as unusu-*
 16 *ally sensitive to environmental damage if there is a hazardous*
 17 *liquid pipeline accident; and*

18 (2) *provide that the identification be carried out through the inventory*
 19 *required under section 60102(c) of this title.*

20 (b) *AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing*
 21 *an area that is unusually sensitive to environmental damage if there is a haz-*
 22 *ardous liquid pipeline accident, the Secretary shall consider including—*

23 (1) *earthquake zones and areas subject to landslides and other substan-*
 24 *tial 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 than*
 39 *April 24, 1994, the Secretary of Transportation shall prescribe regulations on*
 40 *the circumstances under which an operator of a natural gas distribu-*

1 *tem must install excess flow valves in the system. The Secretary shall con-*
 2 *sider—*

3 *(1) the system design pressure;*

4 *(2) the system operating pressure;*

5 *(3) the types of customers to which the distribution system supplies*
 6 *gas, including hospitals, schools, and commercial enterprises;*

7 *(4) the technical feasibility and cost of installing the valve;*

8 *(5) the public safety benefits of installing the valve;*

9 *(6) the location of customer meters; and*

10 *(7) other factors the Secretary considers relevant.*

11 *(c) NOTIFICATION OF AVAILABILITY.—(1) Not later than October 24, 1994,*
 12 *the Secretary shall prescribe regulations requiring an operator of a natural*
 13 *gas distribution system to notify in writing its customers having lines in*
 14 *which excess flow valves are not required by law but can be installed accord-*
 15 *ing to the standards prescribed under subsection (e) of this section, of—*

16 *(A) the availability of excess flow valves for installation in the system;*

17 *(B) safety benefits to be derived from installation; and*

18 *(C) costs associated with installation.*

19 *(2) The regulations shall provide that, except when installation is required*
 20 *under subsection (b) of this section, excess flow valves shall be installed at the*
 21 *request of the customer if the customer will pay all costs associated with in-*
 22 *stallation.*

23 *(d) REPORT.—If the Secretary decides under subsection (b) of this section*
 24 *that there are no circumstances under which an operator must install excess*
 25 *flow valves, the Secretary shall submit to Congress a report on the reasons*
 26 *for the decision not later than 30 days after the decision is made.*

27 *(e) PERFORMANCE STANDARDS.—Not later than April 24, 1994, the Sec-*
 28 *retary shall develop standards for the performance of excess flow valves used*
 29 *to protect lines in a natural gas distribution system. The standards shall be*
 30 *incorporated into regulations the Secretary prescribes under this section. All*
 31 *excess flow valves shall be installed according to the standards.*

32 **§ 60111. Financial responsibility for liquefied natural gas fa-**
 33 **ilities**

34 *(a) NOTICE.—When the Secretary of Transportation believes that an opera-*
 35 *tor of a liquefied natural gas facility does not have adequate financial respon-*
 36 *sibility for the facility, the Secretary may issue a notice to the operator about*
 37 *the inadequacy and the amount of financial responsibility the Secretary con-*
 38 *siders adequate.*

39 *(b) HEARINGS.—An operator receiving a notice under subsection (a) of this*
 40 *section may have a hearing on the record not later than 30 days after receiv-*
 41 *ing the notice. The operator may show why the Secretary should not issue*

1 an order requiring the operator to demonstrate and maintain financial re-
2 sponsibility in at least the amount the Secretary considers adequate.

3 (c) *ORDERS.*—After an opportunity for a hearing on the record, the Sec-
4 retary may issue the order if the Secretary decides it is justified in the public
5 interest.

6 **§60112. Pipeline facilities hazardous to life and property**

7 (a) *GENERAL AUTHORITY.*—After notice and an opportunity for a hearing,
8 the Secretary of Transportation may decide a pipeline facility is hazardous
9 if the Secretary decides the facility is—

10 (1) hazardous to life, property, or the environment; or

11 (2) constructed or operated, or a component of the facility is con-
12 structed or operated, with equipment, material, or a technique the Sec-
13 retary decides is hazardous to life, property, or the environment.

14 (b) *CONSIDERATIONS.*—In making a decision under subsection (a) of this
15 section, the Secretary shall consider, if relevant—

16 (1) the characteristics of the pipe and other equipment used in the
17 pipeline facility, including the age, manufacture, physical properties,
18 and method of manufacturing, constructing, or assembling the equip-
19 ment;

20 (2) the nature of the material the pipeline facility transports, the cor-
21 rosive and deteriorative qualities of the material, the sequence in which
22 the material are transported, and the pressure required for transporting
23 the material;

24 (3) the aspects of the area in which the pipeline facility is located,
25 including climatic and geologic conditions and soil characteristics;

26 (4) the proximity of the area in which the hazardous liquid pipeline
27 facility is located to environmentally sensitive areas;

28 (5) the population density and population and growth patterns of the
29 area in which the pipeline facility is located;

30 (6) any recommendation of the National Transportation Safety Board
31 made under another law; and

32 (7) other factors the Secretary considers appropriate.

33 (c) *OPPORTUNITY FOR STATE COMMENT.*—The Secretary shall provide, to
34 any appropriate official of a State in which a pipeline facility is located and
35 about which a proceeding has begun under this section, notice and an oppor-
36 tunity to comment on an agreement the Secretary proposes to make to resolve
37 the proceeding. State comment shall incorporate comments of affected local of-
38 ficials.

39 (d) *CORRECTIVE ACTION ORDERS.*—If the Secretary decides under sub-
40 section (a) of this section that a pipeline facility is hazardous, the Secretary
41 shall order the operator of the facility to take necessary corrective action.

1 (e) *WAIVER OF NOTICE AND HEARING IN EMERGENCY.*—The Secretary
2 may waive the requirements for notice and an opportunity for a hearing
3 under this section and issue expeditiously an order under this section if the
4 Secretary decides failure to issue the order expeditiously will result in likely
5 serious harm to life, property, or the environment. An order under this sub-
6 section shall provide an opportunity for a hearing as soon as practicable after
7 the order is issued.

8 **§ 60113. Customer-owned natural gas service lines**

9 (a) *MAINTENANCE INFORMATION.*—Not later than October 24, 1993, the
10 Secretary of Transportation shall prescribe regulations requiring an operator
11 of a natural gas distribution pipeline that does not maintain customer-owned
12 natural gas service lines up to building walls to advise its customers of—

13 (1) the requirements for maintaining those lines;

14 (2) any resources known to the operator that could assist customers
15 in carrying out the maintenance;

16 (3) information the operator has on operating and maintaining its
17 lines that could assist customers; and

18 (4) the potential hazards of not maintaining the lines.

19 (b) *Actions To Promote Safety.*—Not later than one year after submitting
20 the report required under section 115(b) of the Pipeline Safety Act of 1992
21 (Public Law 102–508, 106 Stat. 3296), the Secretary, considering the report
22 and in cooperation and coordination with appropriate State and local au-
23 thorities, shall take appropriate action to promote the adoption of measures
24 to improve the safety of customer-owned natural gas service lines.

25 **§ 60114. One-call notification systems**

26 (a) *MINIMUM REQUIREMENTS.*—The Secretary of Transportation shall pre-
27 scribe regulations providing minimum requirements for establishing and oper-
28 ating a one-call notification system for a State to adopt that will notify an
29 operator of a pipeline facility of activity in the vicinity of the facility that
30 could threaten the safety of the facility. The regulations shall include the fol-
31 lowing:

32 (1) a requirement that the system apply to all areas of the State con-
33 taining underground pipeline facilities.

34 (2) a requirement that a person intending to engage in an activity
35 the Secretary decides could cause physical damage to an underground fa-
36 cility must contact the appropriate system to establish if there are under-
37 ground facilities present in the area of the intended activity.

38 (3) a requirement that all operators of underground pipeline facilities
39 participate in an appropriate one-call notification system.

40 (4) qualifications for an operator of a facility, a private contractor,
41 or a State or local authority to operate a system.

1 (5) procedures for advertisement and notice of the availability of a
2 system.

3 (6) a requirement about the information to be provided by a person
4 contacting the system under clause (2) of this subsection.

5 (7) a requirement for the response of the operator of the system and
6 of the facility after they are contacted by an individual under this sub-
7 section.

8 (8) a requirement that each State decide whether the system will be
9 toll free.

10 (9) a requirement for sanctions substantially the same as provided
11 under sections 60120, 60122, and 60123 of this title.

12 (b) *GRANTS*.—The Secretary may make a grant to a State under this sec-
13 tion to develop and establish a one-call notification system consistent with
14 subsection (a) of this section.

15 (c) *MARKING FACILITIES*.—On notification by an operator of a damage
16 prevention program or by a person planning to carry out demolition, exca-
17 vation, tunneling, or construction in the vicinity of a pipeline facility, the
18 operator of the facility shall mark accurately, in a reasonable and timely
19 way, the location of the pipeline facilities in the vicinity of the demolition,
20 excavation, tunneling, or construction.

21 (d) *APPORTIONMENT*.—When apportioning the amount appropriated to
22 carry out section 60107 of this title among the States, the Secretary—

23 (1) shall consider whether a State has adopted or is seeking adoption
24 of a one-call notification system under this section; and

25 (2) shall withhold part of a payment under section 60107 of this title
26 when the Secretary decides a State has not adopted, or is not seeking
27 adoption of, a one-call notification system.

28 (e) *RELATIONSHIP TO OTHER LAWS*.—This section and regulations pre-
29 scribed under this section do not affect the liability established under a law
30 of the United States or a State for damage caused by an activity described
31 in subsection (a)(2) of this section.

32 **§60115. Technical safety standards committees**

33 (a) *ORGANIZATION*.—The Technical Pipeline Safety Standards Committee
34 and the Technical Hazardous Liquid Pipeline Safety Standards Committee
35 are committees in the Department of Transportation.

36 (b) *COMPOSITION AND APPOINTMENT*.—(1) The Technical Pipeline Safety
37 Standards Committee is composed of 15 members appointed by the Secretary
38 of Transportation after consulting with public and private agencies concerned
39 with the technical aspect of transporting gas or operating a gas pipeline facil-
40 ity. Each member must be experienced in the safety regulation of transporting
41 gas and of gas pipeline facilities or technically qualified, by training, experi-

1 ence, or knowledge in at least one field of engineering applicable to transport-
2 ing gas or operating a gas pipeline facility, to evaluate gas pipeline safety
3 standards.

4 (2) *The Technical Hazardous Liquid Pipeline Safety Standards Committee*
5 *is composed of 15 members appointed by the Secretary after consulting with*
6 *public and private agencies concerned with the technical aspect of transport-*
7 *ing hazardous liquid or operating a hazardous liquid pipeline facility. Each*
8 *member must be experienced in the safety regulation of transporting hazard-*
9 *ous liquid and of hazardous liquid pipeline facilities or technically qualified,*
10 *by training, experience, or knowledge in at least one field of engineering ap-*
11 *licable to transporting hazardous liquid or operating a hazardous liquid*
12 *pipeline facility, to evaluate hazardous liquid pipeline safety standards.*

13 (3) *The members of each committee are appointed as follows:*

14 (A) *5 individuals selected from departments, agencies, and instrumen-*
15 *talities of the United States Government and of the States.*

16 (B) *4 individuals selected from the natural gas or hazardous liquid*
17 *industry, as appropriate, after consulting with industry representatives.*

18 (C) *6 individuals selected from the general public.*

19 (4)(A) *Two of the individuals selected for each committee under paragraph*
20 *(3)(A) of this subsection must be State commissioners. The Secretary shall*
21 *consult with the national organization of State commissions (referred to in*
22 *section 10344(f) of this title) before selecting those 2 individuals.*

23 (B) *At least 3 of the individuals selected for each committee under para-*
24 *graph (3)(B) of this subsection must be currently in the active operation of*
25 *natural gas pipelines or hazardous liquid pipeline facilities, as appropriate.*

26 (C) *Two of the individuals selected for each committee under paragraph*
27 *(3)(C) of this subsection must have education, background, or experience in*
28 *environmental protection or public safety. At least one individual selected for*
29 *each committee under paragraph (3)(C) may not have a financial interest in*
30 *the pipeline, petroleum, or natural gas industries.*

31 (c) *COMMITTEE REPORTS ON PROPOSED STANDARDS.—(1) The Secretary*
32 *shall give to—*

33 (A) *the Technical Pipeline Safety Standards Committee each standard*
34 *proposed under this chapter for transporting gas and for gas pipeline*
35 *facilities; and*

36 (B) *the Technical Hazardous Liquid Pipeline Safety Standards Com-*
37 *mittee each standard proposed under this chapter for transporting haz-*
38 *ardous liquid and for hazardous liquid pipeline facilities.*

39 (2) *Not later than 90 days after receiving the proposed standard, the ap-*
40 *propriate committee shall prepare a report on the technical feasibility, reason-*
41 *ableness, and practicability of the proposed standard. The Secretary shall*

1 *publish each report, including minority views. The report if timely made is*
2 *part of the proceeding for prescribing the standard. The Secretary is not*
3 *bound by the conclusions of the committee. However, if the Secretary rejects*
4 *the conclusions of the committee, the Secretary shall publish the reasons.*

5 (3) *The Secretary may prescribe a standard after the end of the 90-day*
6 *period.*

7 (d) *PROPOSED COMMITTEE STANDARDS AND POLICY DEVELOPMENT REC-*
8 *COMMENDATIONS.—(1) The Technical Pipeline Safety Standards Committee*
9 *may propose to the Secretary a safety standard for transporting gas and for*
10 *gas pipeline facilities. The Technical Hazardous Liquid Pipeline Safety*
11 *Standards Committee may propose to the Secretary a safety standard for*
12 *transporting hazardous liquid and for hazardous liquid pipeline facilities.*

13 (2) *If requested by the Secretary, a committee shall make policy develop-*
14 *ment recommendations to the Secretary.*

15 (e) *MEETINGS.—Each committee shall meet with the Secretary at least*
16 *twice annually. Each committee proceeding shall be recorded. The record of*
17 *the proceeding shall be available to the public.*

18 (f) *PAY AND EXPENSES.—The Secretary may establish the pay for each*
19 *member of a committee for each day (including travel time) when performing*
20 *duties of the committee. However, a member may not be paid more than the*
21 *daily equivalent of the maximum annual rate of basic pay payable under sec-*
22 *tion 5376 of title 5. A member is entitled to expenses under section 5703 of*
23 *title 5. A payment under this subsection does not make a member an officer*
24 *or employee of the Government. This subsection does not apply to members*
25 *regularly employed by the Government.*

26 **§60116. Public education programs**

27 *Under regulations the Secretary of Transportation prescribes, each person*
28 *transporting gas shall carry out a program to educate the public on the pos-*
29 *sible hazards associated with gas leaks and the importance of reporting gas*
30 *odors and leaks to the appropriate authority. The Secretary may develop ma-*
31 *terial suitable for use in the program.*

32 **§60117. Administrative**

33 (a) *GENERAL AUTHORITY.—To carry out this chapter, the Secretary of*
34 *Transportation may conduct investigations, make reports, issue subpoenas,*
35 *conduct hearings, require the production of records, take depositions, and con-*
36 *duct research, testing, development, demonstration, and training activities.*
37 *The Secretary may not charge a tuition-type fee for training State or local*
38 *government personnel in the enforcement of regulations prescribed under this*
39 *chapter.*

40 (b) *RECORDS, REPORTS, AND INFORMATION.—To enable the Secretary to*
41 *decide whether a person transporting gas or hazardous liquid or operating a*

1 pipeline facility is complying with this chapter and standards prescribed or
2 orders issued under this chapter, the person shall—

3 (1) maintain records, make reports, and provide information the Sec-
4 retary requires; and

5 (2) make the records, reports, and information available when the Sec-
6 retary requests.

7 (c) *ENTRY AND INSPECTION.*—An officer, employee, or agent of the Depart-
8 ment of Transportation designated by the Secretary, on display of proper cre-
9 dentials to the individual in charge, may enter premises to inspect the records
10 and property of a person at a reasonable time and in a reasonable way to
11 decide whether a person is complying with this chapter and standards pre-
12 scribed or orders issued under this chapter.

13 (d) *CONFIDENTIALITY OF INFORMATION.*—Information related to a con-
14 fidential matter referred to in section 1905 of title 18 that is obtained by the
15 Secretary or an officer, employee, or agent in carrying out this section may
16 be disclosed only to another officer or employee concerned with carrying out
17 this chapter or in a proceeding under this chapter.

18 (e) *USE OF ACCIDENT REPORTS.*—(1) Each accident report made by an
19 officer, employee, or agent of the Department may be used in a judicial pro-
20 ceeding resulting from the accident. The officer, employee, or agent may be
21 required to testify in the proceeding about the facts developed in investigating
22 the accident. The report shall be made available to the public in a way that
23 does not identify an individual.

24 (2) Each report related to research and demonstration projects and related
25 activities is public information.

26 (f) *TESTING FACILITIES INVOLVED IN ACCIDENTS.*—The Secretary may re-
27 quire testing of a part of a pipeline facility subject to this chapter that has
28 been involved in or affected by an accident only after—

29 (1) notifying the appropriate State official in the State in which the
30 facility is located; and

31 (2) attempting to negotiate a mutually acceptable plan for testing
32 with the owner of the facility and, when the Secretary considers appro-
33 priate, the National Transportation Safety Board.

34 (g) *PROVIDING SAFETY INFORMATION.*—On request, the Secretary shall
35 provide the Federal Energy Regulatory Commission or appropriate State au-
36 thority with information the Secretary has on the safety of material, oper-
37 ations, devices, or processes related to pipeline transportation or operating a
38 pipeline facility.

39 (h) *COOPERATION.*—The Secretary may—

40 (1) advise, assist, and cooperate with other departments, agencies, and
41 instrumentalities of the United States Government, the States, and pub-

1 *lic and private agencies and persons in planning and developing safety*
2 *standards and ways to inspect and test to decide whether those standards*
3 *have been complied with;*

4 *(2) consult with and make recommendations to other departments,*
5 *agencies, and instrumentalities of the Government, State and local gov-*
6 *ernments, and public and private agencies and persons to develop and*
7 *encourage activities, including the enactment of legislation, that will as-*
8 *ist in carrying out this chapter and improve State and local pipeline*
9 *safety programs; and*

10 *(3) participate in a proceeding involving safety requirements related*
11 *to a liquefied natural gas facility before the Commission or a State au-*
12 *thority.*

13 *(i) PROMOTING COORDINATION.—After consulting with appropriate State*
14 *officials, the Secretary shall establish procedures to promote more effective co-*
15 *ordination between departments, agencies, and instrumentalities of the Gov-*
16 *ernment and State authorities with regulatory authority over pipeline facili-*
17 *ties about responses to a pipeline accident.*

18 *(j) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not*
19 *authorize information to be withheld from a committee of Congress authorized*
20 *to have the information.*

21 **§ 60118. Compliance and waivers**

22 *(a) GENERAL REQUIREMENTS.—A person transporting gas or hazardous*
23 *liquid or owning or operating a pipeline facility shall—*

24 *(1) comply with applicable safety standards prescribed under this*
25 *chapter, except as provided in this section;*

26 *(2) prepare and carry out a plan for inspection and maintenance re-*
27 *quired under section 60108(a) and (b) of this title; and*

28 *(3) allow access to or copying of records, make reports and provide*
29 *information, and allow entry or inspection required under section*
30 *60117(a)–(d) of this title.*

31 *(b) COMPLIANCE ORDERS.—The Secretary of Transportation may issue or-*
32 *ders directing compliance with this chapter or a regulation prescribed under*
33 *this chapter. An order shall state clearly the action a person must take to*
34 *comply.*

35 *(c) WAIVERS BY SECRETARY.—On application of a person transporting gas*
36 *or hazardous liquid or operating a pipeline facility, the Secretary by order*
37 *may waive compliance with any part of an applicable standard prescribed*
38 *under this chapter on terms the Secretary considers appropriate, if the waiver*
39 *is not inconsistent with pipeline safety. The Secretary shall state the reasons*
40 *for granting a waiver under this subsection. The Secretary may act on a*
41 *waiver only after notice and an opportunity for a hearing.*

1 (d) *WAIVERS BY STATE AUTHORITIES.*—If a certification under section
2 60105 of this title or an agreement under section 60106 of this title is in ef-
3 fect, the State authority may waive compliance with a safety standard to
4 which the certification or agreement applies in the same way and to the same
5 extent the Secretary may waive compliance under subsection (c) of this sec-
6 tion. However, the authority must give the Secretary written notice of the
7 waiver at least 60 days before its effective date. If the Secretary makes a writ-
8 ten objection before the effective date of the waiver, the waiver is stayed. After
9 notifying the authority of the objection, the Secretary shall provide a prompt
10 opportunity for a hearing. The Secretary shall make the final decision on
11 granting the waiver.

12 **§60119. Judicial review**

13 (a) *REVIEW OF REGULATIONS AND WAIVER ORDERS.*—(1) Except as pro-
14 vided in subsection (b) of this section, a person adversely affected by a regula-
15 tion prescribed under this chapter or an order issued about an application
16 for a waiver under section 60118(c) or (d) of this title may apply for review
17 of the regulation or order by filing a petition for review in the United States
18 Court of Appeals for the District of Columbia Circuit or in the court of ap-
19 peals of the United States for the circuit in which the person resides or has
20 its principal place of business. The petition must be filed not later than 89
21 days after the regulation is prescribed or order is issued. The clerk of the court
22 immediately shall send a copy of the petition to the Secretary of Transpor-
23 tation.

24 (2) A judgment of a court under paragraph (1) of this subsection may be
25 reviewed only by the Supreme Court under section 1254 of title 28. A remedy
26 under paragraph (1) is in addition to any other remedies provided by law.

27 (b) *REVIEW OF FINANCIAL RESPONSIBILITY ORDERS.*—(1) A person ad-
28 versely affected by an order issued under section 60111 of this title may apply
29 for review of the order by filing a petition for review in the appropriate court
30 of appeals of the United States. The petition must be filed not later than 60
31 days after the order is issued. Findings of fact the Secretary makes are con-
32 clusive if supported by substantial evidence.

33 (2) A judgment of a court under paragraph (1) of this subsection may be
34 reviewed only by the Supreme Court under section 1254(1) of title 28.

35 **§60120. Enforcement**

36 (a) *CIVIL ACTIONS.*—(1) On the request of the Secretary of Transportation,
37 the Attorney General may bring a civil action in an appropriate district
38 court of the United States to enforce this chapter or a regulation prescribed
39 or order issued under this chapter. The court may award appropriate relief,
40 including punitive damages.

1 (2) *At the request of the Secretary, the Attorney General may bring a civil*
 2 *action in a district court of the United States to require a person to comply*
 3 *immediately with a subpoena or to allow an officer, employee, or agent author-*
 4 *ized by the Secretary to enter the premises, and inspect the records and prop-*
 5 *erty, of the person to decide whether the person is complying with this chap-*
 6 *ter. The action may be brought in the judicial district in which the defendant*
 7 *resides, is found, or does business. The court may punish a failure to obey*
 8 *the order as a contempt of court.*

9 (b) *JURY TRIAL DEMAND.—In a trial for criminal contempt for violating*
 10 *an injunction issued under this section, the violation of which is also a viola-*
 11 *tion of this chapter, the defendant may demand a jury trial. The defendant*
 12 *shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Pro-*
 13 *cedure (18 App. U.S.C.).*

14 (c) *EFFECT ON TORT LIABILITY.—This chapter does not affect the tort li-*
 15 *ability of any person.*

16 **§60121. Actions by private persons**

17 (a) *GENERAL AUTHORITY.—(1) A person may bring a civil action in an*
 18 *appropriate district court of the United States for an injunction against an-*
 19 *other person (including the United States Government and other govern-*
 20 *mental authorities to the extent permitted under the 11th amendment to the*
 21 *Constitution) for a violation of this chapter or a regulation prescribed or*
 22 *order issued under this chapter. However, the person—*

23 (A) *may bring the action only after 60 days after the person has given*
 24 *notice of the violation to the Secretary of Transportation or to the appro-*
 25 *priate State authority (when the violation is alleged to have occurred in*
 26 *a State certified under section 60105 of this title) and to the person al-*
 27 *leged to have committed the violation;*

28 (B) *may not bring the action if the Secretary or authority has begun*
 29 *and diligently is pursuing an administrative proceeding for the viola-*
 30 *tion; and*

31 (C) *may not bring the action if the Attorney General of the United*
 32 *States, or the chief law enforcement officer of a State, has begun and*
 33 *diligently is pursuing a judicial proceeding for the violation.*

34 (2) *The Secretary shall prescribe the way in which notice is given under*
 35 *this subsection.*

36 (3) *The Secretary, with the approval of the Attorney General, or the Attor-*
 37 *ney General may intervene in an action under paragraph (1) of this sub-*
 38 *section.*

39 (b) *COSTS AND FEES.—The court may award costs, reasonable expert wit-*
 40 *ness fees, and a reasonable attorney's fee to a prevailing plaintiff in a civil*
 41 *action under this section. The court may award costs to a prevailing defend-*

1 ant when the action is unreasonable, frivolous, or meritless. In this subsection,
2 a reasonable attorney's fee is a fee—

3 (1) based on the actual time spent and the reasonable expenses of the
4 attorney for legal services provided to a person under this section; and

5 (2) computed at the rate prevailing for providing similar services for
6 actions brought in the court awarding the fee.

7 (c) *STATE VIOLATIONS AS VIOLATIONS OF THIS CHAPTER.*—In this section,
8 a violation of a safety standard or practice of a State is deemed to be a viola-
9 tion of this chapter or a regulation prescribed or order issued under this chap-
10 ter only to the extent the standard or practice is not more stringent than a
11 comparable minimum safety standard prescribed under this chapter.

12 (d) *ADDITIONAL REMEDIES.*—A remedy under this section is in addition
13 to any other remedies provided by law. This section does not restrict a right
14 to relief that a person or a class of persons may have under another law or
15 at common law.

16 **§60122. Civil penalties**

17 (a) *GENERAL PENALTIES.*—(1) A person that the Secretary of Transpor-
18 tation decides, after written notice and an opportunity for a hearing, has vio-
19 lated section 60114(c) or 60118(a) of this title or a regulation prescribed or
20 order issued under this chapter is liable to the United States Government for
21 a civil penalty of not more than \$25,000 for each violation. A separate viola-
22 tion occurs for each day the violation continues. The maximum civil penalty
23 under this paragraph for a related series of violations is \$500,000.

24 (2) A person violating a standard or order under section 60103 or 60111
25 of this title is liable to the Government for a civil penalty of not more than
26 \$50,000 for each violation. A penalty under this paragraph may be imposed
27 in addition to penalties imposed under paragraph (1) of this subsection.

28 (b) *PENALTY CONSIDERATIONS.*—In determining the amount of a civil pen-
29 alty under this section, the Secretary shall consider—

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

31 (2) with respect to the violator, the degree of culpability, any history
32 of prior violations, the ability to pay, and any effect on ability to con-
33 tinue doing business;

34 (3) good faith in attempting to comply; and

35 (4) other matters that justice requires.

36 (c) *COLLECTION AND COMPROMISE.*—(1) The Secretary may request the At-
37 torney General to bring a civil action in an appropriate district court of the
38 United States to collect a civil penalty imposed under this section.

39 (2) The Secretary may compromise the amount of a civil penalty imposed
40 under this section before referral to the Attorney General.

1 (d) *SETOFF.*—The Government may deduct the amount of a civil penalty
2 imposed or compromised under this section from amounts it owes the person
3 liable for the penalty.

4 (e) *DEPOSIT IN TREASURY.*—Amounts collected under this section shall be
5 deposited in the Treasury as miscellaneous receipts.

6 (f) *PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.*—Separate
7 penalties for violating a regulation prescribed under this chapter and for vio-
8 lating an order under section 60112 or 60118(b) of this title may not be im-
9 posed under this chapter if both violations are based on the same act.

10 **§60123. Criminal penalties**

11 (a) *GENERAL PENALTY.*—A person knowingly and willfully violating sec-
12 tion 60114(c) or 60118(a) of this title or a regulation prescribed or order is-
13 sued under this chapter shall be fined under title 18, imprisoned for not more
14 than 5 years, or both.

15 (b) *PENALTY FOR DAMAGING OR DESTROYING FACILITY.*—A person know-
16 ingly and willfully damaging or destroying, or attempting to damage or de-
17 stroy, an interstate transmission facility or interstate hazardous liquid pipe-
18 line facility shall be fined under title 18, imprisoned for not more than 15
19 years, or both.

20 (c) *PENALTY FOR DAMAGING OR DESTROYING SIGN.*—A person knowingly
21 and willfully defacing, damaging, removing, or destroying a pipeline sign or
22 right-of-way marker required by a law or regulation of the United States
23 shall be fined under title 18, imprisoned for not more than one year, or both.

24 (d) *PENALTY FOR NOT USING ONE-CALL NOTIFICATION SYSTEM OR NOT*
25 *HEEDING LOCATION INFORMATION OR MARKINGS.*—A person shall be fined
26 under title 18, imprisoned for not more than 5 years, or both, if the person
27 knowingly and willfully—

28 (1) engages in an excavation activity—

29 (A) without first using an available one-call notification system
30 to establish the location of underground facilities in the excavation
31 area; or

32 (B) without paying attention to appropriate location information
33 or markings the operator of a pipeline facility establishes; and

34 (2) subsequently damages—

35 (A) a pipeline facility that results in death, serious bodily harm,
36 or actual damage to property of more than \$50,000; or

37 (B) a hazardous liquid pipeline facility that results in the release
38 of more than 50 barrels of product.

39 **§60124. Annual reports**

40 (a) *SUBMISSION AND CONTENTS.*—The Secretary of Transportation shall
41 submit to Congress not later than August 15 of each year a report on carry-

1 *ing out this chapter for the prior calendar year for gas and a report on carry-*
2 *ing out this chapter for the prior calendar year for hazardous liquid. Each*
3 *report shall include the following information about the prior year for gas*
4 *or hazardous liquid, as appropriate:*

5 *(1) a thorough compilation of the leak repairs, accidents, and casual-*
6 *ties and a statement of cause when investigated and established by the*
7 *National Transportation Safety Board.*

8 *(2) a list of applicable pipeline safety standards prescribed under this*
9 *chapter including identification of standards prescribed during the year.*

10 *(3) a summary of the reasons for each waiver granted under section*
11 *60118(c) and (d) of this title.*

12 *(4) an evaluation of the degree of compliance with applicable safety*
13 *standards, including a list of enforcement actions and compromises of al-*
14 *leged violations by location and company name.*

15 *(5) a summary of outstanding problems in carrying out this chapter,*
16 *in order of priority.*

17 *(6) an analysis and evaluation of—*

18 *(A) research activities, including their policy implications, com-*
19 *pleted as a result of the United States Government and private*
20 *sponsorship; and*

21 *(B) technological progress in safety achieved.*

22 *(7) a list, with a brief statement of the issues, of completed or pending*
23 *judicial actions under this chapter.*

24 *(8) the extent to which technical information was distributed to the*
25 *scientific community and consumer-oriented information was made*
26 *available to the public.*

27 *(9) a compilation of certifications filed under section 60105 of this*
28 *title that were—*

29 *(A) in effect; or*

30 *(B) rejected in any part by the Secretary and a summary of the*
31 *reasons for each rejection.*

32 *(10) a compilation of agreements made under section 60106 of this*
33 *title that were—*

34 *(A) in effect; or*

35 *(B) ended in any part by the Secretary and a summary of the*
36 *reasons for ending each agreement.*

37 *(11) a description of the number and qualifications of State pipeline*
38 *safety inspectors in each State for which a certification under section*
39 *60105 of this title or an agreement under section 60106 of this title is*
40 *in effect and the number and qualifications of inspectors the Secretary*
41 *recommends for that State.*

1 (12) recommendations for legislation the Secretary considers nec-
2 essary—

3 (A) to promote cooperation among the States in improving—

4 (i) gas pipeline safety; or

5 (ii) hazardous liquid pipeline safety programs; and

6 (B) to strengthen the national gas pipeline safety program.

7 (b) *SUBMISSION OF ONE REPORT.*—The Secretary may submit one report
8 to carry out subsection (a) of this section.

9 **§ 60125. Authorization of appropriations**

10 (a) *GAS.*—Not more than the following amounts may be appropriated to
11 the Secretary of Transportation to carry out this chapter (except sections
12 60107 and 60114(b)) related to gas:

13 (1) \$6,857,000 for the fiscal year ending September 30, 1993.

14 (2) \$7,000,000 for the fiscal year ending September 30, 1994.

15 (3) \$7,500,000 for the fiscal year ending September 30, 1995.

16 (b) *HAZARDOUS LIQUID.*—Not more than the following amounts may be
17 appropriated to the Secretary to carry out this chapter (except sections 60107
18 and 60114(b)) related to hazardous liquid:

19 (1) \$1,728,500 for the fiscal year ending September 30, 1993.

20 (2) \$1,866,800 for the fiscal year ending September 30, 1994.

21 (3) \$2,000,000 for the fiscal year ending September 30, 1995.

22 (c) *STATE GRANTS.*—(1) Not more than the following amounts may be ap-
23 propriated to the Secretary to carry out section 60107 of this title:

24 (A) \$7,750,000 for the fiscal year ending September 30, 1993.

25 (B) \$9,000,000 for the fiscal year ending September 30, 1994.

26 (C) \$10,000,000 for the fiscal year ending September 30, 1995.

27 (2) At least 5 percent of amounts appropriated to carry out United States
28 Government grants-in-aid programs for a fiscal year are available only to
29 carry out section 60107 of this title related to hazardous liquid.

30 (3) Not more than 20 percent of a pipeline safety program grant under
31 section 60107 of this title may be allocated to indirect expenses.

32 (d) *GRANTS FOR ONE-CALL NOTIFICATION SYSTEMS.*—Not more than
33 \$_____ may be appropriated to the Secretary for the fiscal year ending
34 September 30, 19__, to carry out section 60114(b) of this title. Amounts
35 under this subsection remain available until expended.

36 (e) *CREDITING APPROPRIATIONS FOR EXPENDITURES FOR TRAINING.*—The
37 Secretary may credit to an appropriation authorized under subsection (a) or
38 (b) of this section amounts received from sources other than the Government
39 for reimbursement for expenses incurred by the Secretary in providing train-
40 ing.

1 (f) *AVAILABILITY OF UNUSED AMOUNTS FOR GRANTS.*—(1) *The Secretary*
 2 *shall make available for grants to States amounts appropriated for each of*
 3 *the fiscal years that ended September 30, 1986, and 1987, that have not been*
 4 *expended in making grants under section 60107 of this title.*

5 (2) *A grant under this subsection is available to a State that after Decem-*
 6 *ber 31, 1987—*

7 (A) *undertakes a new responsibility under section 60105 of this title;*

8 *or*

9 (B) *implements a one-call damage prevention program established*
 10 *under State law.*

11 (3) *This subsection does not authorize a State to receive more than 50 per-*
 12 *cent of its allowable pipeline safety costs from a grant under this chapter.*

13 (4) *A State may receive not more than \$75,000 under this subsection.*

14 (5) *Amounts under this subsection remain available until expended.*

15 **CHAPTER 603—USER FEES**

Sec.

60301. *User fees.*

16 **§60301. User fees**

17 (a) *SCHEDULE OF FEES.*—*The Secretary of Transportation shall prescribe*
 18 *a schedule of fees for all natural gas and hazardous liquids transported by*
 19 *pipelines subject to chapter 601 of this title. The fees shall be based on usage*
 20 *(in reasonable relationship to volume-miles, miles, revenues, or a combination*
 21 *of volume-miles, miles, and revenues) of the pipelines. The Secretary shall*
 22 *consider the allocation of resources of the Department of Transportation when*
 23 *establishing the schedule.*

24 (b) *IMPOSITION AND TIME OF COLLECTION.*—*A fee shall be imposed on each*
 25 *person operating a gas pipeline transmission facility, a liquefied natural gas*
 26 *pipeline facility, or a hazardous liquid pipeline facility to which chapter 601*
 27 *of this title applies. The fee shall be collected before the end of the fiscal year*
 28 *to which it applies.*

29 (c) *MEANS OF COLLECTION.*—*The Secretary shall prescribe procedures to*
 30 *collect fees under this section. The Secretary may use a department, agency,*
 31 *or instrumentality of the United States Government or of a State or local gov-*
 32 *ernment to collect the fee and may reimburse the department, agency, or in-*
 33 *strumentality a reasonable amount for its services.*

34 (d) *USE OF FEES.*—*A fee collected under this section—*

35 (1)(A) *related to a gas pipeline facility may be used only for an activ-*
 36 *ity related to gas under chapter 601 of this title; and*

37 (B) *related to a hazardous liquid pipeline facility may be used only*
 38 *for an activity related to hazardous liquid under chapter 601 of this*
 39 *title; and*

1 (2) may be used only to the extent provided in advance in an appro-
2 piation law.

3 (e) *LIMITATIONS.*—Fees prescribed under subsection (a) of this section shall
4 be sufficient to pay for the costs of activities described in subsection (d) of
5 this section. However, the total amount collected for a fiscal year may not
6 be more than 105 percent of the total amount of the appropriations made for
7 the fiscal year for activities to be financed by the fees.

8 **CHAPTER 605—INTERSTATE COMMERCE REGULATION**

Sec.

60501. Secretary of Energy.

60502. Federal Energy Regulatory Commission.

60503. Effect of enactment.

9 **§60501. Secretary of Energy**

10 Except as provided in section 60502 of this title, the Secretary of Energy
11 has the duties and powers related to the transportation of oil by pipeline that
12 were vested on October 1, 1977, in the Interstate Commerce Commission or
13 the chairman or a member of the Commission.

14 **§60502. Federal Energy Regulatory Commission**

15 The Federal Energy Regulatory Commission has the duties and powers re-
16 lated to the establishment of a rate or charge for the transportation of oil by
17 pipeline or the valuation of that pipeline that were vested on October 1, 1977,
18 in the Interstate Commerce Commission or an officer or component of the
19 Interstate Commerce Commission.

20 **§60503. Effect of enactment**

21 The enactment of the Act of October 17, 1978 (Public Law 95–473, 92 Stat.
22 1337), the Act of January 12, 1983 (Public Law 97–449, 96 Stat. 2413), and
23 the Act enacting this section does not repeal, and has no substantive effect
24 on, any right, obligation, liability, or remedy of an oil pipeline, including
25 a right, obligation, liability, or remedy arising under the Interstate Commerce
26 Act or the Act of August 29, 1916 (known as the Pomerene Bills of Lading
27 Act), before any department, agency, or instrumentality of the United States
28 Government, an officer or employee of the Government, or a court of com-
29 petent jurisdiction.

30 **SUBTITLE IX—COMMERCIAL SPACE**
31 **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.*

1 **§70101. Findings and purposes**

2 (a) *FINDINGS.—Congress finds that—*

3 (1) *the peaceful uses of outer space continue to be of great value and*
 4 *to offer benefits to all mankind;*

5 (2) *private applications of space technology have achieved a signifi-*
 6 *cant level of commercial and economic activity and offer the potential*
 7 *for growth in the future, particularly in the United States;*

8 (3) *new and innovative equipment and services are being sought, pro-*
 9 *duced, and offered by entrepreneurs in telecommunications, information*
 10 *services, and remote sensing technologies;*

11 (4) *the private sector in the United States has the capability of devel-*
 12 *oping and providing private satellite launching and associated services*
 13 *that would complement the launching and associated services now avail-*
 14 *able from the United States Government;*

15 (5) *the development of commercial launch vehicles and associated serv-*
 16 *ices would enable the United States to retain its competitive position*
 17 *internationally, contributing to the national interest and economic well-*
 18 *being of the United States;*

19 (6) *providing launch services by the private sector is consistent with*
 20 *the national security and foreign policy interests of the United States*
 21 *and would be facilitated by stable, minimal, and appropriate regulatory*
 22 *guidelines that are fairly and expeditiously applied;*

23 (7) *the United States should encourage private sector launches and as-*
 24 *sociated services and, only to the extent necessary, regulate those launches*
 25 *and services to ensure compliance with international obligations of the*
 26 *United States and to protect the public health and safety, safety of prop-*
 27 *erty, and national security and foreign policy interests of the United*
 28 *States;*

29 (8) *space transportation, including the establishment and operation of*
 30 *launch sites and complementary facilities, the providing of launch serv-*
 31 *ices, the establishment of support facilities, and the providing of support*
 32 *services, is an important element of the transportation system of the*

1 *United States, and in connection with the commerce of the United States*
2 *there is a need to develop a strong space transportation infrastructure*
3 *with significant private sector involvement; and*

4 *(9) the participation of State governments in encouraging and facili-*
5 *tating private sector involvement in space-related activity, particularly*
6 *through the establishment of a space transportation-related infrastruc-*
7 *ture, including launch sites, complementary facilities, and launch site*
8 *support facilities, is in the national interest and is of significant public*
9 *benefit.*

10 (b) *PURPOSES.—The purposes of this chapter are—*

11 *(1) to promote economic growth and entrepreneurial activity through*
12 *use of the space environment for peaceful purposes;*

13 *(2) to encourage the United States private sector to provide launch ve-*
14 *hicles and associated services by—*

15 *(A) simplifying and expediting the issuance and transfer of com-*
16 *mercial launch licenses; and*

17 *(B) facilitating and encouraging the use of Government-developed*
18 *space technology;*

19 *(3) to provide that the Secretary of Transportation is to oversee and*
20 *coordinate the conduct of commercial launch operations, issue and trans-*
21 *fer commercial launch licenses authorizing those operations, and protect*
22 *the public health and safety, safety of property, and national security*
23 *and foreign policy interests of the United States; and*

24 *(4) to facilitate the strengthening and expansion of the United States*
25 *space transportation infrastructure, including the enhancement of United*
26 *States launch sites and launch-site support facilities, with Government,*
27 *State, and private sector involvement, to support the full range of United*
28 *States space-related activities.*

29 **§ 70102. Definitions**

30 *In this chapter—*

31 *(1) “citizen of the United States” means—*

32 *(A) an individual who is a citizen of the United States;*

33 *(B) an entity organized or existing under the laws of the United*
34 *States or a State; or*

35 *(C) an entity organized or existing under the laws of a foreign*
36 *country if the controlling interest (as defined by the Secretary of*
37 *Transportation) is held by an individual or entity described in*
38 *subclause (A) or (B) of this clause.*

39 *(2) “executive agency” has the same meaning given that term in sec-*
40 *tion 105 of title 5.*

1 (3) “launch” means to place or try to place a launch vehicle and any
2 payload—

3 (A) in a suborbital trajectory;

4 (B) in Earth orbit in outer space; or

5 (C) otherwise in outer space.

6 (4) “launch property” means an item built for, or used in, the launch
7 preparation or launch of a launch vehicle.

8 (5) “launch services” means—

9 (A) activities involved in the preparation of a launch vehicle and
10 payload for launch; and

11 (B) the conduct of a launch.

12 (6) “launch site” means the location on Earth from which a launch
13 takes place (as defined in a license the Secretary issues or transfers
14 under this chapter) and necessary facilities.

15 (7) “launch vehicle” means—

16 (A) a vehicle built to operate in, or place a payload in, outer
17 space; and

18 (B) a suborbital rocket.

19 (8) “payload” means an object that a person undertakes to place in
20 outer space by means of a launch vehicle, including components of the
21 vehicle specifically designed or adapted for that object.

22 (9) “person” means an individual and an entity organized or existing
23 under the laws of a State or country.

24 (10) “State” means a State of the United States, the District of Co-
25 lumbia, and a territory or possession of the United States.

26 (11) “third party” means a person except—

27 (A) the United States Government or the Government’s contrac-
28 tors or subcontractors involved in launch services;

29 (B) a licensee or transferee under this chapter;

30 (C) a licensee’s or transferee’s contractors, subcontractors, or cus-
31 tomers involved in launch services; or

32 (D) the customer’s contractors or subcontractors involved in
33 launch services.

34 (12) “United States” means the States of the United States, the Dis-
35 trict of Columbia, and the territories and possessions of the United
36 States.

37 **§70103. General authority**

38 (a) GENERAL.—The Secretary of Transportation shall carry out this chap-
39 ter.

40 (b) FACILITATING COMMERCIAL LAUNCHES.—In carrying out this chapter,
41 the Secretary shall—

1 (1) encourage, facilitate, and promote commercial space launches by
2 the private sector; and

3 (2) take actions to facilitate private sector involvement in commercial
4 space transportation activity, and to promote public-private partner-
5 ships involving the United States Government, State governments, and
6 the private sector to build, expand, modernize, or operate a space launch
7 infrastructure.

8 (c) *EXECUTIVE AGENCY ASSISTANCE.*—When necessary, the head of an ex-
9 ecutive agency shall assist the Secretary in carrying out this chapter.

10 **§ 70104. Restrictions on launches and operations**

11 (a) *LICENSE REQUIREMENT.*—A license issued or transferred under this
12 chapter is required for the following:

13 (1) for a person to launch a launch vehicle or to operate a launch site
14 in the United States.

15 (2) for a citizen of the United States (as defined in section
16 70102(1)(A) or (B) of this title) to launch a launch vehicle or to operate
17 a launch site outside the United States.

18 (3) for a citizen of the United States (as defined in section
19 70102(1)(C) of this title) to launch a launch vehicle or to operate a
20 launch site outside the United States and outside the territory of a for-
21 eign country unless there is an agreement between the United States Gov-
22 ernment and the government of the foreign country providing that the
23 government of the foreign country has jurisdiction over the launch or op-
24 eration.

25 (4) for a citizen of the United States (as defined in section
26 70102(1)(C) of this title) to launch a launch vehicle or to operate a
27 launch site in the territory of a foreign country if there is an agreement
28 between the United States Government and the government of the foreign
29 country providing that the United States Government has jurisdiction
30 over the launch or operation.

31 (b) *COMPLIANCE WITH PAYLOAD REQUIREMENTS.*—The holder of a launch
32 license under this chapter may launch a payload only if the payload complies
33 with all requirements of the laws of the United States related to launching
34 a payload.

35 (c) *PREVENTING LAUNCHES.*—The Secretary of Transportation shall estab-
36 lish whether all required licenses, authorizations, and permits required for a
37 payload have been obtained. If no license, authorization, or permit is re-
38 quired, the Secretary may prevent the launch if the Secretary decides the
39 launch would jeopardize the public health and safety, safety of property, or
40 national security or foreign policy interest of the United States.

1 **§70105. License applications and requirements**

2 (a) *APPLICATIONS.*—A person may apply to the Secretary of Transpor-
3 tation for a license or transfer of a license under this chapter in the form
4 and way the Secretary prescribes. Consistent with the public health and safe-
5 ty, safety of property, and national security and foreign policy interests of
6 the United States, the Secretary, not later than 180 days after receiving an
7 application, shall issue or transfer a license if the Secretary decides in writ-
8 ing that the applicant complies, and will continue to comply, with this chap-
9 ter and regulations prescribed under this chapter. The Secretary shall inform
10 the applicant of any pending issue and action required to resolve the issue
11 if the Secretary has not made a decision not later than 120 days after receiv-
12 ing an application.

13 (b) *REQUIREMENTS.*—(1) Except as provided in this subsection, all require-
14 ments of the laws of the United States applicable to the launch of a launch
15 vehicle or the operation of a launch site are requirements for a license under
16 this chapter.

17 (2) The Secretary may prescribe—

18 (A) any term necessary to ensure compliance with this chapter, in-
19 cluding on-site verification that a launch or operation complies with rep-
20 resentations stated in the application;

21 (B) an additional requirement necessary to protect the public health
22 and safety, safety of property, national security interests, and foreign
23 policy interests of the United States; and

24 (C) by regulation that a requirement of a law of the United States
25 not be a requirement for a license if the Secretary, after consulting with
26 the head of the appropriate executive agency, decides that the require-
27 ment is not necessary to protect the public health and safety, safety of
28 property, and national security and foreign policy interests of the United
29 States.

30 (3) The Secretary may waive a requirement for an individual applicant
31 if the Secretary decides that the waiver is in the public interest and will not
32 jeopardize the public health and safety, safety of property, and national secu-
33 rity and foreign policy interests of the United States.

34 (c) *PROCEDURES AND TIMETABLES.*—The Secretary shall establish proce-
35 dures and timetables that expedite review of a license application and reduce
36 the regulatory burden for an applicant.

37 **§70106. Monitoring activities**

38 (a) *GENERAL REQUIREMENTS.*—A licensee under this chapter must allow
39 the Secretary of Transportation to place an officer or employee of the United
40 States Government or another individual as an observer at a launch site the
41 licensee uses, at a production facility or assembly site a contractor of the li-

1 licensee uses to produce or assemble a launch vehicle, or at a site at which a
 2 payload is integrated with a launch vehicle. The observer will monitor the ac-
 3 tivity of the licensee or contractor at the time and to the extent the Secretary
 4 considers reasonable to ensure compliance with the license or to carry out the
 5 duties of the Secretary under section 70104(c) of this title. A licensee must
 6 cooperate with an observer carrying out this subsection.

7 (b) *CONTRACTS.*—To the extent provided in advance in an appropriation
 8 law, the Secretary may make a contract with a person to carry out subsection
 9 (a) of this section.

10 **§70107. Effective periods, and modifications, suspensions,**
 11 **and revocations, of licenses**

12 (a) *EFFECTIVE PERIODS OF LICENSES.*—The Secretary of Transportation
 13 shall specify the period for which a license issued or transferred under this
 14 chapter is in effect.

15 (b) *MODIFICATIONS.*—On the initiative of the Secretary or on application
 16 of the licensee, the Secretary may modify a license issued or transferred under
 17 this chapter if the Secretary decides the modification will comply with this
 18 chapter.

19 (c) *SUSPENSIONS AND REVOCATIONS.*—The Secretary may suspend or re-
 20 voke a license if the Secretary decides that—

21 (1) the licensee has not complied substantially with a requirement of
 22 this chapter or a regulation prescribed under this chapter; or

23 (2) the suspension or revocation is necessary to protect the public
 24 health and safety, the safety of property, or a national security or foreign
 25 policy interest of the United States.

26 (d) *EFFECTIVE PERIODS OF MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS.*—Unless the Secretary specifies otherwise, a modification, suspension,
 27 or revocation under this section takes effect immediately and remains in effect
 28 during a review under section 70110 of this title.

29 (e) *NOTIFICATION.*—The Secretary shall notify the licensee in writing of the
 30 decision of the Secretary under this section and any action the Secretary
 31 takes or proposes to take based on the decision.

32 **§70108. Prohibition, suspension, and end of launches and**
 33 **operation of launch sites**

34 (a) *GENERAL AUTHORITY.*—The Secretary of Transportation may prohibit,
 35 suspend, or end immediately the launch of a launch vehicle or the operation
 36 of a launch site licensed under this chapter if the Secretary decides the launch
 37 or operation is detrimental to the public health and safety, the safety of prop-
 38 erty, or a national security or foreign policy interest of the United States.
 39

1 (b) *EFFECTIVE PERIODS OF ORDERS.*—An order under this section takes
 2 effect immediately and remains in effect during a review under section 70110
 3 of this title.

4 **§ 70109. Preemption of scheduled launches**

5 (a) *GENERAL.*—With the cooperation of the Secretary of Defense and the
 6 Administrator of the National Aeronautics and Space Administration, the
 7 Secretary of Transportation shall act to ensure that a launch of a payload
 8 is not preempted from access to a United States Government launch site or
 9 launch property, except for imperative national need, when a launch date
 10 commitment from the Government has been obtained for a launch licensed
 11 under this chapter. A licensee or transferee preempted from access to a launch
 12 site or launch property does not have to pay the Government any amount
 13 for launch services attributable only to the scheduled launch prevented by the
 14 preemption.

15 (b) *IMPERATIVE NATIONAL NEED DECISIONS.*—In consultation with the
 16 Secretary of Transportation, the Secretary of Defense or the Administrator
 17 shall decide when an imperative national need requires preemption under
 18 subsection (a) of this section. That decision may not be delegated.

19 (c) *REPORTS.*—In cooperation with the Secretary of Transportation, the
 20 Secretary of Defense or the Administrator, as appropriate, shall submit to
 21 Congress not later than 7 days after a decision to preempt under subsection
 22 (a) of this section, a report that includes an explanation of the circumstances
 23 justifying the decision and a schedule for ensuring the prompt launching of
 24 a preempted payload.

25 **§ 70110. Administrative hearings and judicial review**

26 (a) *ADMINISTRATIVE HEARINGS.*—The Secretary of Transportation shall
 27 provide an opportunity for a hearing on the record to—

28 (1) an applicant under this chapter, for a decision of the Secretary
 29 under section 70105(a) of this title to issue or transfer a license with
 30 terms or deny the issuance or transfer of a license;

31 (2) an owner or operator of a payload under this chapter, for a deci-
 32 sion of the Secretary under section 70104(c) of this title to prevent the
 33 launch of the payload; and

34 (3) a licensee under this chapter, for a decision of the Secretary
 35 under—

36 (A) section 70107 (b) or (c) of this title to modify, suspend, or
 37 revoke a license; or

38 (B) section 70108(a) of this title to prohibit, suspend, or end a
 39 launch or operation of a launch site licensed by the Secretary.

40 (b) *JUDICIAL REVIEW.*—A final action of the Secretary under this chapter
 41 is subject to judicial review as provided in chapter 7 of title 5.

1 **§70111. Acquiring United States Government property and**
2 **services**

3 (a) *GENERAL REQUIREMENTS AND CONSIDERATIONS.*—(1) *The Secretary of*
4 *Transportation shall facilitate and encourage the acquisition by the private*
5 *sector and State governments of—*

6 (A) *launch property of the United States Government that is excess*
7 *or otherwise is not needed for public use; and*

8 (B) *launch services, including utilities, of the Government otherwise*
9 *not needed for public use.*

10 (2) *In acting under paragraph (1) of this subsection, the Secretary shall*
11 *consider the commercial availability on reasonable terms of substantially*
12 *equivalent launch property or launch services from a domestic source.*

13 (b) *PRICE.*—(1) *In this subsection, “direct costs” means the actual costs*
14 *that—*

15 (A) *can be associated unambiguously with a commercial launch effort;*
16 *and*

17 (B) *the Government would not incur if there were no commercial*
18 *launch effort.*

19 (2) *In consultation with the Secretary, the head of the executive agency pro-*
20 *viding the property or service under subsection (a) of this section shall estab-*
21 *lish the price for the property or service. The price for—*

22 (A) *acquiring launch property by sale or transaction instead of sale*
23 *is the fair market value;*

24 (B) *acquiring launch property (except by sale or transaction instead*
25 *of sale) is an amount equal to the direct costs, including specific wear*
26 *and tear and property damage, the Government incurred because of ac-*
27 *quisition of the property; and*

28 (C) *launch services is an amount equal to the direct costs, including*
29 *the basic pay of Government civilian and contractor personnel, the Gov-*
30 *ernment incurred because of acquisition of the services.*

31 (c) *COLLECTION BY SECRETARY.*—*The Secretary may collect a payment*
32 *under this section with the consent of the head of the executive agency estab-*
33 *lishing the price. Amounts collected under this subsection shall be deposited*
34 *in the Treasury. Amounts (except for excess launch property) shall be credited*
35 *to the appropriation from which the cost of providing the property or services*
36 *was paid.*

37 (d) *COLLECTION BY OTHER GOVERNMENTAL HEADS.*—*The head of a de-*
38 *partment, agency, or instrumentality of the Government may collect a pay-*
39 *ment for an activity involved in producing a launch vehicle or its payload*
40 *for launch if the activity was agreed to by the owner or manufacturer of the*
41 *launch vehicle or payload.*

1 **§70112. Liability insurance and financial responsibility re-**
2 **quirements**

3 (a) *GENERAL REQUIREMENTS.—(1) When a license is issued or transferred*
4 *under this chapter, the licensee or transferee shall obtain liability insurance*
5 *or demonstrate financial responsibility in amounts to compensate for the*
6 *maximum probable loss from claims by—*

7 (A) *a third party for death, bodily injury, or property damage or loss*
8 *resulting from an activity carried out under the license; and*

9 (B) *the United States Government against a person for damage or loss*
10 *to Government property resulting from an activity carried out under the*
11 *license.*

12 (2) *The Secretary of Transportation shall determine the amounts required*
13 *under paragraph (1)(A) and (B) of this subsection, after consulting with the*
14 *Administrator of the National Aeronautics and Space Administration, the*
15 *Secretary of the Air Force, and the heads of other appropriate executive agen-*
16 *cies.*

17 (3) *For the total claims related to one launch, a licensee or transferee is*
18 *not required to obtain insurance or demonstrate financial responsibility of*
19 *more than—*

20 (A)(i) *\$500,000,000 under paragraph (1)(A) of this subsection; or*

21 (ii) *\$100,000,000 under paragraph (1)(B) of this subsection; or*

22 (B) *the maximum liability insurance available on the world market*
23 *at reasonable cost if the amount is less than the applicable amount in*
24 *clause (A) of this paragraph.*

25 (4) *An insurance policy or demonstration of financial responsibility under*
26 *this subsection shall protect the following, to the extent of their potential li-*
27 *ability for involvement in launch services, at no cost to the Government:*

28 (A) *the Government.*

29 (B) *executive agencies and personnel, contractors, and subcontractors*
30 *of the Government.*

31 (C) *contractors, subcontractors, and customers of the licensee or trans-*
32 *feree.*

33 (D) *contractors and subcontractors of the customer.*

34 (b) *RECIPROCAL WAIVER OF CLAIMS.—(1) A license issued or transferred*
35 *under this chapter shall contain a provision requiring the licensee or trans-*
36 *feree to make a reciprocal waiver of claims with its contractors, subcontrac-*
37 *tors, and customers, and contractors and subcontractors of the customers, in-*
38 *volved in launch services under which each party to the waiver agrees to be*
39 *responsible for property damage or loss it sustains, or for personal injury to,*
40 *death of, or property damage or loss sustained by its own employees resulting*
41 *from an activity carried out under the license.*

1 (2) *The Secretary of Transportation shall make, for the Government, execu-*
2 *tive agencies of the Government involved in launch services, and contractors*
3 *and subcontractors involved in launch services, a reciprocal waiver of claims*
4 *with the licensee or transferee, contractors, subcontractors, and customers of*
5 *the licensee or transferee, and contractors and subcontractors of the customers,*
6 *involved in launch services under which each party to the waiver agrees to*
7 *be responsible for property damage or loss it sustains, or for personal injury*
8 *to, death of, or property damage or loss sustained by its own employees result-*
9 *ing from an activity carried out under the license. The waiver applies only*
10 *to the extent that claims are more than the amount of insurance or dem-*
11 *onstration of financial responsibility required under subsection (a)(1)(B) of*
12 *this section. After consulting with the Administrator and the Secretary of the*
13 *Air Force, the Secretary of Transportation may waive, for the Government*
14 *and a department, agency, and instrumentality of the Government, the right*
15 *to recover damages for damage or loss to Government property to the extent*
16 *insurance is not available because of a policy exclusion the Secretary of*
17 *Transportation decides is usual for the type of insurance involved.*

18 (c) *DETERMINATION OF MAXIMUM PROBABLE LOSSES.—The Secretary of*
19 *Transportation shall determine the maximum probable losses under subsection*
20 *(a)(1)(A) and (B) of this section associated with an activity under a license*
21 *not later than 90 days after a licensee or transferee requires a determination*
22 *and submits all information the Secretary requires. The Secretary shall*
23 *amend the determination as warranted by new information.*

24 (d) *ANNUAL REPORT.—(1) Not later than November 15 of each year, the*
25 *Secretary of Transportation shall submit to the Committee on Commerce,*
26 *Science, and Transportation of the Senate and the Committee on Science,*
27 *Space, and Technology of the House of Representatives a report on current*
28 *determinations made under subsection (c) of this section related to all issued*
29 *licenses and the reasons for the determinations.*

30 (2) *Not later than May 15 of each year, the Secretary of Transportation*
31 *shall review the amounts specified in subsection (a)(3)(A) of this section and*
32 *submit a report to Congress that contains proposed adjustments in the*
33 *amounts to conform with changed liability expectations and availability of*
34 *insurance on the world market. The proposed adjustment takes effect 30 days*
35 *after a report is submitted.*

36 (e) *LAUNCHES INVOLVING GOVERNMENT FACILITIES AND PERSONNEL.—*
37 *The Secretary of Transportation shall establish requirements consistent with*
38 *this chapter for proof of financial responsibility and other assurances nec-*
39 *essary to protect the Government and its executive agencies and personnel*
40 *from liability, death, bodily injury, or property damage or loss as a result*
41 *of a launch or operation of a launch site involving a facility or personnel*

1 of the Government. The Secretary may not relieve the Government of liability
 2 under this subsection for death, bodily injury, or property damage or loss re-
 3 sulting from the willful misconduct of the Government or its agents.

4 (f) *COLLECTION AND CREDITING PAYMENTS.*—The head of a department,
 5 agency, or instrumentality of the Government shall collect a payment owed
 6 for damage or loss to Government property under its jurisdiction or control
 7 resulting from an activity carried out under a license issued or transferred
 8 under this chapter. The payment shall be credited to the current applicable
 9 appropriation, fund, or account of the department, agency, or instrumentality.
 10

11 **§ 70113. Paying claims exceeding liability insurance and fi-**
 12 **ncial responsibility requirements**

13 (a) *GENERAL REQUIREMENTS.*—(1) To the extent provided in advance in
 14 an appropriation law or to the extent additional legislative authority is en-
 15 acted providing for paying claims in a compensation plan submitted under
 16 subsection (d) of this section, the Secretary of Transportation shall provide
 17 for the payment by the United States Government of a successful claim (in-
 18 cluding reasonable litigation or settlement expenses) of a third party against
 19 a licensee or transferee under this chapter, a contractor, subcontractor, or cus-
 20 tomer of the licensee or transferee, or a contractor or subcontractor of a cus-
 21 tomer, resulting from an activity carried out under the license issued or
 22 transferred under this chapter for death, bodily injury, or property damage
 23 or loss resulting from an activity carried out under the license. However,
 24 claims may be paid under this section only to the extent the total amount
 25 of successful claims related to one launch—

26 (A) is more than the amount of insurance or demonstration of finan-
 27 cial responsibility required under section 70112(a)(1)(A) of this title;
 28 and

29 (B) is not more than \$1,500,000,000 (plus additional amounts nec-
 30 essary to reflect inflation occurring after January 1, 1989) above that
 31 insurance or financial responsibility amount.

32 (2) The Secretary may not provide for paying a part of a claim for which
 33 death, bodily injury, or property damage or loss results from willful mis-
 34 conduct by the licensee or transferee. To the extent insurance required under
 35 section 70112(a)(1)(A) of this title is not available to cover a successful third
 36 party liability claim because of an insurance policy exclusion the Secretary
 37 decides is usual for the type of insurance involved, the Secretary may provide
 38 for paying the excluded claims without regard to the limitation contained in
 39 section 70112(a)(1).

40 (b) *NOTICE, PARTICIPATION, AND APPROVAL.*—Before a payment under
 41 subsection (a) of this section is made—

1 (1) notice must be given to the Government of a claim, or a civil ac-
2 tion related to the claim, against a party described in subsection (a)(1)
3 of this section for death, bodily injury, or property damage or loss;

4 (2) the Government must be given an opportunity to participate or
5 assist in the defense of the claim or action; and

6 (3) the Secretary must approve any part of a settlement to be paid
7 out of appropriations of the Government.

8 (c) *WITHHOLDING PAYMENTS.*—The Secretary may withhold a payment
9 under subsection (a) of this section if the Secretary certifies that the amount
10 is not reasonable. However, the Secretary shall deem to be reasonable the
11 amount of a claim finally decided by a court of competent jurisdiction.

12 (d) *SURVEYS, REPORTS, AND COMPENSATION PLANS.*—(1) If as a result of
13 an activity carried out under a license issued or transferred under this chap-
14 ter the total of claims related to one launch is likely to be more than the
15 amount of required insurance or demonstration of financial responsibility, the
16 Secretary shall—

17 (A) survey the causes and extent of damage; and

18 (B) submit expeditiously to Congress a report on the results of the sur-
19 vey.

20 (2) Not later than 90 days after a court determination indicates that the
21 liability for the total of claims related to one launch may be more than the
22 required amount of insurance or demonstration of financial responsibility, the
23 President, on the recommendation of the Secretary, shall submit to Congress
24 a compensation plan that—

25 (A) outlines the total dollar value of the claims;

26 (B) recommends sources of amounts to pay for the claims;

27 (C) includes legislative language required to carry out the plan if ad-
28 ditional legislative authority is required; and

29 (D) for a single event or incident, may not be for more than
30 \$1,500,000,000.

31 (3) A compensation plan submitted to Congress under paragraph (2) of this
32 subsection shall—

33 (A) have an identification number; and

34 (B) be submitted to the Senate and the House of Representatives on
35 the same day and when the Senate and House are in session.

36 (e) *CONGRESSIONAL RESOLUTIONS.*—(1) In this subsection, “resolution”—

37 (A) means a joint resolution of Congress the matter after the resolving
38 clause of which is as follows: “That the Congress approves the compensa-
39 tion plan numbered _____ submitted to the Congress on
40 _____, 19____.”, with the blank spaces being filled appro-
41 priately; but

1 (B) does not include a resolution that includes more than one com-
2 pensation plan.

3 (2) The Senate shall consider under this subsection a compensation plan
4 requiring additional appropriations or legislative authority not later than 60
5 calendar days of continuous session of Congress after the date on which the
6 plan is submitted to Congress.

7 (3) A resolution introduced in the Senate shall be referred immediately to
8 a committee by the President of the Senate. All resolutions related to the same
9 plan shall be referred to the same committee.

10 (4)(A) If the committee of the Senate to which a resolution has been re-
11 ferred does not report the resolution within 20 calendar days after it is re-
12 ferred, a motion is in order to discharge the committee from further consider-
13 ation of the resolution or to discharge the committee from further consider-
14 ation of the plan.

15 (B) A motion to discharge may be made only by an individual favoring
16 the resolution and is highly privileged (except that the motion may not be
17 made after the committee has reported a resolution on the plan). Debate on
18 the motion is limited to one hour, to be divided equally between those favoring
19 and those opposing the resolution. An amendment to the motion is not in
20 order. A motion to reconsider the vote by which the motion is agreed to or
21 disagreed to is not in order.

22 (C) If the motion to discharge is agreed to or disagreed to, the motion may
23 not be renewed and another motion to discharge the committee from another
24 resolution on the same plan may not be made.

25 (5)(A) After a committee of the Senate reports, or is discharged from fur-
26 ther consideration of, a resolution, a motion to proceed to the consideration
27 of the resolution is in order at any time, even though a similar previous mo-
28 tion has been disagreed to. The motion is highly privileged and is not debat-
29 able. An amendment to the motion is not in order. A motion to reconsider
30 the vote by which the motion is agreed to or disagreed to is not in order.

31 (B) Debate on the resolution referred to in subparagraph (A) of this para-
32 graph is limited to not more than 10 hours, to be divided equally between
33 those favoring and those opposing the resolution. A motion further to limit
34 debate is not debatable. An amendment to, or motion to recommit, the resolu-
35 tion is not in order. A motion to reconsider the vote by which the resolution
36 is agreed to or disagreed to is not in order.

37 (6) The following shall be decided in the Senate without debate:

38 (A) a motion to postpone related to the discharge from committee.

39 (B) a motion to postpone consideration of a resolution.

40 (C) a motion to proceed to the consideration of other business.

1 (D) an appeal from a decision of the chair related to the application
2 of the rules of the Senate to the procedures related to resolution.

3 (f) APPLICATION.—This section applies to a license issued or transferred
4 under this chapter for which the Secretary receives a complete and valid ap-
5 plication not later than December 31, 1999.

6 **§ 70114. Disclosing information**

7 The Secretary of Transportation, an officer or employee of the United
8 States Government, or a person making a contract with the Secretary under
9 section 70106(b) of this title may disclose information under this chapter that
10 qualifies for an exemption under section 552(b)(4) of title 5 or is designated
11 as confidential by the person or head of the executive agency providing the
12 information only if the Secretary decides withholding the information is con-
13 trary to the public or national interest.

14 **§ 70115. Enforcement and penalty**

15 (a) PROHIBITIONS.—A person may not violate this chapter, a regulation
16 prescribed under this chapter, or any term of a license issued or transferred
17 under this chapter.

18 (b) GENERAL AUTHORITY.—(1) In carrying out this chapter, the Secretary
19 of Transportation may—

20 (A) conduct investigations and inquiries;

21 (B) administer oaths;

22 (C) take affidavits; and

23 (D) under lawful process—

24 (i) enter at a reasonable time a launch site, production facility,
25 assembly site of a launch vehicle, or site at which a payload is inte-
26 grated with a launch vehicle to inspect an object to which this chap-
27 ter applies or a record or report the Secretary requires be made or
28 kept under this chapter; and

29 (ii) seize the object, record, or report when there is probable cause
30 to believe the object, record, or report was used, is being used, or
31 likely will be used in violation of this chapter.

32 (2) The Secretary may delegate a duty or power under this chapter related
33 to enforcement to an officer or employee of another executive agency with the
34 consent of the head of the agency.

35 (c) CIVIL PENALTY.—(1) After notice and an opportunity for a hearing on
36 the record, a person the Secretary finds to have violated subsection (a) of this
37 section is liable to the United States Government for a civil penalty of not
38 more than \$100,000. A separate violation occurs for each day the violation
39 continues.

40 (2) In conducting a hearing under paragraph (1) of this subsection, the
41 Secretary may—

1 (A) subpoena witnesses and records; and

2 (B) enforce a subpoena in an appropriate district court of the United
3 States.

4 (3) The Secretary shall impose the civil penalty by written notice. The Sec-
5 retary may compromise or remit a penalty imposed, or that may be imposed,
6 under this section.

7 (4) The Secretary shall recover a civil penalty not paid after the penalty
8 is final or after a court enters a final judgment for the Secretary.

9 **§ 70116. Consultation**

10 (a) *MATTERS AFFECTING NATIONAL SECURITY.*—The Secretary of Trans-
11 portation shall consult with the Secretary of Defense on a matter under this
12 chapter affecting national security. The Secretary of Defense shall identify
13 and notify the Secretary of Transportation of a national security interest rel-
14 evant to an activity under this chapter.

15 (b) *MATTERS AFFECTING FOREIGN POLICY.*—The Secretary of Transpor-
16 tation shall consult with the Secretary of State on a matter under this chap-
17 ter affecting foreign policy. The Secretary of State shall identify and notify
18 the Secretary of Transportation of a foreign policy interest or obligation rel-
19 evant to an activity under this chapter.

20 (c) *OTHER MATTERS.*—In carrying out this chapter, the Secretary of
21 Transportation shall consult with the head of another executive agency—

22 (1) to provide consistent application of licensing requirements under
23 this chapter;

24 (2) to ensure fair treatment for all license applicants; and

25 (3) when appropriate.

26 **§ 70117. Relationship to other executive agencies, laws, and**
27 **international obligations**

28 (a) *EXECUTIVE AGENCIES.*—Except as provided in this chapter, a person
29 is not required to obtain from an executive agency a license, approval, waiver,
30 or exemption to launch a launch vehicle or operate a launch site.

31 (b) *FEDERAL COMMUNICATIONS COMMISSION AND SECRETARY OF COM-*
32 *MERCE.*—This chapter does not affect the authority of—

33 (1) the Federal Communications Commission under the Communica-
34 tions Act of 1934 (47 U.S.C. 151 et seq.); or

35 (2) the Secretary of Commerce under the Land Remote-Sensing Com-
36 mercialization Act of 1984 (15 U.S.C. 4201 et seq.).

37 (c) *STATES AND POLITICAL SUBDIVISIONS.*—A State or political subdivi-
38 sion of a State—

39 (1) may not adopt or have in effect a law, regulation, standard, or
40 order inconsistent with this chapter; but

1 (2) may adopt or have in effect a law, regulation, standard, or order
2 consistent with this chapter that is in addition to or more stringent than
3 a requirement of, or regulation prescribed under, this chapter.

4 (d) *CONSULTATION.*—The Secretary of Transportation is encouraged to
5 consult with a State to simplify and expedite the approval of a space launch
6 activity.

7 (e) *FOREIGN COUNTRIES.*—The Secretary of Transportation shall—
8 (1) carry out this chapter consistent with an obligation the United
9 States Government assumes in a treaty, convention, or agreement in
10 force between the Government and the government of a foreign country;
11 and

12 (2) consider applicable laws and requirements of a foreign country
13 when carrying out this chapter.

14 (f) *LAUNCH NOT AN EXPORT.*—A launch vehicle or payload that is
15 launched is not, because of the launch, an export for purposes of a law con-
16 trolling exports.

17 (g) *NONAPPLICATION.*—This chapter does not apply to—

18 (1) a launch, operation of a launch vehicle or launch site, or other
19 space activity the Government carries out for the Government; or

20 (2) planning or policies related to the launch, operation, or activity.

21 **§ 70118. User fees**

22 The Secretary of Transportation may collect a user fee for a regulatory or
23 other service conducted under this chapter only if specifically authorized by
24 this chapter.

25 **§ 70119. Authorization of appropriations**

26 The following amounts may be appropriated to the Secretary of Transpor-
27 tation for the fiscal year ending September 30, 1993:

28 (1) \$4,900,000 to carry out this chapter.

29 (2) \$20,000,000 for a program to ensure the resiliency of the space
30 launch infrastructure of the United States if a law is enacted to establish
31 that program in the Department of Transportation.

32 **CHAPTER 703—SPACE TRANSPORTATION**
33 **INFRASTRUCTURE MATCHING GRANTS**

Sec.

70301. Definitions.

70302. Grant authority.

70303. Grant applications.

70304. Environmental requirements.

70305. Authorization of appropriations.

34 **§ 70301. Definitions**

35 In this chapter—

1 (1) the definitions in section 502 of the National Aeronautics and
2 Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C.
3 5802) apply.

4 (2) “commercial space transportation infrastructure development” in-
5 cludes—

6 (A) construction, improvement, design, and engineering of space
7 transportation infrastructure in the United States; and

8 (B) technical studies to define how new or enhanced space trans-
9 portation infrastructure can best meet the needs of the United States
10 commercial space transportation industry.

11 (3) “project” means a project (or separate projects submitted together)
12 to carry out commercial space transportation infrastructure development,
13 including the combined submission of all projects to be undertaken at a
14 particular site in a fiscal year.

15 (4) “project grant” means a grant of an amount by the Secretary of
16 Transportation to a sponsor for one or more projects.

17 (5) “public agency” means a State or an agency of a State, a political
18 subdivision of a State, or a tax-supported organization.

19 (6) “sponsor” means a public agency that, individually or jointly with
20 one or more other public agencies, submits to the Secretary under this
21 chapter an application for a project grant.

22 **§ 70302. Grant authority**

23 (a) *GENERAL AUTHORITY.*—To ensure the resiliency of the space transpor-
24 tation infrastructure of the United States, the Secretary of Transportation
25 may make project grants to sponsors as provided in this chapter.

26 (b) *LIMITATIONS.*—The Secretary may make a project grant under this
27 chapter only if—

28 (1) at least 10 percent of the total cost of the project will be paid by
29 the private sector; and

30 (2) the grant will not be for more than 50 percent of the total cost
31 of the project.

32 **§ 70303. Grant applications**

33 (a) *GENERAL.*—A sponsor may submit to the Secretary of Transportation
34 an application for a project grant. The application must state the project to
35 be undertaken and be in the form and contain the information the Secretary
36 requires.

37 (b) *CONSIDERATIONS AND CONSULTATION.*—(1) In selecting proposed
38 projects for grants under this section, the Secretary of Transportation shall
39 consider—

40 (A) the contribution of the project to industry capabilities that serve
41 the United States Government’s space transportation needs;

- 1 (B) the extent of industry's financial contribution to the project;
2 (C) the extent of industry's participation in the project;
3 (D) the positive impact of the project on the international competitive-
4 ness of the United States space transportation industry;
5 (E) the extent of State contributions to the project; and
6 (F) the impact of the project on launch operations and other activities
7 at Government launch ranges.

8 (2) The Secretary of Transportation shall consult with the Secretary of De-
9 fense, the Administrator of the National Space and Aeronautics Administra-
10 tion, and the heads of other appropriate agencies of the Government about
11 paragraph (1)(A) and (F) of this subsection.

12 (c) *REQUIREMENTS.*—The Secretary of Transportation may approve an
13 application only if the Secretary is satisfied that—

- 14 (1) the project will contribute to the purposes of this chapter;
15 (2) the project is reasonably consistent with plans (existing at the time
16 of approval of the project) of public agencies that are—

- 17 (A) authorized by the State in which the project is located; and
18 (B) responsible for the development of the area surrounding the
19 project site;

20 (3) if the application proposes to use Government property, the spe-
21 cific consent of the head of the appropriate agency has been obtained;

22 (4) the project will be completed without unreasonable delay;

23 (5) the sponsor submitting the application has the legal authority to
24 engage in the project; and

25 (6) any additional requirements prescribed by the Secretary have been
26 met.

27 (d) *PREFERENCE FOR INDUSTRY CONTRIBUTIONS.*—The Secretary of
28 Transportation shall give preference to applications for projects for which
29 there will be greater industry financial contributions, all other factors being
30 equal.

31 **§ 70304. Environmental requirements**

32 (a) *POLICY.*—It is the policy of the United States that projects selected
33 under this chapter shall provide for the protection and enhancement of the
34 natural resources and the quality of the environment of the United States.
35 In carrying out this policy, the Secretary of Transportation shall consult with
36 the Secretary of the Interior and the Administrator of the Environmental
37 Protection Agency about a project that may have a significant effect on natu-
38 ral resources, including fish and wildlife, natural, scenic, and recreational as-
39 sets, water and air quality, and other factors affecting the environment. If
40 the Secretary of Transportation finds that a project will have a significant
41 adverse effect, the Secretary may approve the application for the project only

1 *if, after a complete review that is a matter of public record, the Secretary*
2 *makes a written finding that no feasible and prudent alternative to the*
3 *project exists and that all reasonable steps have been taken to minimize the*
4 *adverse effect.*

5 *(b) PUBLIC HEARING REQUIREMENT.—The Secretary of Transportation*
6 *may approve an application only if the sponsor of the project certifies to the*
7 *Secretary that an opportunity for a public hearing has been provided to con-*
8 *sider the economic, social, and environmental effects of the project and its con-*
9 *sistency with the goals of any planning carried out by the community. When*
10 *a hearing is held under this paragraph, the sponsor shall submit a copy of*
11 *the transcript of the hearing to the Secretary.*

12 *(c) COMPLIANCE WITH AIR AND WATER QUALITY STANDARDS.—(1) The*
13 *Secretary of Transportation may approve an application only if the chief ex-*
14 *ecutive officer of the State in which the project is located certifies in writing*
15 *to the Secretary that there is reasonable assurance that the project will be lo-*
16 *cated, designed, constructed, and operated to comply with applicable air and*
17 *water quality standards. If the Administrator has not prescribed those stand-*
18 *ards, certification shall be obtained from the Administrator. Notice of certifi-*
19 *cation or refusal to certify shall be provided not later than 60 days after the*
20 *Secretary receives the application.*

21 *(2) The Secretary of Transportation shall condition the approval of an ap-*
22 *plication on compliance with applicable air and water quality standards dur-*
23 *ing construction and operation.*

24 *(d) COMPLIANCE WITH LAWS AND REGULATIONS.—The Secretary of Trans-*
25 *portation may require a certification from a sponsor that the sponsor will*
26 *comply with all applicable laws and regulations. The Secretary may rescind*
27 *at any time acceptance of a certification from a sponsor under this sub-*
28 *section. This subsection does not affect any responsibility of the Secretary*
29 *under another law, including—*

30 *(1) section 303 of this title;*

31 *(2) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);*

32 *(3) title VIII of the Act of April 11, 1968 (42 U.S.C. 3601 et seq.);*

33 *(4) the National Environmental Policy Act of 1969 (42 U.S.C. 4321*
34 *et seq.); and*

35 *(5) the Uniform Relocation Assistance and Real Property Acquisition*
36 *Policies Act of 1970 (42 U.S.C. 4601 et seq.).*

37 **§ 70305. Authorization of appropriations**

38 *Not more than \$10,000,000 may be appropriated to the Secretary of Trans-*
39 *portation to make grants under this chapter. Amounts appropriated under*
40 *this section remain available until expended.*

1

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 carriers.
80116. Criminal penalty.

2 § 80101. Definitions

3 In this chapter—

4 (1) “consignee” means the person named in a bill of lading as the per-
5 son to whom the goods are to be delivered.

6 (2) “consignor” means the person named in a bill of lading as the per-
7 son from whom the goods have been received for shipment.

8 (3) “goods” means merchandise or personal property that has been, is
9 being, or will be transported.

10 (4) “holder” means a person having possession of, and a property
11 right in, a bill of lading.

12 (5) “order” means an order by indorsement on a bill of lading.

13 (6) “purchase” includes taking by mortgage or pledge.

14 (7) “State” means a State of the United States, the District of Colum-
15 bia, and a territory or possession of the United States.

16 § 80102. Application

17 This chapter applies to a bill of lading when the bill is issued by a common
18 carrier for the transportation of goods—

19 (1) between a place in the District of Columbia and another place in
20 the District of Columbia;

21 (2) between a place in a territory or possession of the United States
22 and another place in the same territory or possession;

23 (3) between a place in a State and a place in another State;

24 (4) between a place in a State and a place in the same State through
25 another State or a foreign country; or

(5) from a place in a State to a place in a foreign country.

§ 80103. Negotiable and nonnegotiable bills

(a) *NEGOTIABLE BILLS.*—(1) A bill of lading is negotiable if the bill—

(A) states that the goods are to be delivered to the order of a consignee;

and

(B) does not contain on its face an agreement with the shipper that the bill is not negotiable.

(2) Inserting in a negotiable bill of lading the name of a person to be notified of the arrival of the goods—

(A) does not limit its negotiability; and

(B) is not notice to the purchaser of the goods of a right the named person has to the goods.

(b) *NONNEGOTIABLE BILLS.*—(1) A bill of lading is nonnegotiable if the bill states that the goods are to be delivered to a consignee. The indorsement of a nonnegotiable bill does not—

(A) make the bill negotiable; or

(B) give the transferee any additional right.

(2) A common carrier issuing a nonnegotiable bill of lading must put “nonnegotiable” or “not negotiable” on the bill. This paragraph does not apply to an informal memorandum or acknowledgment.

§ 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 with-

1 out notice of the breach of duty, fraud, accident, mistake, duress, loss, theft,
2 or conversion.

3 (c) *NEGOTIATION BY SELLER, MORTGAGOR, OR PLEDGOR TO PERSON*
4 *WITHOUT NOTICE.*—When goods for which a negotiable bill of lading has been
5 issued are in a common carrier's possession, and the person to whom the bill
6 has been issued retains possession of the bill after selling, mortgaging, or
7 pledging the goods or bill, the subsequent negotiation of the bill by that person
8 to another person receiving the bill for value, in good faith, and without no-
9 tice of the prior sale, mortgage, or pledge has the same effect as if the first
10 purchaser of the goods or bill had expressly authorized the subsequent negotia-
11 tion.

12 **§ 80105. Title and rights affected by negotiation**

13 (a) *TITLE.*—When a negotiable bill of lading is negotiated—

14 (1) the person to whom it is negotiated acquires the title to the goods
15 that—

16 (A) the person negotiating the bill had the ability to convey to
17 a purchaser in good faith for value; and

18 (B) the consignor and consignee had the ability to convey to such
19 a purchaser; and

20 (2) the common carrier issuing the bill becomes obligated directly to
21 the person to whom the bill is negotiated to hold possession of the goods
22 under the terms of the bill the same as if the carrier had issued the bill
23 to that person.

24 (b) *SUPERIORITY OF RIGHTS.*—When a negotiable bill of lading is nego-
25 tiated to a person for value in good faith, that person's right to the goods
26 for which the bill was issued is superior to a seller's lien or to a right to
27 stop the transportation of the goods. This subsection applies whether the nego-
28 tiation is made before or after the common carrier issuing the bill receives
29 notice of the seller's claim. The carrier may deliver the goods to an unpaid
30 seller only if the bill first is surrendered for cancellation.

31 (c) *MORTGAGEE AND LIEN HOLDER RIGHTS NOT AFFECTED.*—Except as
32 provided in subsection (b) of this section, this chapter does not limit a right
33 of a mortgagee or lien holder having a mortgage or lien on goods against a
34 person that purchased for value in good faith from the owner, and got posses-
35 sion of the goods immediately before delivery to the common carrier.

36 **§ 80106. Transfer without negotiation**

37 (a) *DELIVERY AND AGREEMENT.*—The holder of a bill of lading may trans-
38 fer the bill without negotiating it by delivery and agreement to transfer title
39 to the bill or to the goods represented by it. Subject to the agreement, the per-
40 son to whom the bill is transferred has title to the goods against the trans-
41 feror.

1 (b) *COMPELLING INDORSEMENT.*—When a negotiable bill of lading is trans-
 2 ferred for value by delivery without being negotiated and indorsement of the
 3 transferor is essential for negotiation, the transferee may compel the trans-
 4 feror to indorse the bill unless a contrary intention appears. The negotiation
 5 is effective when the indorsement is made.

6 (c) *EFFECT OF NOTIFICATION.*—(1) When a transferee notifies the common
 7 carrier that a nonnegotiable bill of lading has been transferred under sub-
 8 section (a) of this section, the carrier is obligated directly to the transferee
 9 for any obligations the carrier owed to the transferor immediately before the
 10 notification. However, before the carrier is notified, the transferee’s title to the
 11 goods and right to acquire the obligations of the carrier may be defeated by—

12 (A) garnishment, attachment, or execution on the goods by a creditor
 13 of the transferor; or

14 (B) notice to the carrier by the transferor or a purchaser from the
 15 transferor of a later purchase of the goods from the transferor.

16 (2) A common carrier has been notified under this subsection only if—

17 (A) an officer or agent of the carrier, whose actual or apparent au-
 18 thority includes acting on the notification, has been notified; and

19 (B) the officer or agent has had time, exercising reasonable diligence,
 20 to communicate with the agent having possession or control of the goods.

21 **§80107. Warranties and liability**

22 (a) *GENERAL RULE.*—Unless a contrary intention appears, a person nego-
 23 tiating or transferring a bill of lading for value warrants that—

24 (1) the bill is genuine;

25 (2) the person has the right to transfer the bill and the title to the
 26 goods described in the bill;

27 (3) the person does not know of a fact that would affect the validity
 28 or worth of the bill; and

29 (4) the goods are merchantable or fit for a particular purpose when
 30 merchantability or fitness would have been implied if the agreement of
 31 the parties had been to transfer the goods without a bill of lading.

32 (b) *SECURITY FOR DEBT.*—A person holding a bill of lading as security
 33 for a debt and in good faith demanding or receiving payment of the debt from
 34 another person does not warrant by the demand or receipt—

35 (1) the genuineness of the bill; or

36 (2) the quantity or quality of the goods described in the bill.

37 (c) *DUPLICATES.*—A common carrier issuing a bill of lading, on the face
 38 of which is the word “duplicate” or another word indicating that the bill is
 39 not an original bill, is liable the same as a person that represents and war-
 40 rants that the bill is an accurate copy of an original bill properly issued.
 41 The carrier is not otherwise liable under the bill.

1 (d) *INDORSER LIABILITY.*—Indorsement of a bill of lading does not make
2 the indorser liable for failure of the common carrier or a previous indorser
3 to fulfill its obligations.

4 **§ 80108. Alterations and additions**

5 An alteration or addition to a bill of lading after its issuance by a common
6 carrier, without authorization from the carrier in writing or noted on the bill,
7 is void. However, the original terms of the bill are enforceable.

8 **§ 80109. Liens under negotiable bills**

9 A common carrier issuing a negotiable bill of lading has a lien on the goods
10 covered by the bill for—

11 (1) charges for storage, transportation, and delivery (including demur-
12 rage and terminal charges), and expenses necessary to preserve the goods
13 or incidental to transporting the goods after the date of the bill; and

14 (2) other charges for which the bill expressly specifies a lien is claimed
15 to the extent the charges are allowed by law and the agreement between
16 the consignor and carrier.

17 **§ 80110. Duty to deliver goods**

18 (a) *GENERAL RULES.*—Except to the extent a common carrier establishes
19 an excuse provided by law, the carrier must deliver goods covered by a bill
20 of lading on demand of the consignee named in a nonnegotiable bill or the
21 holder of a negotiable bill for the goods when the consignee or holder—

22 (1) offers in good faith to satisfy the lien of the carrier on the goods;

23 (2) has possession of the bill and, if a negotiable bill, offers to indorse
24 and give the bill to the carrier; and

25 (3) agrees to sign, on delivery of the goods, a receipt for delivery if
26 requested by the carrier.

27 (b) *PERSONS TO WHOM GOODS MAY BE DELIVERED.*—Subject to section
28 80111 of this title, a common carrier may deliver the goods covered by a bill
29 of lading to—

30 (1) a person entitled to their possession;

31 (2) the consignee named in a nonnegotiable bill; or

32 (3) a person in possession of a negotiable bill if—

33 (A) the goods are deliverable to the order of that person; or

34 (B) the bill has been indorsed to that person or in blank by the
35 consignee or another indorsee.

36 (c) *COMMON CARRIER CLAIMS OF TITLE AND POSSESSION.*—A claim by a
37 common carrier that the carrier has title to goods or right to their possession
38 is an excuse for nondelivery of the goods only if the title or right is derived
39 from—

40 (1) a transfer made by the consignor or consignee after the shipment;

41 or

1 (2) *the carrier's lien.*

2 (d) *ADVERSE CLAIMS.—If a person other than the consignee or the person*
 3 *in possession of a bill of lading claims title to or possession of goods and the*
 4 *common carrier knows of the claim, the carrier is not required to deliver the*
 5 *goods to any claimant until the carrier has had a reasonable time to decide*
 6 *the validity of the adverse claim or to bring a civil action to require all*
 7 *claimants to interplead.*

8 (e) *INTERPLEADER.—If at least 2 persons claim title to or possession of the*
 9 *goods, the common carrier may—*

10 (1) *bring a civil action to interplead all known claimants to the goods;*

11 *or*

12 (2) *require those claimants to interplead as a defense in an action*
 13 *brought against the carrier for nondelivery.*

14 (f) *THIRD PERSON CLAIMS NOT A DEFENSE.—Except as provided in sub-*
 15 *sections (b), (d), and (e) of this section, title or a right of a third person is*
 16 *not a defense to an action brought by the consignee of a nonnegotiable bill*
 17 *of lading or by the holder of a negotiable bill against the common carrier for*
 18 *failure to deliver the goods on demand unless enforced by legal process.*

19 **§ 80111. Liability for delivery of goods**

20 (a) *GENERAL RULES.—A common carrier is liable for damages to a person*
 21 *having title to, or right to possession of, goods when—*

22 (1) *the carrier delivers the goods to a person not entitled to their pos-*
 23 *session unless the delivery is authorized under section 80110(b)(2) or (3)*
 24 *of this title;*

25 (2) *the carrier makes a delivery under section 80110(b)(2) or (3) of*
 26 *this title after being requested by or for a person having title to, or right*
 27 *to possession of, the goods not to make the delivery; or*

28 (3) *at the time of delivery under section 80110(b)(2) or (3) of this*
 29 *title, the carrier has information it is delivering the goods to a person*
 30 *not entitled to their possession.*

31 (b) *EFFECTIVENESS OF REQUEST OR INFORMATION.—A request or infor-*
 32 *mation is effective under subsection (a)(2) or (3) of this section only if—*

33 (1) *an officer or agent of the carrier, whose actual or apparent author-*
 34 *ity includes acting on the request or information, has been given the re-*
 35 *quest or information; and*

36 (2) *the officer or agent has had time, exercising reasonable diligence,*
 37 *to stop delivery of the goods.*

38 (c) *FAILURE TO TAKE AND CANCEL BILLS.—Except as provided in sub-*
 39 *section (d) of this section, if a common carrier delivers goods for which a ne-*
 40 *gotiable bill of lading has been issued without taking and canceling the bill,*
 41 *the carrier is liable for damages for failure to deliver the goods to a person*

1 purchasing the bill for value in good faith whether the purchase was before
 2 or after delivery and even when delivery was made to the person entitled to
 3 the goods. The carrier also is liable under this paragraph if part of the goods
 4 are delivered without taking and canceling the bill or plainly noting on the
 5 bill that a partial delivery was made and generally describing the goods or
 6 the remaining goods kept by the carrier.

7 (d) *EXCEPTIONS TO LIABILITY.*—A common carrier is not liable for failure
 8 to deliver goods to the consignee or owner of the goods or a holder of the bill
 9 if—

10 (1) a delivery described in subsection (c) of this section was compelled
 11 by legal process;

12 (2) the goods have been sold lawfully to satisfy the carrier's lien;

13 (3) the goods have not been claimed; or

14 (4) the goods are perishable or hazardous.

15 **§80112. Liability under negotiable bills issued in parts, sets,
 16 or duplicates**

17 (a) *PARTS AND SETS.*—A negotiable bill of lading issued in a State for
 18 the transportation of goods to a place in the 48 contiguous States or the Dis-
 19 trict of Columbia may not be issued in parts or sets. A common carrier issu-
 20 ing a bill in violation of this subsection is liable for damages for failure to
 21 deliver the goods to a purchaser of one part for value in good faith even
 22 though the purchase occurred after the carrier delivered the goods to a holder
 23 of one of the other parts.

24 (b) *DUPLICATES.*—When at least 2 negotiable bills of lading are issued in
 25 a State for the same goods to be transported to a place in the 48 contiguous
 26 States or the District of Columbia, the word “duplicate” or another word in-
 27 dicating that the bill is not an original must be put plainly on the face of
 28 each bill except the original. A common carrier violating this subsection is
 29 liable for damages caused by the violation to a purchaser of the bill for value
 30 in good faith as an original bill even though the purchase occurred after the
 31 carrier delivered the goods to the holder of the original bill.

32 **§80113. Liability for nonreceipt, misdescription, and im-
 33 proper loading**

34 (a) *LIABILITY FOR NONRECEIPT AND MISDESCRIPTION.*—Except as pro-
 35 vided in this section, a common carrier issuing a bill of lading is liable for
 36 damages caused by nonreceipt by the carrier of any part of the goods by the
 37 date shown in the bill or by failure of the goods to correspond with the de-
 38 scription contained in the bill. The carrier is liable to the owner of goods
 39 transported under a nonnegotiable bill (subject to the right of stoppage in
 40 transit) or to the holder of a negotiable bill if the owner or holder gave value

1 *in good faith relying on the description of the goods in the bill or on the ship-*
 2 *ment being made on the date shown in the bill.*

3 (b) *NONLIABILITY OF CARRIERS.*—A common carrier issuing a bill of lad-
 4 *ing is not liable under subsection (a) of this section—*

5 (1) *when the goods are loaded by the shipper;*

6 (2) *when the bill—*

7 (A) *describes the goods in terms of marks or labels, or in a state-*
 8 *ment about kind, quantity, or condition; or*

9 (B) *is qualified by “contents or condition of contents of packages*
 10 *unknown”, “said to contain”, “shipper’s weight, load, and count”,*
 11 *or words of the same meaning; and*

12 (3) *to the extent the carrier does not know whether any part of the*
 13 *goods were received or conform to the description.*

14 (c) *LIABILITY FOR IMPROPER LOADING.*—A common carrier issuing a bill
 15 *of lading is not liable for damages caused by improper loading if—*

16 (1) *the shipper loads the goods; and*

17 (2) *the bill contains the words “shipper’s weight, load, and count”, or*
 18 *words of the same meaning indicating the shipper loaded the goods.*

19 (d) *CARRIER’S DUTY TO DETERMINE KIND, QUANTITY, AND NUMBER.*—(1)
 20 *When bulk freight is loaded by a shipper that makes available to the common*
 21 *carrier adequate facilities for weighing the freight, the carrier must determine*
 22 *the kind and quantity of the freight within a reasonable time after receiving*
 23 *the written request of the shipper to make the determination. In that situa-*
 24 *tion, inserting the words “shipper’s weight” or words of the same meaning*
 25 *in the bill of lading has no effect.*

26 (2) *When goods are loaded by a common carrier, the carrier must count*
 27 *the packages of goods, if package freight, and determine the kind and quan-*
 28 *tity, if bulk freight. In that situation, inserting in the bill of lading or in*
 29 *a notice, receipt, contract, rule, or tariff, the words “shipper’s weight, load,*
 30 *and count” or words indicating that the shipper described and loaded the*
 31 *goods, has no effect except for freight concealed by packages.*

32 **§80114. Lost, stolen, and destroyed negotiable bills**

33 (a) *DELIVERY ON COURT ORDER AND SURETY BOND.*—If a negotiable bill
 34 *of lading is lost, stolen, or destroyed, a court of competent jurisdiction may*
 35 *order the common carrier to deliver the goods if the person claiming the goods*
 36 *gives a surety bond, in an amount approved by the court, to indemnify the*
 37 *carrier or a person injured by delivery against liability under the outstanding*
 38 *original bill. The court also may order payment of reasonable costs and attor-*
 39 *ney’s fees to the carrier. A voluntary surety bond, without court order, is*
 40 *binding on the parties to the bond.*

1 (b) *LIABILITY TO HOLDER.*—Delivery of goods under a court order under
 2 subsection (a) of this section does not relieve a common carrier from liability
 3 to a person to whom the negotiable bill has been or is negotiated for value
 4 without notice of the court proceeding or of the delivery of the goods.

5 **§80115. Limitation on use of judicial process to obtain pos-**
 6 **session of goods from common carriers**

7 (a) *ATTACHMENT AND LEVY.*—Except when a negotiable bill of lading was
 8 issued originally on delivery of goods by a person that did not have the power
 9 to dispose of the goods, goods in the possession of a common carrier for which
 10 a negotiable bill has been issued may be attached through judicial process or
 11 levied on in execution of a judgment only if the bill is surrendered to the car-
 12 rier or its negotiation is enjoined.

13 (b) *DELIVERY.*—A common carrier may be compelled by judicial process
 14 to deliver goods under subsection (a) of this section only when the bill is sur-
 15 rendered to the carrier or impounded by the court.

16 **§80116. Criminal penalty**

17 A person shall be fined under title 18, imprisoned for not more than 5
 18 years, or both, if the person—

19 (1) violates this chapter with intent to defraud; or

20 (2) knowingly or with intent to defraud—

21 (A) falsely makes, alters, or copies a bill of lading subject to this
 22 chapter;

23 (B) utters, publishes, or issues a falsely made, altered, or copied
 24 bill subject to this chapter; or

25 (C) negotiates or transfers for value a bill containing a false
 26 statement.

27 **CHAPTER 803—CONTRABAND**

Sec.

80301. Definitions.

80302. Prohibitions.

80303. Seizure and forfeiture.

80304. Administrative.

80305. Availability of certain appropriations.

80306. Relationship to other laws.

28 **§80301. Definitions**

29 In this chapter—

30 (1) “aircraft” means a contrivance used, or capable of being used, for
 31 transportation in the air.

32 (2) “vehicle” means a contrivance used, or capable of being used, for
 33 transportation on, below, or above land, but does not include aircraft.

34 (3) “vessel” means a contrivance used, or capable of being used, for
 35 transportation in water, but does not include aircraft.

1 **§ 80302. Prohibitions**

2 (a) *DEFINITION.*—In this section, “contraband” means—

3 (1) a narcotic drug (as defined in section 102 of the Comprehensive
4 Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)), in-
5 cluding marihuana (as defined in section 102 of that Act (21 U.S.C.
6 802)), that—

7 (A) is possessed with intent to sell or offer for sale in violation
8 of the laws and regulations of the United States;

9 (B) is acquired, possessed, sold, transferred, or offered for sale in
10 violation of those laws;

11 (C) is acquired by theft, robbery, or burglary and transported—

12 (i) in the District of Columbia or a territory or possession
13 of the United States; or

14 (ii) from a place in a State, the District of Columbia, or a
15 territory or possession of the United States, to a place in an-
16 other State, the District of Columbia, or a territory or posses-
17 sion; or

18 (D) does not bear tax-paid internal revenue stamps required by
19 those laws or regulations;

20 (2) a firearm involved in a violation of chapter 53 of the Internal
21 Revenue Code of 1986 (26 U.S.C. 5801 et seq.);

22 (3) a forged, altered, or counterfeit—

23 (A) coin or an obligation or other security of the United States
24 Government (as defined in section 8 of title 18); or

25 (B) coin, obligation, or other security of the government of a for-
26 eign country;

27 (4) material or equipment used, or intended to be used, in making a
28 coin, obligation, or other security referred to in clause (3) of this sub-
29 section; or

30 (5) a cigarette involved in a violation of chapter 114 of title 18 or
31 a regulation prescribed under chapter 114.

32 (b) *PROHIBITIONS.*—A person may not—

33 (1) transport contraband in an aircraft, vehicle, or vessel;

34 (2) conceal or possess contraband on an aircraft, vehicle, or vessel; or

35 (3) use an aircraft, vehicle, or vessel to facilitate the transportation,
36 concealment, receipt, possession, purchase, sale, exchange, or giving away
37 of contraband.

38 **§ 80303. Seizure and forfeiture**

39 The Secretary of the Treasury or the Governor of Guam or of the Northern
40 Mariana Islands as provided in section 80304 of this title, or a person au-
41 thorized by another law to enforce section 80302 of this title, shall seize an

1 aircraft, vehicle, or vessel involved in a violation of section 80302 and place
 2 it in the custody of a person designated by the Secretary or appropriate Gov-
 3 ernor, as the case may be. The seized aircraft, vehicle, or vessel shall be for-
 4 feited, except when the owner establishes that a person except the owner com-
 5 mitted the violation when the aircraft, vehicle, or vessel was in the possession
 6 of a person who got possession by violating a criminal law of the United
 7 States or a State. However, an aircraft, vehicle, or vessel used by a common
 8 carrier to provide transportation for compensation may be forfeited only
 9 when—

10 (1) the owner, conductor, driver, pilot, or other individual in charge
 11 of the aircraft or vehicle (except a rail car or engine) consents to, or
 12 knows of, the alleged violation when the violation occurs;

13 (2) the owner of the rail car or engine consents to, or knows of, the
 14 alleged violation when the violation occurs; or

15 (3) the master or owner of the vessel consents to, or knows of, the al-
 16 leged violation when the violation occurs.

17 **§ 80304. Administrative**

18 (a) *GENERAL.*—Except as provided in subsections (b) and (c) of this sec-
 19 tion, the Secretary of the Treasury—

20 (1) may designate officers, employees, agents, or other persons to carry
 21 out this chapter; and

22 (2) shall prescribe regulations to carry out this chapter.

23 (b) *IN GUAM.*—The Governor of Guam—

24 (1) or officers of the government of Guam designated by the Governor
 25 shall carry out this chapter in Guam;

26 (2) may carry out laws referred to in section 80306(b) of this title
 27 with modifications the Governor decides are necessary to meet conditions
 28 in Guam; and

29 (3) may prescribe regulations to carry out this chapter in Guam.

30 (c) *IN NORTHERN MARIANA ISLANDS.*—The Governor of the Northern Mari-
 31 ana Islands—

32 (1) or officers of the government of the Northern Mariana Islands des-
 33 ignated by the Governor shall carry out this chapter in the Northern
 34 Mariana Islands;

35 (2) may carry out laws referred to in section 80306(b) of this title
 36 with modifications the Governor decides are necessary to meet conditions
 37 in the Northern Mariana Islands; and

38 (3) may prescribe regulations to carry out this chapter in the North-
 39 ern Mariana Islands.

40 (d) *CUSTOMS LAWS ON SEIZURE AND FORFEITURE.*—The Secretary, or the
 41 Governor of Guam or of the Northern Mariana Islands as provided in sub-

1 sections (b) and (c) of this section, shall carry out the customs laws on the
2 seizure and forfeiture of aircraft, vehicles, and vessels under this chapter.

3 **§ 80305. Availability of certain appropriations**

4 Appropriations for enforcing customs, narcotics, counterfeiting, or internal
5 revenue laws are available to carry out this chapter.

6 **§ 80306. Relationship to other laws**

7 (a) *CHAPTER AS ADDITIONAL LAW.*—This chapter is in addition to another
8 law—

9 (1) imposing, or authorizing the compromise of, fines, penalties, or
10 forfeitures; or

11 (2) providing for seizure, condemnation, or disposition of forfeited
12 property, or the proceeds from the property.

13 (b) *LAWS APPLICABLE TO SEIZURES AND FORFEITURES.*—To the extent
14 applicable and consistent with this chapter, the following apply to a seizure
15 or forfeiture under this chapter:

16 (1) provisions of law related to the seizure, forfeiture, and condemna-
17 tion of vehicles and vessels violating the customs laws.

18 (2) provisions of law related to the disposition of those vehicles or ves-
19 sels or the proceeds from the sale of those vehicles or vessels.

20 (3) provisions of law related to the compromise of those forfeitures or
21 claims related to those forfeitures.

22 (4) provisions of law related to the award of compensation to an in-
23 former about those forfeitures.

24 **CHAPTER 805—MISCELLANEOUS**

Sec.

80501. Damage to transported property.

80502. Transportation of animals.

80503. Payments for inspection and quarantine services.

80504. Medals of honor.

25 **§ 80501. Damage to transported property**

26 (a) *CRIMINAL PENALTY.*—A person willfully damaging, or attempting to
27 damage, property in the possession of an air carrier, motor carrier, or rail
28 carrier and being transported in interstate or foreign commerce, shall be fined
29 under title 18, imprisoned for not more than 10 years, or both. In a criminal
30 proceeding under this section, a shipping document for the property is *prima*
31 *facie* evidence of the places to which and from which the property was being
32 transported.

33 (b) *PROHIBITION AGAINST MULTIPLE PROSECUTIONS FOR SAME ACT.*—A
34 person may not be prosecuted for an act under this section when the person
35 has been convicted or acquitted on the merits for the same act under the laws
36 of a State, the District of Columbia, or a territory or possession of the United
37 States.

1 **§80502. Transportation of animals**

2 (a) *CONFINEMENT.*—(1) *Except as provided in this section, a rail carrier,*
3 *express carrier, or common carrier (except by air or water), a receiver, trust-*
4 *ee, or lessee of one of those carriers, or an owner or master of a vessel trans-*
5 *porting animals from a place in a State, the District of Columbia, or a terri-*
6 *tory or possession of the United States through or to a place in another State,*
7 *the District of Columbia, or a territory or possession, may not confine ani-*
8 *mals in a vehicle or vessel for more than 28 consecutive hours without unload-*
9 *ing the animals for feeding, water, and rest.*

10 (2) *Sheep may be confined for an additional 8 consecutive hours without*
11 *being unloaded when the 28-hour period of confinement ends at night. Ani-*
12 *mals may be confined for—*

13 (A) *more than 28 hours when the animals cannot be unloaded because*
14 *of accidental or unavoidable causes that could not have been anticipated*
15 *or avoided when being careful; and*

16 (B) *36 consecutive hours when the owner or person having custody of*
17 *animals being transported requests, in writing and separate from a bill*
18 *of lading or other rail form, that the 28-hour period be extended to 36*
19 *hours.*

20 (3) *Time spent in loading and unloading animals is not included as part*
21 *of a period of confinement under this subsection.*

22 (b) *UNLOADING, FEEDING, WATERING, AND REST.*—*Animals being trans-*
23 *ported shall be unloaded in a humane way into pens equipped for feeding,*
24 *water, and rest for at least 5 consecutive hours. The owner or person having*
25 *custody of the animals shall feed and water the animals. When the animals*
26 *are not fed and watered by the owner or person having custody, the rail car-*
27 *rier, express carrier, or common carrier (except by air or water), the receiver,*
28 *trustee, or lessee of one of those carriers, or the owner or master of a vessel*
29 *transporting the animals—*

30 (1) *shall feed and water the animals at the reasonable expense of the*
31 *owner or person having custody, except that the owner or shipper may*
32 *provide food;*

33 (2) *has a lien on the animals for providing food, care, and custody*
34 *that may be collected at the destination in the same way that a transpor-*
35 *tation charge is collected; and*

36 (3) *is not liable for detaining the animals for a reasonable period to*
37 *comply with subsection (a) of this section.*

38 (c) *NONAPPLICATION.*—*This section does not apply when animals are*
39 *transported in a vehicle or vessel in which the animals have food, water,*
40 *space, and an opportunity for rest.*

1 (d) *CIVIL PENALTY.*—A rail carrier, express carrier, or common carrier
 2 (except by air or water), a receiver, trustee, or lessee of one of those carriers,
 3 or an owner or master of a vessel that knowingly and willfully violates this
 4 section is liable to the United States Government for a civil penalty of at least
 5 \$100 but not more than \$500 for each violation. On learning of a violation,
 6 the Attorney General shall bring a civil action to collect the penalty in the
 7 district court of the United States for the judicial district in which the viola-
 8 tion occurred or the defendant resides or does business.

9 **§ 80503. Payments for inspection and quarantine services**

10 (a) *GENERAL.*—(1) In this subsection—

11 (A) “private aircraft” means a civilian aircraft not being used to
 12 transport passengers or property for compensation.

13 (B) “private vessel” means a civilian vessel not being used—

14 (i) to transport passengers or property for compensation; or

15 (ii) in fishing or fish processing operations.

16 (2) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451),
 17 the owner, operator, or agent of a private aircraft or private vessel may pay
 18 not more than \$25 for the services of an officer or employee of the Department
 19 of Agriculture, the Customs Service, the Immigration and Naturalization
 20 Service, or the Public Health Service (including an independent contractor
 21 performing an inspection service for the Public Health Service) when the serv-
 22 ices are performed on a Sunday, holiday, or from 5 p.m. through 8 a.m. on
 23 a weekday, and are related to the aircraft’s or vessel’s arrival in, or departure
 24 from, the United States. However, the owner, operator, or agent does not have
 25 to pay for the services from 5 p.m. through 8 a.m. on a weekday when an
 26 officer or employee on regular duty is available at the place of arrival or de-
 27 parture to perform services.

28 (3) The head of a department, agency, or instrumentality of the United
 29 States Government providing services under paragraph (2) of this subsection
 30 shall collect the amount paid for the services and deposit the amount in the
 31 Treasury. The amount shall be credited to the appropriation of the depart-
 32 ment, agency, or instrumentality against which the expense of those services
 33 was charged.

34 (b) *LIMITATIONS ON REIMBURSEMENT.*—(1) An owner or operator of an
 35 aircraft is required to reimburse the head of a department, agency, or instru-
 36 mentality of the Government for the expenses of performing an inspection or
 37 quarantine service related to the aircraft at a place of inspection during regu-
 38 lar service hours on a Sunday or holiday only to the same extent that an
 39 owner or operator makes reimbursement for the service during regular service
 40 hours on a weekday. The head of the department, agency, or instrumentality
 41 may not assess an owner or operator of an aircraft for administrative over-

1 *head expenses for inspection or quarantine service provided by the depart-*
 2 *ment, agency, or instrumentality at an entry airport.*

3 *(2) This subsection does not require reimbursement for costs incurred by*
 4 *the Secretary of the Treasury in providing customs services described in sec-*
 5 *tion 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of*
 6 *1985 (19 U.S.C. 58c(e)(1)).*

7 **§ 80504. Medals of honor**

8 *(a) MEDALS.—The President may prepare and give a bronze medal of*
 9 *honor with emblematic devices to an individual who by extreme daring en-*
 10 *dangers that individual's life in trying to prevent, or save the life of another*
 11 *in, a grave accident in the United States involving a rail carrier providing*
 12 *transportation in interstate commerce or involving a motor vehicle on the*
 13 *public streets, roads, or highways. The President may give a medal only when*
 14 *sufficient evidence that the individual deserves the medal has been filed under*
 15 *regulations prescribed by the President.*

16 *(b) RIBBONS, KNOTS, AND ROSETTES.—The President may give an indi-*
 17 *vidual who receives a medal a ribbon to be worn with the medal and a knot*
 18 *or rosette to be worn in place of the medal. The President shall prescribe the*
 19 *design for the ribbon, knot, and rosette. If the ribbon is lost, destroyed, or*
 20 *made unfit for use and the individual receiving the medal is not negligent,*
 21 *the President shall issue a new ribbon without charge to the individual.*

22 *(c) AVAILABILITY OF APPROPRIATIONS.—Appropriations made to the Sec-*
 23 *retary of Transportation are available to carry out this section.*

24 *PORTS OF ENTRY*

25 *Sec. 2. (a) The definitions in section 40102(a) of title 49, United States*
 26 *Code, apply to this section.*

27 *(b)(1) The Secretary of the Treasury may—*

28 *(A) designate ports of entry in the United States for civil aircraft ar-*
 29 *riving in the United States from a place outside the United States and*
 30 *property transported on that aircraft;*

31 *(B) detail to ports of entry officers and employees of the United States*
 32 *Customs Service the Secretary considers necessary;*

33 *(C) give an officer or employee of the United States Government sta-*
 34 *tioned at a port of entry (with the consent of the head of the department,*
 35 *agency, or instrumentality of the Government with jurisdiction over the*
 36 *officer or employee) duties and powers of officers or employees of the*
 37 *Customs Service;*

38 *(D) by regulation, apply to civil air navigation the laws and regula-*
 39 *tions on carrying out the customs laws, to the extent and under condi-*
 40 *tions the Secretary considers necessary; and*

1 (E) by regulation, apply to civil aircraft the laws and regulations on
2 entry and clearance of vessels, to the extent and under conditions the Sec-
3 retary considers necessary.

4 (2) A person violating a customs regulation prescribed under paragraph
5 (1)(A)–(D) of this subsection or a public health or customs law or regulation
6 made applicable to aircraft by a regulation under paragraph (1)(A)–(D) is
7 liable to the Government for a civil penalty of \$5,000 for each violation. An
8 aircraft involved in the violation may be seized and forfeited under the cus-
9 toms laws. The Secretary of the Treasury may remit or mitigate a penalty
10 and forfeiture under this paragraph.

11 (3) A person violating a regulation made applicable under paragraph
12 (1)(E) of this subsection or an immigration regulation prescribed under para-
13 graph (1)(E) is liable to the Government for a civil penalty of \$5,000 for each
14 violation. The Secretary of the Treasury or the Attorney General may remit
15 or mitigate a penalty under this paragraph.

16 (4) In addition to any other penalty, when a controlled substance described
17 in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on, or to
18 have been unloaded from, an aircraft to which this subsection applies, the
19 owner of, or individual commanding, the aircraft is liable to the Government
20 for the penalties provided in section 584 for each violation unless the owner
21 or individual, by a preponderance of the evidence, demonstrates that the
22 owner or individual did not know, and by exercising the highest degree of care
23 and diligence, could not have known, that a controlled substance was on the
24 aircraft.

25 (5) If a violation under this subsection is by the owner or operator of, or
26 individual commanding, the aircraft, the aircraft is subject to a lien for the
27 penalty.

28 (c)(1) The Secretary of Agriculture by regulation may apply laws and reg-
29 ulations on animal and plant quarantine (including laws and regulations on
30 importing, exporting, transporting, and quarantining animals, plants, ani-
31 mal and plant products, insects, bacterial and fungus cultures, viruses, and
32 serums) to civil air navigation to the extent and under conditions the Sec-
33 retary considers necessary.

34 (2) A person violating a law or regulation made applicable under para-
35 graph (1) of this subsection is liable for the penalties provided under that law
36 or regulation.

37 (d) A decision to remit or mitigate a civil penalty under this section is
38 final. When libel proceedings are pending during a proceeding to remit or
39 mitigate a penalty, the appropriate Secretary shall notify the Attorney Gen-
40 eral of the remission or mitigation proceeding.

1 (e)(1) An aircraft subject to a lien under this section may be seized sum-
 2 marily by and placed in the custody of a person authorized by regulations
 3 of the appropriate Secretary or the Attorney General. A report of the case
 4 shall be sent to the Attorney General. The Attorney General shall bring
 5 promptly a civil action in rem to enforce the lien or notify the appropriate
 6 Secretary that the action will not be brought.

7 (2) An aircraft seized under this section shall be released from custody
 8 when—

9 (A) the civil penalty or amount not remitted or mitigated is paid;

10 (B) the aircraft is seized under process of a court in a civil action
 11 in rem to enforce the lien;

12 (C) the Attorney General gives notice that a civil action will not be
 13 brought under paragraph (1) of this subsection; or

14 (D) a bond is deposited with the appropriate Secretary or the Attor-
 15 ney General in an amount and with a surety the appropriate Secretary
 16 or the Attorney General prescribes, conditioned on payment of the pen-
 17 alty or amount not remitted or mitigated.

18 (f) A civil penalty under this section may be collected by bringing a civil
 19 action against the person subject to the penalty, a civil action in rem against
 20 an aircraft subject to a lien for a penalty, or both. The action shall conform
 21 as nearly as practicable to a civil action in admiralty, regardless of the place
 22 an aircraft in a civil action in rem is seized. However, a party may demand
 23 a trial by jury of an issue of fact if the value of the matter in controversy
 24 is more than \$20. An issue of fact tried by jury may be reexamined only
 25 under common law rules.

26 (g) Necessary amounts may be appropriated to allow the head of a depart-
 27 ment, agency, or instrumentality of the Government to acquire space at a
 28 public airport (as defined in section 47102 of title 49) when the head decides
 29 the space is necessary to carry out inspections, clearance, collection of taxes
 30 or duties, or a similar responsibility of the head, related to transporting pas-
 31 sengers or property in air commerce. The head must consult with the Sec-
 32 retary of Transportation before making a decision on space.

33 MASS TRANSPORTATION EXEMPTION

34 Sec. 3. Chapter 105 of title 49, United States Code, is amended as follows:

35 (1) Insert immediately after section 10530 the following new section:

36 “§ 10531. **Mass transportation exemption**

37 “(a) DEFINITIONS.—The definitions in section 5302(a) of this title apply
 38 to this section.

39 “(b) PETITION FOR GRANTING EXEMPTIONS.—A State or local govern-
 40 mental authority may petition the Interstate Commerce Commission for an
 41 exemption from the jurisdiction of the Commission under this subchapter for

1 mass transportation the authority provides or has provided to it by contract.
 2 Not later than 180 days after the Commission receives a petition and after
 3 notice and a reasonable opportunity for a proceeding, the Commission shall
 4 exempt the State, local governmental authority, or contractor unless the Com-
 5 mission finds that—

6 “(1) the public interest would not be served by an exemption;

7 “(2) the exemption would result in an unreasonable burden on inter-
 8 state or foreign commerce; or

9 “(3) a State or local governmental authority may not regulate the
 10 mass transportation to be exempt under this section.

11 “(c) APPLICATION OF OTHER LAWS.—All applicable laws of the United
 12 States related to safety and to representation of employees for collective bar-
 13 gaining purposes, retirement, annuities, and unemployment systems, and all
 14 other laws related to employee–employer relations, apply to a State or local
 15 governmental authority that was granted, or whose contractor was granted,
 16 an exemption under this section.

17 “(d) CHANGING AND REVOKING EXEMPTIONS.—The Commission may
 18 change or revoke an exemption if it finds that new evidence, material error,
 19 or changed circumstances exist that materially affect the original order. The
 20 Commission may act on its own initiative or on application of an interested
 21 party.”

22 (2) Insert immediately below item 10530 in the analysis of the chapter
 23 the following new item:

“10531. Mass transportation exemption.”

24 CONFORMING PROVISIONS

25 Sec. 4. (a) Section 401 of the Federal Election Campaign Act of 1971 (2
 26 U.S.C. 451) is amended by striking “Civil Aeronautics Board” and “Board
 27 or Commission” and substituting “Secretary of Transportation” and “Sec-
 28 retary under subpart II of part A of subtitle VII of title 49, United States
 29 Code, or such Commission,” respectively.

30 (b) Title 5, United States Code, is amended as follows:

31 (1) In section 5109, add at the end of the section the following new
 32 subsection:

33 “(c)(1) The position held by a fully experienced and qualified railroad safe-
 34 ty inspector of the Department of Transportation shall be classified in accord-
 35 ance with this chapter, but not lower than GS–12.

36 “(2) The position held by a railroad safety specialist of the Department
 37 shall be classified in accordance with this chapter, but not lower than GS–
 38 13.”

39 (2) In section 5315, strike—

1 “Administrator of the St. Lawrence Seaway Development Corpora-
2 tion.”

3 and substitute—

4 “Administrator of the Saint Lawrence Seaway Development Corpora-
5 tion.”.

6 (3) In section 8172, strike “Secretary of the Treasury” and substitute
7 “Secretary of Transportation”.

8 (c) Section 511(e) of the Motor Vehicle Information and Cost Savings Act
9 (15 U.S.C. 2011(e)) is amended to read as follows:

10 “(e) For purposes of this section—

11 “(1) ‘retrofit device’ means any component, equipment, or other de-
12 vice—

13 “(A) which is designed to be installed in or on an automobile (as
14 an addition to, as a replacement for, or through alteration or modi-
15 fication of, any original component, equipment, or other device);
16 and

17 “(B) which any manufacturer, dealer, or distributor of such de-
18 vice represents will provide higher fuel economy than would have re-
19 sulted with the automobile as originally equipped,

20 as determined under rules of the Administrator. Such term also includes
21 a fuel additive for use in an automobile.

22 “(2) the definitions in section 32901(a) of title 49, United States Code,
23 apply.”.

24 (d) Section 6001(1) of title 18, United States Code, is amended by striking
25 “the Civil Aeronautics Board,”.

26 (e) Chapter 33 of title 28, United States Code, is amended as follows:

27 (1) Insert immediately after section 537 the following new section:

28 **“§ 538. Investigation of aircraft piracy and related violations**

29 “The Federal Bureau of Investigation shall investigate any violation of sec-
30 tion 46314 or chapter 465 of title 49.”.

31 (2) In the analysis of chapter 33, insert immediately after item 537
32 the following new item:

“538. Investigation of aircraft piracy and related violations.”.

33 (f)(1) Title 31, United States Code, is amended as follows:

34 (A) In section 309, strike “section 2A(a)” and substitute “section
35 3(a)”.

36 (B) In section 503(b)(9), strike “perform” and substitute “Perform”.

37 (C) In the analysis of chapter 7, immediately above item 781, strike—
“Sec.”.

38 (D) In section 782, strike “612a.” and substitute “612a)).”.

39 (E) In section 1105(a), strike—

1 “(26) a separate”

2 and substitute—

3 “(27) a separate”.

4 (F) Section 1352 is amended as follows:

5 (i) Immediately below subsection (b)(7), strike—

6 “(C)(1) Any”

7 and substitute—

8 “(c)(1) Any”.

9 (ii) In subsection (e)(1)(C), strike “appropriated” and “law” and
10 substitute “appropriated” and “law.”, respectively.

11 (iii) In subsection (h)(7), strike “agency” and “guaranty” and
12 substitute “agency.” and “guaranty.”, respectively.

13 (G) The analysis of chapter 33 is amended by inserting below item
14 3333 the following new item:

“3334. Cancellation and proceeds distribution of Treasury checks.”.

15 (H) In section 3302(c)(1), strike the comma at the end and substitute
16 a period.

17 (I) In section 3330(d)(1)(B), strike “Administrator” and substitute
18 “Secretary of Veterans Affairs”.

19 (J)(i) In section 3512(c)(1), strike “subsection (a)(3)” and substitute
20 “subsection (b)(3)”.

21 (ii) In section 3512(d)(1) and (2), strike “subsection (b)” wherever it
22 appears and substitute “subsection (c)”.

23 (K) In section 3551(1), strike “an Federal” and substitute “a Fed-
24 eral”.

25 (L) In section 3552, strike “section 111(h)” and “(40 U.S.C. 759(h))”
26 and substitute “section 111(f)” and “(40 U.S.C. 759(f))”, respectively.

27 (M) In section 3718(b)(3)(A), strike “15 U.S.C. 6376(d)(3)(C)(i)” and
28 substitute “15 U.S.C. 637(d)(3)(C)(i)”.

29 (N) In section 3726(d), strike “miscellaneous receipt” and substitute
30 “miscellaneous receipts”.

31 (O) In section 3729(e), strike “1954” and substitute “1986”.

32 (P) In section 3730(e)(2)(B), strike “section paragraphs (1)” and sub-
33 stitute “paragraphs (1)”.

34 (Q) In section 3801(a)(7)(B)(ii), strike “section 3803 of such title”
35 and substitute “section 3803 of this title”.

36 (R) In section 5112(h), strike “title 31, United States Code” and sub-
37 stitute “this title”.

38 (S) In section 6101(4)(B), strike “agency” and substitute “agency.”.

39 (T) In the catchline of section 6202, strike “**form**” and substitute
40 “**form,**”.

1 (U)(i) *At the end of the analysis of chapter 69, add the following new*
2 *item:*

“6907. State legislation requiring reallocation or redistribution of payments to smaller units
of general purpose government.”.

3 (ii) Section 6907 is amended by adding before subsection (a) the fol-
4 lowing:

5 **“§ 6907. State legislation requiring reallocation or redis-**
6 **tribution of payments to smaller units of general**
7 **purpose government”.**

8 (V) In section 7102(3), strike “political” and substitute “political”.

9 (W) Section 7502 is amended as follows:

10 (i) In subsection (b)(2)(A), strike “the date of enactment of this
11 chapter” and substitute “October 19, 1984”.

12 (ii) In subsection (b)(2)(B), strike “such date” and substitute
13 “October 19, 1984”.

14 (iii) *In subsection (d), strike paragraph (5) and redesignate*
15 *paragraph (6) as paragraph (5).*

16 (iv) *In subsection (g), strike “section 3512(b)” and substitute*
17 *“section 3512(c)”.*

18 (X) *In section 7503(a), strike “To the extend” and substitute “To the*
19 *extent”.*

20 (Y)(i) *Subtitle V is amended by adding at the end of the subtitle the*
21 *following new chapter:*

22 **“CHAPTER 77—LOAN REQUIREMENTS**

“Sec.

“7701. Taxpayer identifying number.

23 **“§ 7701. Taxpayer identifying number**

24 “(a) *In this section—*

25 “(1) *‘included Federal loan program’ has the same meaning given that*
26 *term in section 6103(l)(3)(C) of the Internal Revenue Code of 1986 (26*
27 *U.S.C. 6103(l)(3)(C)).*

28 “(2) *‘taxpayer identifying number’ means the identifying number re-*
29 *quired under section 6109 of the Internal Revenue Code of 1986 (26*
30 *U.S.C. 6109).*

31 “(b) *The head of an agency administering an included Federal loan pro-*
32 *gram shall require a person applying for a loan under the program to provide*
33 *that person’s taxpayer identifying number.”.*

34 (ii) *The analysis of subtitle V is amended by adding immediately after*
35 *item 75 the following new item:*

“77. Loan Requirements 7701”.

36 (Z) *In section 9101(2)(K), strike “The” and substitute “the”.*

1 (AA) In section 9110(e)(1), strike “subparagraph” and substitute “sec-
2 tion”.

3 (2) Effective December 22, 1987, section 407 of The Judiciary Appropria-
4 tion Act, 1988 (Public Law 100–202, 101 Stat. 1329–26), is amended to read
5 as follows:

6 “Sec. 407. Section 1344 of title 31, United States Code, is amended as fol-
7 lows:

8 “(1) In subsection (b)—

9 “(A) redesignate clauses (2)–(8) as clauses (3)–(9), respectively;

10 “(B) insert below clause (1) the following:

11 “(2) the Chief Justice and the Associate Justices of the Supreme
12 Court;”;

13 “(C) in clause (3)(B), as redesignated by clause (A) of this para-
14 graph, strike ‘subparagraph (A) of this paragraph’ and substitute
15 ‘subclause (A) of this clause’; and

16 “(D) in the last sentence, strike ‘paragraph (8)’ and substitute
17 ‘clause (9)’.

18 “(2) In subsection (d)—

19 “(A) in paragraphs (1) and (2), strike ‘paragraph (8) of sub-
20 section (b)’ wherever it appears and substitute ‘subsection (b)(9) of
21 this section’;

22 “(B) in paragraph (3), strike ‘subsections (a)(2), (b)(2)(B), and
23 (b)(8)’ and ‘subsection (b)(8)’ and substitute ‘subsections (a)(2) and
24 (b)(3)(B) and (9)’ and ‘subsection (b)(9)’, respectively; and

25 “(C) in paragraph (4), strike ‘paragraphs (1), (2)(B), and (8) of
26 subsection (b)’ and ‘paragraph (8) of subsection (b), and the ex-
27 pected duration of any authorization under such paragraph’ and
28 substitute ‘subsection (b)(1), (3)(B), and (9) of this section’ and
29 ‘subsection (b)(9), and the expected duration of any authorization
30 under subsection (b)(9)’, respectively.

31 “(3) In subsection (e)(1), strike ‘(b)(8)’ and substitute ‘(b)(9)’.”.

32 (3) Effective September 27, 1988, the last sentence of the paragraph headed
33 “PAYMENTS IN LIEU OF TAXES” in title I of the Act of September 27,
34 1988 (Public Law 100–446, 102 Stat. 1775), is amended to read as follows:
35 “Section 6901(2)(A) of title 31, United States Code, is amended by striking
36 ‘existing in Alaska on October 20, 1976’.”.

37 (g) Title 39, United States Code, is amended as follows:

38 (1) In section 5007—

39 (A) insert the subsection designation “(a)” at the beginning of the
40 text of the section; and

41 (B) add at the end of the section the following new subsection:

1 “(b)(1) In this subsection, ‘air carrier’ and ‘aircraft’ have the same mean-
2 ings given those terms in section 40102(a) of title 49.

3 “(2) An air carrier engaged in transporting mail shall carry without
4 charge on any plane it operates those agents and officers of the Postal Service
5 traveling on official business related to transporting mail by aircraft, as pre-
6 scribed by regulations of the Secretary of Transportation, on exhibiting cre-
7 dentials.”.

8 (2) Amend section 5402 as follows:

9 (A) In subsection (a), strike “section 1302” and substitute “sec-
10 tion 40101(a)”.

11 (B) In subsection (b), strike “sections 1371(k) and 1386(b)”, “sec-
12 tions 1301–1542”, and “sections 1371–1386” and substitute “sec-
13 tions 40109(a) and (c)–(h) and 42112”, “part A of subtitle VII”,
14 and “chapters 411 and 413”, respectively.

15 (C) In subsection (d)—

16 (i) insert “determine rates and” after “may”; and

17 (ii) strike “and overseas”.

18 (D) In subsection (e)—

19 (i) strike “‘overseas air transportation’,”; and

20 (ii) strike “section 101 of the Federal Aviation Act of 1958
21 (49 U.S.C. 1301)” and substitute “section 40102(a) of title 49”.

22 (h) Section 382 of the Energy Policy and Conservation Act (42 U.S.C.
23 6362) is amended as follows:

24 (1) Strike subsection (a) and substitute the following:

25 “(a) In this section, ‘agency’ means—

26 “(1) the Department of Transportation with respect to part A of sub-
27 title VII of title 49, United States Code;

28 “(2) the Interstate Commerce Commission;

29 “(3) the Federal Maritime Commission; and

30 “(4) the Federal Power Commission.”.

31 (2) In subsection (b), strike “subsection (a)(1)” and substitute “sub-
32 section (a)”.

33 (i) The Act of April 22, 1908 (45 U.S.C. 51 et seq.), is amended by insert-
34 ing immediately after section 4 the following new section:

35 “SEC. 4A. A regulation, standard, or requirement in force, or prescribed
36 by the Secretary of Transportation under chapter 201 of title 49, United
37 States Code, or by a State agency that is participating in investigative and
38 surveillance activities under section 20105 of title 49, is deemed to be a stat-
39 ute under sections 3 and 4 of this Act.”.

40 (j) Title 49, United States Code, is amended as follows:

1 (1) In section 102, redesignate subsection (e), as enacted by section
2 1(b) of the Act of January 12, 1983 (Public Law 97-449, 96 Stat. 2414),
3 as subsection (f).

4 (2) In section 104(b)(1), strike “Admininstrator” and substitute “Ad-
5 ministratoꝛ”.

6 (3) Amend section 106 as follows:

7 (A) In subsection (f), strike “Secretary shall” and substitute “Sec-
8 retary of Transportation shall”.

9 (B) Subsection (g) is amended to read as follows:

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

12 “(A) duties and powers of the Secretary of Transportation under sub-
13 section (f) of this section related to aviation safety (except those related
14 to transportation, packaging, marking, or description of hazardous mate-
15 rial) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b),
16 40106(a), 40108, 40109(b), 40113(a), (c), and (d), 40114(a), 40119,
17 44501(a) and (c), 44502(a)(1), (b), and (c), 44504, 44505, 44507, 44508,
18 44511-44513, 44701-44716, 44718(c), 44721(a), 44901, 44902,
19 44903(a)-(c) and (e), 44906, 44912, 44935-44937, and 44938(a) and
20 (b), chapter 451, sections 45302, 45303, 46104, 46301(d) and (h)(2),
21 46303(c), 46304-46308, 46310, 46311, and 46313-46316, chapter 465,
22 and sections 47504(b)(related to flight procedures), 47508(a), and 48107
23 of this title; and

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

26 “(2) In carrying out sections 40119, 44901, 44903(a)-(c) and (e), 44906,
27 44912, 44935-44937, 44938(a) and (b), and 48107 of this title, paragraph
28 (1)(A) of this subsection does not apply to duties and powers vested in the
29 Director of Intelligence and Security by section 44931 of this title.”.

30 (C) In subsection (k), insert “to the Secretary of Transportation”
31 immediately after “appropriated”.

32 (4) In section 108(a)—

33 (A) strike—

34 “(a) Except when operating as a service in the Navy, the”

35 and substitute—

36 “(a)(1) The”; and

37 (B) add at the end of subsection (a) the following new paragraph:

38 “(2) Notwithstanding paragraph (1) of this subsection, the Coast Guard,
39 together with the duties and powers of the Coast Guard, shall operate as a
40 service in the Navy as provided under section 3 of title 14.”.

1 (5)(A) In section 110(a), strike “St. Lawrence” and substitute “Saint
2 Lawrence”.

3 (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.”.

4 and substitute—

“110. Saint Lawrence Seaway Development Corporation.

“111. Bureau of Transportation Statistics.”.

5 (6)(A) Chapter 3 is amended by inserting immediately after section
6 303 the following new section:

7 **“§ 303a. Development of water transportation**

8 “(a) *POLICY.*—It is the policy of Congress—

9 “(1) to promote, encourage, and develop water transportation, service,
10 and facilities for the commerce of the United States; and

11 “(2) to foster and preserve rail and water transportation.

12 “(b) *DEFINITION.*—In this section, ‘inland waterway’ includes the Great
13 Lakes.

14 “(c) *REQUIREMENTS.*—The Secretary of Transportation shall—

15 “(1) investigate the types of vessels suitable for different classes of in-
16 land waterways to promote, encourage, and develop inland waterway
17 transportation facilities for the commerce of the United States;

18 “(2) investigate water terminals, both for inland waterway traffic and
19 for through traffic by water and rail, including the necessary docks,
20 warehouses, and equipment, and investigate railroad spurs and switches
21 connecting with those water terminals, to develop the types most appro-
22 priate for different locations and for transferring passengers or property
23 between water carriers and rail carriers more expeditiously and economi-
24 cally;

25 “(3) consult with communities, cities, and towns about the location of
26 water terminals, and cooperate with them in preparing plans for termi-
27 nal facilities;

28 “(4) investigate the existing status of water transportation on the dif-
29 ferent inland waterways of the United States to learn the extent to
30 which—

31 “(A) the waterways are being used to their capacity and are
32 meeting the demands of traffic; and

33 “(B) water carriers using those waterways are interchanging
34 traffic with rail carriers;

35 “(5) investigate other matters that may promote and encourage inland
36 water transportation; and

1 “(6) compile, publish, and distribute information about transportation
2 on inland waterways that the Secretary considers useful to the commer-
3 cial interests of the United States.”.

4 (B) The analysis of chapter 3 is amended by inserting immediately
5 after item 303 the following new item:

“303a. Development of water transportation.”.

6 (7) Amend section 329 as follows:

7 (A) In subsection (b)(1)—

8 (i) strike “title VII of the Federal Aviation Act of 1958 (49
9 U.S.C. 1441 et seq.)” and substitute “chapter 11 of this title”;

10 (ii) strike “and overseas” and “or overseas” wherever it ap-
11 pears; and

12 (iii) strike “section 419 of the Federal Aviation Act of 1958”
13 and substitute “subchapter II of chapter 417 of this title”.

14 (B) In subsection (d), strike “the Federal Aviation Act of 1958
15 (49 App. U.S.C. 1301 et seq.)” and substitute “part A of subtitle
16 VII of this title”.

17 (8) In section 331(b), strike “services, supplies, and facilities provided
18 under subsection (a)(1), (2), and (3) of this section” and substitute
19 “medical treatment provided under subsection (a)(1) of this section and
20 for supplies and services provided under subsection (a)(2) and (3) of this
21 section”.

22 (9)(A) Sections 334 and 335 are repealed.

23 (B) Items 334 and 335 in the analysis of chapter 3 are repealed.

24 (10)(A) Chapter 3 is amended by adding immediately after section
25 336 the following:

26 **“§337. Budget request for the Director of Intelligence and**
27 **Security**

28 “The annual budget the Secretary of Transportation submits shall include
29 a specific request for the Office of the Director of Intelligence and Security.
30 In deciding on the budget request for the Office, the Secretary shall consider
31 recommendations in the annual report submitted under section 44938(a) of
32 this title.

33 “SUBCHAPTER III—MISCELLANEOUS

34 **“§351. Judicial review of actions in carrying out certain**
35 **transferred duties and powers**

36 “(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in
37 carrying out a duty or power transferred under the Department of Transpor-
38 tation Act (Public Law 89–670, 80 Stat. 931), or an action of the Adminis-
39 trator of the Federal Railroad Administration, the Federal Highway Admin-
40 istration, or the Federal Aviation Administration in carrying out a duty or

1 *power specifically assigned to the Administrator by that Act, may be reviewed*
2 *judicially to the same extent and in the same way as if the action had been*
3 *an action by the department, agency, or instrumentality of the United States*
4 *Government carrying out the duty or power immediately before the transfer*
5 *or assignment.*

6 *“(b) APPLICATION OF PROCEDURAL REQUIREMENTS.—A statutory require-*
7 *ment related to notice, an opportunity for a hearing, action on the record,*
8 *or administrative review that applied to a duty or power transferred by the*
9 *Act applies to the Secretary or Administrator when carrying out the duty or*
10 *power.*

11 *“(c) NONAPPLICATION.—This section does not apply to a duty or power*
12 *transferred from the Interstate Commerce Commission to the Secretary under*
13 *section 6(e)(1)–(4) and (6)(A) of the Act.*

14 **“§ 352. Authority to carry out certain transferred duties and**
15 **powers**

16 *“In carrying out a duty or power transferred under the Department of*
17 *Transportation Act (Public Law 89–670, 80 Stat. 931), the Secretary of*
18 *Transportation and the Administrators of the Federal Railroad Administra-*
19 *tion, the Federal Highway Administration, and the Federal Aviation Admin-*
20 *istration have the same authority that was vested in the department, agency,*
21 *or instrumentality of the United States Government carrying out the duty or*
22 *power immediately before the transfer. An action of the Secretary or Adminis-*
23 *trator in carrying out the duty or power has the same effect as when carried*
24 *out by the department, agency, or instrumentality.*

25 **“§ 353. Toxicological testing of officers and employees**

26 *“(a) COLLECTING SPECIMENS.—When the Secretary of Transportation or*
27 *the head of a component of the Department of Transportation conducts post-*
28 *accident or post-incident toxicological testing of an officer or employee of the*
29 *Department, the Secretary or head shall collect the specimen from the officer*
30 *or employee as soon as practicable after the accident or incident. The Sec-*
31 *retary or head shall try to collect the specimen not later than 4 hours after*
32 *the accident or incident.*

33 *“(b) REPORTS.—The head of each component shall submit a report to the*
34 *Secretary on the circumstances about the amount of time required to collect*
35 *the specimen for a toxicological test conducted on an officer or employee who*
36 *is reasonably associated with the circumstances of an accident or incident*
37 *under the investigative jurisdiction of the National Transportation Safety*
38 *Board.*

39 *“(c) NONCOMPLIANCE NOT A DEFENSE.—An officer or employee required*
40 *to submit to toxicological testing may not assert failure to comply with this*

1 *section as a claim, cause of action, or defense in an administrative or judicial*
 2 *proceeding.”.*

3 *(B) The analysis of chapter 3 is amended by adding immediately after*
 4 *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.”.*

5 *(11)(A) In section 501(a), strike clauses (4)–(9).*

6 *(B) Strike section 508.*

7 *(C) In the analysis of chapter 105, strike the item related to section*
 8 *508.*

9 *(D) In section 521(b)(2)(A), strike “section 508” and substitute “chap-*
 10 *ter 59”.*

11 *(12) In sections 502(e)(2) and 10321(d)(3), insert “judge” after “Unit-*
 12 *ed States magistrate”.*

13 *(13) Section 10362(b)(5) is amended to read as follows:*

14 *“(5) prescribe regulations that contain standards for the computation*
 15 *of subsidies for rail passenger transportation (except passenger transpor-*
 16 *tation compensation disputes subject to the jurisdiction of the Commis-*
 17 *sion under sections 24308(a) and 24903(c)(2) of this title) that are con-*
 18 *sistent with the compensation principles described in the final system*
 19 *plan established under the Regional Rail Reorganization Act of 1973 (45*
 20 *U.S.C. 701 et seq.) and that avoid cross-subsidization among commuter,*
 21 *intercity, and freight rail transportation;”.*

22 *(14) In sections 10363(c) and 10383(c), strike “rate for GS–18” and*
 23 *substitute “maximum rate payable under section 5376 of title 5”.*

24 *(15) In section 10501(d)—*

25 *(A) strike “procedures of this title” and substitute “procedures of*
 26 *this subtitle”; and*

27 *(B) strike “provided in this title” and substitute “provided in*
 28 *this subtitle”.*

29 *(16) In section 10504—*

30 *(A) strike “local public body” wherever it appears and substitute*
 31 *“local governmental authority”;*

32 *(B) strike “rail mass transportation” wherever it appears and*
 33 *substitute “mass transportation”;*

34 *(C) in subsection (a)(1)(A), strike “section 1608(c)(2)” and sub-*
 35 *stitute “section 5302(a)”;* and

36 *(D) in subsection (a)(2), strike “section 1608(c)(5)” and sub-*
 37 *stitute “section 5302(a)”.*

- 1 (17) In section 10526(a)—
2 (A) in clause (8)(B), strike “Civil Aeronautics Board or its suc-
3 cessor agency” and substitute “Secretary of Transportation”;
4 (B) in clause (10), strike “work.” and substitute “work;”;
5 (C) in clause (13), strike “or”; and
6 (D) in clause (14), strike “title.” and substitute “title; or”.
- 7 (18) In section 10530(i)(3), strike “notified” and substitute “notified”.
- 8 (19) In section 10701a(b)(3), strike “policy of this title” and substitute
9 “policy of this subtitle”.
- 10 (20) In section 10705a(g)(3)—
11 (A) before clause (A), strike “provision of this title” and sub-
12 stitute “provision of this subtitle”; and
13 (B) in clause (A), strike “service over any rate” and substitute
14 “service over any route”.
- 15 (21) In section 10707(d)—
16 (A) in paragraph (2), strike “under this title” and substitute
17 “under this subtitle”; and
18 (B) in paragraph (3), strike “title” wherever it appears and sub-
19 stitute “subtitle”.
- 20 (22) In section 10707a(b)(1), strike “paragraph (2)” and substitute
21 “paragraph (3)”.
- 22 (23) In section 10731(e), strike “provision of this title” and substitute
23 “provision of this subtitle”.
- 24 (24) In section 10749(b)(2), strike “Civil Aeronautics Board under the
25 Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)” and sub-
26 stitute “Secretary of Transportation under part A of subtitle VII of this
27 title”.
- 28 (25) In section 10751(b), strike “purposes of this title” and substitute
29 “purposes of this subtitle”.
- 30 (26) In section 10905(d)(1) and (e), strike “government authority”
31 and substitute “governmental authority”.
- 32 (27) In section 10910—
33 (A) in subsection (a)(1), strike “government authority” and sub-
34 stitute “governmental authority”; and
35 (B) in subsection (g)(1), strike “provisions of this title” and sub-
36 stitute “provisions of this subtitle”.
- 37 (28) In section 10924(e), insert “of” after “protection”.
- 38 (29) In the analysis of chapter 111—
39 (A) in item 11128, strike “Water” and substitute “War”; and
40 (B) in item 11142, strike “systems” and substitute “system”.

1 (30) In section 11162(a), strike “proceedings under this title” and sub-
2 stitute “proceedings under this subtitle”.

3 (31) In section 11163, strike “purposes of this title” and substitute
4 “purposes of this subtitle”.

5 (32) In section 11166(a), strike “pursuant to this title” and substitute
6 “under this subtitle”.

7 (33) In section 11167, strike “under this title” and substitute “under
8 this subtitle”.

9 (34) In section 11501(b)(3)(A), strike “title” and substitute “subtitle”.

10 (35) In section 11909(b), strike “1966,,” and substitute “1966,”.

11 (k) Effective January 1, 1999, the following sections of title 49, United
12 States Code, as enacted by section 1 of this Act, are amended as follows:

13 (1) In sections 41107, 41901(b)(1), 41902(a), and 41903, strike
14 “transportation or between places in Alaska” wherever it appears
15 and substitute “transportation”.

16 (2) Strike section 41901(g).

17 (3) In section 41902(b)—

18 (A) strike clause (3); and

19 (B) in clause (4), strike “clauses (1)–(3)” and substitute
20 “clauses (1) and (2)”.

21 (1) The Act of June 29, 1940 (ch. 444, 54 Stat. 686), is amended as follows:

22 (1) Except as provided in paragraphs (2) and (3) of this subsection,
23 strike “Administrator” wherever it appears and substitute “Secretary”.

24 (2) In subsection (a) of the first section, strike “ ‘Administrator’ means
25 the Administrator of the Federal Aviation Agency” and substitute “ ‘Sec-
26 retary’ means the Secretary of Transportation”.

27 (3) In section 4(a), strike “Administrator, and any Federal Aviation
28 Agency” and substitute “Secretary, and any Department of Transpor-
29 tation”.

30 (4) In section 6, strike “United States commissioner” wherever it ap-
31 pears and substitute “United States magistrate judge”.

32 (m) The Act of September 7, 1950 (ch. 905, 64 Stat. 770), is amended as
33 follows:

34 (1) Except as provided in paragraph (2) of this subsection, strike “Ad-
35 ministrator” wherever it appears and substitute “Secretary”.

36 (2) In the first section, strike “Administrator of the Federal Aviation
37 Agency” and “ ‘Administrator’ ” and substitute “Secretary of Transpor-
38 tation” and “ ‘Secretary’ ”, respectively.

39 (3) In sections 4 and 8(a), strike “Federal Aviation Agency” and sub-
40 stitute “Department of Transportation”.

1 (4) In section 8(d), strike “United States Commissioner” wherever it
2 appears and substitute “United States magistrate judge”.

3 (n) Section 101(1st complete par. on p. 646) of the Act of August 30, 1964
4 (Public Law 88–507, 78 Stat. 646), is amended by striking “Administrator
5 of the Federal Aviation Agency” and substituting “Secretary of Transpor-
6 tation”.

7 (o) Section 9111 of the Anti-Drug Abuse Act of 1988 (Public Law 100–
8 690, 102 Stat. 4531) is amended as follows:

9 (1) In the introductory language of subsection (b)(1), strike “Sub-
10 section (b) of section 10530 of such title is amended by striking out para-
11 graph (1) and inserting in lieu thereof the following new paragraph:”
12 and substitute “Subsection (b)(1) of section 10530 of title 49 is amended
13 to read as follows:”.

14 (2) In subsection (b)(2), strike “Such subsection” and substitute “Sub-
15 section (b) of section 10530”.

16 (3) In the introductory language of subsection (f)(1), strike “Sub-
17 section (g) of such section is amended by striking out paragraph (1) and
18 inserting in lieu thereof the following:” and substitute “Subsection (g)(1)
19 of section 10530 of title 49 is amended to read as follows:”.

20 (4) In subsection (f)(2), strike “Such subsection” and substitute “Sub-
21 section (g) of section 10530”.

22 (p) Section 4007(e) of the Intermodal Surface Transportation Efficiency
23 Act of 1991 (Public Law 102–240, 105 Stat. 2153) is amended by inserting
24 “and section 31307 of title 49, United States Code” immediately after “this
25 section”.

26 (q) The revision of regulations, referred to in section 32705(b)(2)(A) of title
27 49, United States Code, as enacted by section 1 of this Act, that is required
28 by section 7 of the Independent Safety Board Act Amendments of 1990 (Pub-
29 lic Law 101–641, 104 Stat. 4657) shall be prescribed not later than May 28,
30 1991.

31 (r) Section 165 of the Surface Transportation Assistance Act of 1982 (Pub-
32 lic Law 97–424, 96 Stat. 2136) is amended as follows:

33 (1) In subsections (a) and (d), strike “the Urban Mass Transportation
34 Act of 1964,”.

35 (2) In subsection (b)—

36 (A) after the semicolon at the end of clause (2), add “or”; and

37 (B) strike clause (3).

38 (s) Effective on the date the regulations required under section 60101(b) of
39 title 49, United States Code, as enacted by section 1 of this Act, are effective,
40 section 60101(a)(21) and (22) of title 49, as enacted by section 1, is amended
41 to read as follows:

- 1 “(21) ‘transporting gas’—
 2 “(A) means—
 3 “(i) the gathering, transmission, or distribution of gas by
 4 pipeline, or the storage of gas, in interstate or foreign com-
 5 merce; and
 6 “(ii) the movement of gas through regulated gathering lines;
 7 but
 8 “(B) does not include gathering gas (except through regulated
 9 gathering lines) in a rural area outside a populated area designated
 10 by the Secretary as a nonrural area.
 11 “(22) ‘transporting hazardous liquid’—
 12 “(A) means—
 13 “(i) the movement of hazardous liquid by pipeline, or the
 14 storage of hazardous liquid incidental to the movement of haz-
 15 ardous liquid by pipeline, in or affecting interstate or foreign
 16 commerce; and
 17 “(ii) the movement of hazardous liquid through regulated
 18 gathering lines; but
 19 “(B) does not include moving hazardous liquid through—
 20 “(i) gathering lines (except regulated gathering lines) in a
 21 rural area;
 22 “(ii) onshore production, refining, or manufacturing facili-
 23 ties; or
 24 “(iii) storage or in-plant piping systems associated with on-
 25 shore production, refining, or manufacturing facilities.”.
 26 (t)(1) Not later than March 3, 1995, the Secretary of Transportation shall
 27 complete a regulatory proceeding to consider prescribing regulations to im-
 28 prove the safety and working conditions of locomotive cabs. The proceeding
 29 shall assess—
 30 (A) the adequacy of Locomotive Crashworthiness Requirements Stand-
 31 ard S-580, or any successor standard, adopted by the Association of
 32 American Railroads in 1989 in improving the safety of locomotive cabs;
 33 and
 34 (B) the extent to which environmental, sanitary, and other working
 35 conditions in locomotive cabs affect productivity, health, and the safe op-
 36 eration of locomotives.
 37 (2) SUPPORTING RESEARCH AND ANALYSIS.—In support of the proceeding
 38 required under paragraph (1) of this subsection, the Secretary shall conduct
 39 research and analysis, including computer modeling and full-scale crash test-
 40 ing, as appropriate, to consider—

1 (A) the costs and benefits associated with equipping locomotives
2 with—

3 (i) braced collision posts;

4 (ii) rollover protection devices;

5 (iii) deflection plates;

6 (iv) shatterproof windows;

7 (v) readily accessible crash refuges;

8 (vi) uniform sill heights;

9 (vii) anticlimbers, or other equipment designed to prevent over-
10 rides resulting from head-on locomotive collisions;

11 (viii) equipment to deter post-collision entry of flammable liquids
12 into locomotive cabs;

13 (ix) any other devices intended to provide crash protection for oc-
14 cupants of locomotive cabs; and

15 (x) functioning and regularly maintained sanitary facilities; and

16 (B) the effects on train crews of the presence of asbestos in locomotive
17 components.

18 (3) *REPORT.*—If, on the basis of the proceeding required under paragraph
19 (1) of this subsection, the Secretary decides not to prescribe regulations, the
20 Secretary shall report to Congress on the reasons for that decision.

21 (u) Not later than April 25, 1993, the Attorney General shall prescribe the
22 regulations required under section 33110(c) of title 49, United States Code,
23 as enacted by section 1 of this Act. Section 33110(b) of title 49 is effective
24 not later than 3 months after those regulations are prescribed but not before
25 the date on which the National Stolen Passenger Motor Vehicle Information
26 System established under section 33109 of title 49 is operational.

27 (v) Section 33111 of title 49, United States Code, as enacted by section 1
28 of this Act, is effective on the date on which the National Stolen Passenger
29 Motor Vehicle Information System is established under section 33109 of title
30 49.

31 *CONFORMING CROSS-REFERENCES*

32 *Sec. 5. (a) Sections 551(1)(H) and 701(b)(1)(H) of title 5, United States*
33 *Code, are amended by striking “or sections 1622,” and substituting “sub-*
34 *chapter II of chapter 471 of title 49; or sections”.*

35 (b) *Title 10, United States Code, is amended as follows:*

36 (1) *In section 2640—*

37 (A) *in subsections (a)(1)(A) and (d)(1)(B)(i), strike “title VI of*
38 *the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)”*
39 *and substitute “chapter 447 of title 49”; and*

40 (B) *in subsection (i), strike “sections 101(3), 101(5), 101(10), and*
41 *101(15), respectively, of the Federal Aviation Act of 1958 (49 U.S.C.*

1 *App. 1301(3), 1301(5), 1301(10), and 1301(15))” and substitute*
2 *“section 40102(a) of title 49”.*

3 (2) *In section 9511(1), strike “section 101 of the Federal Aviation Act*
4 *of 1958 (49 U.S.C. 1301)” and substitute “section 40102(a) of title 49”.*

5 (3) *In section 9512(b)(4), strike “section 501 of the Federal Aviation*
6 *Act of 1958 (49 U.S.C. App. 1401)” and substitute “section 44103 of title*
7 *49”.*

8 (c) *Section 1110(a) of title 11, United States Code, is amended by striking*
9 *“section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)”, “sub-*
10 *section B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4))”, and “Civil*
11 *Aeronautics Board” and substituting “section 40102(a) of title 49”, “section*
12 *30101 of title 46”, and “Secretary of Transportation”, respectively.*

13 (d) *The last sentence of section 82 of title 14, United States Code, is amend-*
14 *ed to read as follows: “Nothing in this title shall be deemed to limit the au-*
15 *thority granted by chapter 167 of title 10 or part A of subtitle VII of title*
16 *49.”.*

17 (e) *Title 18, United States Code, is amended as follows:*

18 (1) *In section 31, strike “the Federal Aviation Act of 1958, as amend-*
19 *ed” and substitute “sections 40102(a) and 46501 of title 49”.*

20 (2) *In the last sentence of sections 112(e), 878(d), 1116(c), and*
21 *1201(e), strike “section” and all that follows and substitute “section*
22 *46501(2) of title 49.”.*

23 (3) *In section 511(c)—*

24 (A) *in clause (1), strike “the National Traffic and Motor Vehicle*
25 *Safety Act of 1966, or the Motor Vehicle Information and Cost Sav-*
26 *ings Act” and substitute “chapter 301 and part C of subtitle VI of*
27 *title 49”; and*

28 (B) *in clause (2), strike “section 2 of the Motor Vehicle Informa-*
29 *tion and Cost Savings Act” and substitute “section 32101 of title*
30 *49”.*

31 (4) *In section 512(a)(2)(A), strike “the National Traffic and Motor Ve-*
32 *hicle Safety Act of 1966” and substitute “chapter 301 of title 49”.*

33 (5) *In section 553(c)—*

34 (A) *in clause (1), strike “section 2 of the Motor Vehicle Informa-*
35 *tion and Cost Savings Act” and substitute “section 32101 of title*
36 *49”; and*

37 (B) *in clause (4), strike “section 101 of the Federal Aviation Act*
38 *of 1958 (49 U.S.C. App. 1301)” and substitute “section 40102(a)*
39 *of title 49”.*

40 (6) *In section 831(c)(1), strike “section 101 of the Federal Aviation*
41 *Act of 1958 (49 U.S.C. 1301)” and substitute “section 46501 of title 49”.*

1 (7) In section 844(g)(2)(B), strike “the Hazardous Materials Trans-
2 portation Act (49 App. U.S.C. 1801, et seq.)” and substitute “chapter
3 51 of title 49”.

4 (8) In section 1201(a)(3), strike “section” and all that follows and
5 substitute “section 46501 of title 49;”.

6 (9) In section 1366(c), strike “interstate transmission facilities, as de-
7 fined in section 2 of the Natural Gas Pipeline Safety Act of 1968” and
8 substitute “an interstate gas pipeline facility as defined in section 60101
9 of title 49”.

10 (10) In section 2318(c)(1), strike “section 101 of the Federal Aviation
11 Act of 1958” and substitute “section 46501 of title 49”.

12 (11) In section 2516(1)(j), strike “section” and all that follows and
13 substitute “section 60123(b) (relating to destruction of a natural gas
14 pipeline) or 46502 (relating to aircraft piracy) of title 49;”.

15 (12) In section 3663(a)(1), strike “under subsection (h), (i), (j), or (n)
16 of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472)”
17 and substitute “section 46312, 46502, or 46504 of title 49”.

18 (f) Title 23, United State Code, is amended as follows:

19 (1) In section 103(e)(4)(L)—

20 (A) in clause (i), strike “the Urban Mass Transportation Act of
21 1964” and substitute “chapter 53 of title 49”; and

22 (B) in clause (ii), strike “section 3(e)(4) of the Urban Mass
23 Transportation Act of 1964” and substitute “section 5323(a)(1)(D)
24 of title 49”.

25 (2) In section 142—

26 (A) in subsection (a)(2), strike “the Federal Transit Act” and
27 substitute “chapter 53 of title 49”;

28 (B) in subsection (h), strike “the Urban Mass Transportation Act
29 of 1964, as amended” and substitute “chapter 53 of title 49”; and

30 (C) in subsection (i), strike “section 3(e)(4) of the Urban Mass
31 Transportation Act of 1964, as amended,” and substitute “section
32 5323(a)(1)(D) of title 49”.

33 (3) In section 157(a)(2) and (3)(A), strike “section 404 of the Surface
34 Transportation Assistance Act of 1982” and substitute “section 31104 of
35 title 49”.

36 (g) The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended
37 as follows:

38 (1) In section 4064(b)(1)(B), strike “section 501 of the Motor Vehicle
39 Information and Cost Savings Act (15 U.S.C. 2001)” and substitute
40 “section 32901 of title 49, United States Code,”.

1 (2) In section 4261(e) and (f)(2), strike “the Airport and Airway Im-
2 provement Act of 1982” and substitute “section 44509 or 44913(b) or
3 subchapter I of chapter 471 of title 49, United States Code.”.

4 (3) In section 9502(d)(1)(B), strike “the Federal Aviation Act of 1958,
5 as amended (49 U.S.C. 1301 et seq.),” and substitute “part A of subtitle
6 VII of title 49, United States Code.”.

7 (h) Section 2342(7) of title 28, United States Code, is amended by striking
8 “section 202(f) of the Federal Railroad Safety Act of 1970” and substituting
9 “section 20114(c) of title 49”.

10 (i) Title 31, United States Code, is amended as follows:

11 (1) In section 3711(c)(2), strike “section 6 of the Act of March 2, 1893
12 (45 U.S.C. 6), section 4 of the Act of April 14, 1910 (45 U.S.C. 13), sec-
13 tion 9 of the Act of February 17, 1911 (45 U.S.C. 34), and section 25(h)
14 of the Interstate Commerce Act (49 App. U.S.C. 26(h))” and substitute
15 “section 21302 of title 49 for a violation of chapter 203, 205, or 207 of
16 title 49 or a regulation or requirement prescribed or order issued under
17 any of those chapters”.

18 (2) In section 3726(b)(1), strike “the Federal Aviation Act of 1958”
19 and substitute “section 40102(a) of title 49”.

20 (j) Section 210(a)(4) of title 35, United States Code, is amended by striking
21 “section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966
22 (15 U.S.C. 1395(c); 80 Stat. 721)” and substituting “section 30168(e) of title
23 49”.

24 (k) Title 39, United States Code, is amended as follows:

25 (1) In section 3401(b) and (c), strike “section 1376” and substitute
26 “section 41901”.

27 (2) In section 5005(b)(3), strike “section 101 of the Federal Aviation
28 Act of 1958” and substitute “section 40102(a) of title 49”.

29 (3) In section 5401(b), strike “sections 1301–1542” and substitute
30 “part A of subtitle VII”.

31 (l) Section 2101(14)(C) of title 46, United States Code, is amended by
32 striking “section 104 of the Hazardous Materials Transportation Act (49
33 App. U.S.C. 1803)” and substituting “section 5103(a) of title 49”.

34 (m) Title 49, United States Code, is amended as follows:

35 (1) In section 103(c)(1), strike “section 6(e)(1), (2), and (6)(A) of the
36 Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and
37 (6)(A))” and substitute “section 20134(c) and chapters 203–211 of this
38 title, and chapter 213 of this title in carrying out chapters 203–211”.

39 (2) In section 104(c)(2), strike “31” and substitute “315”.

1 (3) In section 105(d), strike “the National Traffic and Motor Vehicle
2 Safety Act of 1966 (15 U.S.C. 1381 et seq.)” and substitute “chapter 301
3 of this title”.

4 (4) In section 106—

5 (A) in subsection (h), strike “Section 103 of the Federal Aviation
6 Act of 1958 (49 App. U.S.C. 1303)” and substitute “Section
7 40101(d) of this title”; and

8 (B) in subsection (j), strike “section 312(e) of the Federal Avia-
9 tion Act of 1958” and substitute “section 44507 of this title”.

10 (5) In section 109(a) and (b), insert “App.” immediately after “(46”.

11 (6) In section 302(b), strike “Subtitle I and chapter 31 of subtitle II
12 of this title and the Department of Transportation Act (49 App. U.S.C.
13 1651 et seq.)” and substitute “This subtitle and chapters 221 and 315
14 of this title”.

15 (7) In section 306(b), strike “section 332 or 333 of this title, section
16 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C.
17 721, 726), title V or VII of the Railroad Revitalization and Regulatory
18 Reform Act of 1976 (45 U.S.C. 821 et seq., 851 et seq.), or section 4(i)
19 or 5 of the Department of Transportation Act (49 App. U.S.C. 1653(i),
20 1654)” and substitute “section 332 or 333 or chapter 221 or 249 of this
21 title, section 211 or 216 of the Regional Rail Reorganization Act of 1973
22 (45 U.S.C. 721, 726), or title V of the Railroad Revitalization and Regu-
23 latory Reform Act of 1976 (45 U.S.C. 821 et seq.)”.

24 (8) In section 321, strike “section 101(2), (4), and (8) of the Federal
25 Aviation Act of 1958 (49 App. U.S.C. 1301(2), (4), (8))” and substitute
26 “section 40102(a) of this title”.

27 (9) In section 501—

28 (A) in subsection (a)(2), strike “section 3101” and substitute
29 “section 31501”;

30 (B) in subsection (a)(3), strike “section 3102(c)” and substitute
31 “section 31502(c)”; and

32 (C) strike subsection (b) and substitute the following:

33 “(b) APPLICATION.—This chapter only applies in carrying out sections
34 20302(a)(1)(B) and (C), (2), and (3), (c), and (d)(1) and 20303 and chapters
35 205 (except section 20504(b)), 211, 213 (in carrying out those sections and
36 chapters), and 315 of this title.”.

37 (10) In section 507(c), strike “section 3102 of this title or the Motor
38 Carrier Safety Act of 1984” and “such section or Act” and substitute
39 “subchapter III of chapter 311 (except sections 31138 and 31139) or sec-
40 tion 31502 of this title” and “any of those provisions”, respectively.

41 (11) In section 521(b)—

1 (A) in paragraph (1)(A), strike “section 3102 of this title or the
2 Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004,
3 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety
4 Act of 1986” and “such sections or Act” and substitute “a provision
5 of subchapter III of chapter 311 (except sections 31138 and 31139)
6 or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502
7 of this title” and “any of those provisions”, respectively;

8 (B) in paragraph (2)(A), strike “pursuant to section 3102 of this
9 title or the Motor Carrier Safety Act of 1984” and substitute “under
10 subchapter III of chapter 311 (except sections 31138 and 31139) or
11 section 31502 of this title”;

12 (C) in paragraph (2)(B), strike “section 12002, 12003, 12004,
13 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety
14 Act of 1986” and substitute “section 31302, 31303, 31304, 31305(b),
15 or 31310(g)(1)(A) of this title”;

16 (D) in paragraph (3), strike “section 3102 of this title or the
17 Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004,
18 or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986”
19 and substitute “subchapter III of chapter 311 (except sections 31138
20 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of
21 this title”;

22 (E) in paragraph (5)(A), strike “section 3102 of this title or the
23 Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004,
24 or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986”
25 and “such sections or Act” and substitute “a provision of subchapter
26 III of chapter 311 (except sections 31138 and 31139) or section
27 31302, 31303, 31304, 31305(b), or 31502 of this title” and “any of
28 those provisions”, respectively;

29 (F) in paragraph (6)(A), strike “section 3102 of this title, the
30 Motor Carrier Safety Act of 1984”, “such section or Act”, and “lia-
31 ble” and substitute “subchapter III of chapter 311 (except sections
32 31138 and 31139) or section 31502 of this title”, “any of those pro-
33 visions”, and “subject”, respectively;

34 (G) in paragraph (6)(B)(i), strike “section 12002, 12003(b),
35 12003(c), 12004, 12005(b), or 12008(d)(2) of the Commercial Motor
36 Vehicle Safety Act of 1986” and substitute “section 31302, 31303(b)
37 or (c), 31304, 31305(b), or 31310(g)(1)(A) of this title”;

38 (H) in paragraph (6)(B)(ii), strike “section 12019 of such Act”,
39 “section 12003(a) of such Act”, and “such section 12003(a)” and
40 substitute “section 31301 of this title”, “section 31303(a) of this
41 title”, and “section 31303(a)”, respectively;

1 (I) in paragraph (12), strike “any provision of the Hazardous
2 Materials Transportation Act (49 U.S.C. App. 1801–1812)” and
3 “such Act” and substitute “chapter 51 of this title” and “chapter
4 51”, respectively; and

5 (J) in paragraph (13), strike “section 204 of the Motor Carrier
6 Safety Act of 1984” and substitute “section 31132 of this title”.

7 (12) In section 526, strike “this chapter, section 3102 of this title, or
8 the Motor Carrier Safety Act of 1984, a person that knowingly and will-
9 fully violates a provision of this chapter or such section or Act, or a reg-
10 ulation or order of the Secretary of Transportation under this chapter
11 or such section or Act” and substitute “a provision of this chapter, sub-
12 chapter III of chapter 311 (except sections 31138 and 31139), or section
13 31502 of this title, a person that knowingly and willfully violates any
14 of those provisions or a regulation or order of the Secretary of Transpor-
15 tation under any of those provisions”.

16 (13) In section 10102(9), strike “the Federal Aviation Act of 1958”
17 and substitute “part A of subtitle VII of this title”.

18 (14) In section 10322(a), strike “subtitle” wherever it appears and
19 substitute “title”.

20 (15) In sections 10364(a) and 10385(a), strike “section 5 of title 41”
21 and substitute “section 3709 of the Revised Statutes (41 U.S.C. 5)”.

22 (16) In sections 10527(a), strike “subchapter” and substitute “title”.

23 (17) In section 10528, strike “subchapter” and “subtitle” wherever ei-
24 ther word appears and substitute “title”.

25 (18) In section 10529(a), strike “(12 U.S.C. 1141j(a))” and substitute
26 “(12 U.S.C. 1141j(a))”.

27 (19) In sections 10542(a)(2) and 10544(d)(1)(B), insert “App.” imme-
28 diately after “(46” wherever it appears.

29 (20) In section 10561(b)(1), strike “chapter 20” and substitute “part
30 A of subtitle VII”.

31 (21) In section 10703(a)(4)—

32 (A) in paragraph (D)(ii), insert “App.” immediately after “(46”
33 wherever it appears; and

34 (B) in paragraph (E), strike “(46 U.S.C. 801 et seq.)” and “(46
35 U.S.C. 843–848)” and substitute “(46 App. U.S.C. 801 et seq.)” and
36 “(46 App. U.S.C. 843 et seq.)”, respectively.

37 (22) In section 10721(a)(1), strike “Section 5 of title 41” and sub-
38 stitute “Section 3709 of the Revised Statutes (41 U.S.C. 5)”.

39 (23) In section 10735(b)(1), strike “under this title” and substitute
40 “under this subtitle”.

1 (24) In section 10903(b)(2), strike “section 11347 of this title and sec-
2 tion 405(b) of the Rail Passenger Service Act (45 U.S.C. 565(b))” and
3 substitute “sections 11347 and 24706(c) of this title”.

4 (25) In section 10922—

5 (A) in subsection (c)(1)(E), strike “provisions of section 12(f) of
6 the Urban Mass Transportation Act of 1964” and substitute “sec-
7 tion 10531 of this title”;

8 (B) in subsection (c)(2)(D), strike “subtitle” wherever it appears
9 and substitute “title”;

10 (C) in subsection (c)(4)(C) and (j)(1), strike “subchapter” wher-
11 ever it appears and substitute “title”; and

12 (D) in subsection (j)(2)(C), strike “subtitle” and substitute
13 “title”.

14 (26) In section 10927(a)(1), insert “section” before “10923”.

15 (27) In section 10935(a) and (e)(3), strike “subchapter” and substitute
16 “title”.

17 (28) In section 11125(b)(2)(A), strike “the Federal Railroad Safety
18 Act of 1970 (45 U.S.C. 431 et seq.)” and substitute “chapter 201 of this
19 title”.

20 (29) In section 11126(a), strike “11501(c)” and substitute “11501(f)”.

21 (30) In section 11303(a), strike “the Ship Mortgage Act, 1920” wher-
22 ever it appears and substitute “chapter 313 of title 46”.

23 (31) In section 11347, strike “section 405 of the Rail Passenger Serv-
24 ice Act (45 U.S.C. 565)” and substitute “sections 24307(c), 24312, and
25 24706(c) of this title”.

26 (32) In section 11348(a), strike “section 504(f),” and substitute “sec-
27 tions 504(f) and”.

28 (33) In section 11504(b)(2), strike “section 204 of the Motor Carrier
29 Safety Act of 1984 (49 App. U.S.C. 2503)” and substitute “section 31132
30 of this title”.

31 (34) In section 11701(a), strike “section 10530 of this subtitle” and
32 substitute “section 10530 of this title”.

33 LEGISLATIVE PURPOSE AND CONSTRUCTION

34 Sec. 6. (a) Sections 1–4 of this Act restate, without substantive change,
35 laws enacted before July 1, 1993, that were replaced by those sections. Those
36 sections may not be construed as making a substantive change in the laws
37 replaced. Laws enacted after June 30, 1993, that are inconsistent with this
38 Act supersede this Act to the extent of the inconsistency.

39 (b) A reference to a law replaced by sections 1–4 of this Act, including a
40 reference in a regulation, order, or other law, is deemed to refer to the cor-
41 responding provision enacted by this Act.

1 (c) An order, rule, or regulation in effect under a law replaced by sections
2 1–4 of this Act continues in effect under the corresponding provision enacted
3 by this Act until repealed, amended, or superseded.

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

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

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

15 REPEALS

16 Sec. 7. (a) The repeal of a law by this Act may not be construed as a legis-
17 lative implication that the provision was or was not in effect before its repeal.

18 (b) The laws specified in the following schedule are repealed, except for
19 rights and duties that matured, penalties that were incurred, and proceedings
20 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		
1874 June 20 June 22	331 414		18 18	111 200	45 45	83 89
1879 Mar. 3	183	1(4th par. on p. 420)	20	420	45	90
1887 Feb. 4 Mar. 3	104 345	25	24 24	379 488	49 App. 45	26 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

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			Vol- ume	Page	Title	Section
1906 June 29 June 30	3594 P.R. 46		34 34	607 838	45 45	71-74 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 May 6	160 208		36 36	298 350	45 45	11-16 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 Aug. 29	109 415		39 39	61 538	45 49 App.	63 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

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1924 June 7	355	43	659	45	22, 23, 25, 27
1927 Mar. 4	510	44	1446	49 App.	102
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	.....	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	.....	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	.....	54	919	.....	49 App.	26
		1 (1st. par. under heading "Civil Aeronautics Authority.")					
		14(b)					

Schedule of Laws Repealed—Continued
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Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
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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 June 10	94 121	(par. under heading "Office of Administrator of Civil Aeronautics")	57 57	80 150	49 App. 49 App.	758 752
1944 June 30 July 1 Oct. 3	333 373 479	813(5th, 6th complete pars. on p. 718) 13(g)	58 58	648 718	49 App. 49 App. 50 App.	757 177, 181 1622
1946 Aug. 8	911		60	944	49 App.	603
1947 May 27 July 30 Aug. 4	85 404 471	2	61 61 61	120 678 743	45 50 App. 49 App.	24-26 1622 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
June 19	482		62	470	49 App.	524
June 25	523		62	493	49 App.	401, 523
June 29	646	4	62	986	49 App.	87
July 1	713		62	1093	49 App.	452
	738		62	1111	49 App.	1116
	792		62	1216	49 App.	452, 459, 551

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			Vol- ume	Page	Title	Section	
1949	359	63	478	49 App.	1111	
	362	63	480	49 App.	622	
	363	63	480	49 App.	1114	
	423	.....	63	603	49 App.	1113
	426	.....	63	605	49 App.	1109
	520	.....	63	678	49 App.	427
	589	.....	63	700	50 App.	1622-1622c
	724	.....	63	903	49 App.	1105
	751	.....	63	925	49 App.	1104
	1950	5	64	4	49 App.	1107
72		.....	64	28	49 App.	1102, 1108
517		.....	64	395	49 App.	622
591		.....	64	414	49 App.	177, 181
643		.....	64	417	49 App.	457
655		.....	64	427	49 App.	781
938		.....	64	825	49 App.	701-705
1055		.....	64	1071	49 App.	1104
1107		.....	64	1079	49 App.	460
1117		.....	64	1090	49 App.	1181-1185
1951		1214	64	1237	49 App.	1109
		123	65	65	49 App.	401, 711-722
		495	65	407	49 App.	177, 560
	655	.....	65	729	49 App.	787
	655	.....	65	729	49 App.	787
1952	485	66	286	49 App.	485	
	740	66	628	49 App.	401, 491, 622	
1953	181	67	140	49 App.	1116	
	379	67	489	49 App.	176	

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			Vol- ume	Page	Title	Section	
1955 May 19 Aug. 3	41	69	49	49 App.	481	
	494	69	441	49 App.	1101-1103, 1104, 1105, 1107, 1108, 1111	
1956 July 20 Aug. 1	650	.....	70	591	49 App.	481
	655	.....	70	594	49 App.	722
	816	.....	70	784	49 App.	483
	852	..... 22	70	911	49 App.	789
1957 June 13 Aug. 14 Aug. 26 Sept. 7	85-50	.....	71	69	49 App.	1201-1203
	85-135	.....	71	352	45	6, 13, 34, 63
	85-166	.....	71	415	49 App.	481
	85-307	.....	71	629	49 App.	1324 (note)
1958 Apr. 9 Apr. 11 July 7 Aug. 23	85-373	.....	72	84	49 App.	486
	85-375	.....	72	86	45	9
	85-507	.....	72	337, 338	49 App.	457, 603
	85-726 (less 613(a), (b), 1402(a), (e)-(g), 1404, 1406, 1411)	72	731	49 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	

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			Vol- ume	Page	Title	Section
1959	86-3	21	73	13	49 App.	1324(note)
	86-70	39	73	150	49 App.	1324(note)
	86-72		73	155	49 App.	1101, 1102, 1104, 1106, 1108, 1109, 1112
	86-81		73	180	49 App.	1403, 1404
	86-154		73	333	49 App.	1743
	86-199		73	427	49 App.	1485
1960	86-295		73	572	49 App.	1105
	86-546	1	74	255	49 App.	1486
	86-624	37	74	421	49 App.	1324(note)
	86-627		74	445	49 App.	1373
	86-661		74	527		
	86-758		74	901	49 App.	1378, 1378(note)
	86-762		74	903	45	38, 42, 43
	87-89		75	210	49 App.	1542
	87-197		75	466	49 App.	1301, 1472, 1511
	87-221		75	494	15	1281, 1282
1961	87-225		75	497	49 App.	1486
	87-255		75	523	49 App.	1101-1106, 1108- 1110, 1112, 1509
	87-367	103(2), (6), (15), 205	75	787, 788, 791	49 App.	1322, 1343, 1343(note)
1962	87-528		76	143	49 App.	1301, 1371, 1371(note), 1376, 1387, 1471, 1472, 1323, 1441, 1505
	87-810		76	921	49 App.	

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1964 Mar. 11	87-820	76	936	49 App.	1324(note), 1380
	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 July 9	88-349	.....	78	239	49 App.	1114
	88-365	.....	78	302	49 App.	1601, 1601(note), 1602, 1603, 1604, 1605-1625
Aug. 14	88-426	.....	78	424	49 App.	1321, 1341, 1342
1965 Aug. 10 Sept. 30 Nov. 8	89-117	.....	79	475, 507	49 App.	1605, 1608
	89-220	.....	79	1310	49 App.	1643
	89-348	.....	79	1310	49 App.	1539
1966 June 13 Sept. 8	89-447	.....	80	199	49 App.	1542
	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 Oct. 15	89-647	.....	80	894	49 App.	1104, 1105
	89-670	80	931, 943, 944, 948, 949	15 49 App.	1376, 1651, 1651(note), 1652, 1653, 1654, 1655- 1657, 1659

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1967	90-19	50	123
	90-34	20	25	49 App.	49 App.	1602, 1603, 1605, 1606, 1608-1610
	90-169	81	49 App.	49 App.	1604
	.....	.....	526	49 App.	49 App.	1604
1968	90-283	.....	82	72	15	1410
	90-411	.....	82	395	49 App.	1431
	90-423	1(f)	82	424	49 App.	1642
	90-448	701-704	82	534	49 App.	1603, 1604, 1605
	90-481	.....	82	720	49 App.	1671, 1671 (note), 1672-1686
	90-514	.....	82	867	49 App.	1301, 1371, 1371 (note)
	90-568	.....	82	1003	49 App.	1324 (note)
	91-62	.....	83	103	49 App.	1377, 1377 (note), 1378
	91-152	306	83	392	49 App.	1603, 1604
	91-169	.....	83	463	45	61, 61 (note), 62- 64b
1970	91-258	.....	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)
	91-51, 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)

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May 22	91-265	84	262	15	1381 (note), 1391, 1401, 1408, 1409, 1426, 1431	
Sept. 8	91-399	84	837	49 App.	1542	
Oct. 13	91-444	.....	84	915	49 App.	1642
Oct. 14	91-449	.....	84	921	49 App.	1301, 1472
Oct. 15	91-453	.....	84	962, 969	49 App.	1601 (note), 1601a, 1602, 1602 (note), 1603-1605, 1610- 1612
Oct. 16	91-458	.....	84	971	45	421, 421 (note), 431-441, 443, 444
Oct. 27	91-513	.....	84	1294	49 App.	787
Oct. 30	91-518	.....	84	1327	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
Dec. 23	91-569	.....	84	1499	49 App.	1512, 1512 (notes)
Dec. 29	91-596	.....	84	1619	49 App.	1421
Dec. 31	91-604	.....	84	1705	49 App.	1421, 1430
1971		.....				
Nov. 18	92-159	.....	85	481	49 App.	1429
Nov. 27	92-174	85	491	49 App.	1429, 1430 (note), 1432, 1711-1713, 1714, 1715, 1717	
1972						
Mar. 22	92-259	86	95	49 App.	1374, 1461, 1482, 1482 (note)	

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June 22	92-316	86	227	45	543, 543(note), 545, 546, 548, 562, 563, 565, 601, 602, 602(note), 644, 645, 1674, 1674(note), 1682, 1684
Aug. 22	92-401	.....	86	616	49 App.	1901, 1901(note), 1911-1922, 1941-1949, 1961-1964, 1981, 1981(note), 1982-1991, 2001-2010, 2012, 2021-2034
Oct. 20	92-513	(less 511)	86	947	15	1381(note), 1409, 1410
Oct. 25	92-548	.....	86	1159	15	1324(note)
Oct. 27	92-556	.....	86	1170	49 App.	
	92-574	7(b)	86	1239	49 App.	
June 18 1973	93-44	.....	87	88	49 App.	1513, 1701(note), 1711, 1712, 1714, 1716, 1717
Aug. 13	93-87	138, 164, 301	87	270, 281, 295	49 App.	1602a, 1603, 1603(note), 1607a(note), 1608(note), 1612
Aug. 14	93-90	.....	87	305	45	421(note), 441(note)
Nov. 3	93-146	87	548	49 App. 45	501(note), 502, 543, 543(note), 545, 546, 548, 561-564, 601, 602, 641

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1974 Jan. 2	93-236	303(e) (words "title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 or of", 711 (words ", the National Railroad Passenger Corporation, or the Amtrak Commuter Services Corporation").	45	743, 797j
	93-239 93-366	4	87	1048	49 App.	1421
		.....	88	409	49 App.	1301 (note), 1301, 1356, 1357, 1471, 1472, 1473, 1487, 1511, 1514-1516
	Aug. 22	93-383	813	737	49 App.	1602, 1602a, 1602a (note)
Aug. 30	93-403	.....	88	802	49 App.	1671 (note), 1684
Oct. 27	93-492	(less 108)	88	1470	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)
Nov. 26	93-503	(less 105)	88	1565	49 App. 49 App.	302, 1643, 1653 1601b, 1601b (note), 1602-1604b, 1605 (note), 1611
1975 Jan. 2	93-604	702	88	1964	49 App.	1537
	93-608	1(20), (21)	88	1970	49 App.	1343, 1603
	93-623	(less 6)	88	2102	49 App.	1151 (note), 1159a, 1159b, 1373, 1376, 1377, 1472, 1517

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1974 Jan. 4	93-633	88	2156	45	39, 421 (note), 437, 438, 440, 440 (note), 1471, 1472, 1653, 1761, 1762, 1801, 1801 (note), 1802- 1813, 1901, 1901 (note), 1902- 1907
	93-650	89	2-1	49 App.	1602, 1602a, 1602a (note)
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	94-56	89	263	49 App. 45	1653 421 (note), 440
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