AMENDMENTS

2008—Pub. L. 110–405, §2(b)(7)(B), renumbered section 41910 of this title as this section.

Pub. L. 110–405, §2(b)(6), substituted ''The United States Postal Service may weigh mail transported by aircraft between places in Alaska and make statistical and –administrative computations necessary in the interest of mail service.'' for ''The United States Postal Service may weigh mail transported by aircraft and make statistical and administrative computations necessary in the interest of mail service.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–405 effective Oct. 1, 2008, see section 2(c) of Pub. L. 110–405, set out as a note under section 101 of Title 39, Postal Service.

### § 41908. Effect on foreign postal arrangements

This part does not—

(1) affect an arrangement made by the United States Government with the postal administration of a foreign country related to the transportation of mail by aircraft; or

(2) impair the authority of the United States Postal Service to make such an arrangement.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1157, §41912; renumbered §41908, Pub. L. 110–405, §2(b)(7)(B), Oct. 13, 2008, 122 Stat. 4289.)

HISTORICAL AND REVISION NOTES

| *Revised Section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 41912 ..... | 49 App.:1375(e)(1). | Aug. 23, 1958, Pub. L. 85–726, §405(e)(1), 72 Stat. 761. |

In clause (1), the words ''abrogate or'' are omitted as being included in ''affect''.

PRIOR PROVISIONS

A prior section 41908, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1156, related to prices for transporting mail of foreign countries, prior to repeal by Pub. L. 110–405, §2(b)(7)(A), (c), Oct. 13, 2008, 122 Stat. 4289, 4290, effective Oct. 1, 2008.

AMENDMENTS

2008—Pub. L. 110–405, which directed the amendment of this chapter by renumbering section 49112 as this section, was executed by renumbering section 41912 of this title as this section to reflect the probable intent of Congress.

### [§ 41909. Renumbered § 41906]

### [§ 41910. Renumbered § 41907]

### [§ 41911. Repealed. Pub. L. 110–405, § 2(b)(7)(A), Oct. 13, 2008, 122 Stat. 4289]

Section, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1157, related to evidence of providing mail service.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2008, see section 2(c) of Pub. L. 110–405, set out as an Effective Date of 2008 Amendment note under section 101 of Title 39, Postal Service.

### [§ 41912. Renumbered § 41908]

## CHAPTER 421—LABOR-MANAGEMENT PROVISIONS

SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM[1]



SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR REQUIREMENTS OF AIR CARRIERS



SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM



AMENDMENTS

2000—Pub. L. 106–181, title V, §519(b), Apr. 5, 2000, 114 Stat. 149, added heading for subchapter III and item 42121.

### [SUBCHAPTER I—REPEALED]

### [§§ 42101 to 42106. Repealed. Pub. L. 105–220, title I, § 199(a)(6), Aug. 7, 1998, 112 Stat. 1059]

Section 42101, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1157, defined terms in subchapter.

Section 42102, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1158, related to payments to eligible protected employees.

Section 42103, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1159, related to duty to hire protected employees.

Section 42104, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1159; Pub. L. 104–287, §5(9), Oct. 11, 1996, 110 Stat. 3389, related to congressional review of regulations.

Section 42105, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1160, related to Airline Employees Protective Account.

Section 42106, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1160, provided ending effective date for subchapter.

## SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR REQUIREMENTS OF AIR CARRIERS

### § 42111. Mutual aid agreements

An air carrier that will receive payments from another air carrier under an agreement between the air carriers for the time the one air carrier is not providing foreign air transportation, or is providing reduced levels of foreign air transportation, because of a labor strike must file a true copy of the agreement with the Secretary of Transportation and have it approved by the Secretary under section 41309 of this title. Notwithstanding section 41309, the Secretary shall approve the agreement only if it provides that—

(1) the air carrier will receive payments of not more than 60 percent of direct operating expenses, including interest expenses, but not depreciation or amortization expenses;

(2) benefits may be paid for not more than 8 weeks, and may not be for losses incurred during the first 30 days of a strike; and

[1] Subchapter I repealed by Pub. L. 105–220 without corresponding amendment of chapter analysis.

(3) on request of the striking employees, the dispute will be submitted to binding arbitration under the Railway Labor Act (45 U.S.C. 151 et seq.).

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1160.)

HISTORICAL AND REVISION NOTES

| *Revised Section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 42111 ..... | 49 App.:1382(c). | Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §412(c); added Oct. 24, 1978, Pub. L. 95–504, §29(a), 92 Stat. 1730; Feb. 15, 1980, Pub. L. 96–192, §11(2), 94 Stat. 39; Oct. 4, 1984, Pub. L. 98–443, §9(s), 98 Stat. 1708. |
| | 49 App.:1551(b)(1)(C) (related to 49 App.:1382(c)). | Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §1601(b)(1)(C) (related to §412(c)); added Oct. 24, 1978, Pub. L. 95–504, §40(a), 92 Stat. 1745; Oct. 14, 1982, Pub. L. 97–309, §4(b), 96 Stat. 1454; Oct. 4, 1984, Pub. L. 98–443, §3(a), 98 Stat. 1703. |

In this section, before clause (1), the text of 49 App.:1382(c)(1) is omitted as executed. The words ''For purposes of this subsection, the term . . . (A) 'mutual aid agreement' means'' are omitted because of the restatement. The words ''contract or'', ''which are parties to such contract or agreement'', and ''during which'' are omitted as surplus. The word ''providing'' is substituted for ''engaging in'' for consistency. The words ''service in'' are omitted as surplus. The words ''No air carrier shall enter into any mutual aid agreement with any other air carrier'' are omitted as surplus. In clause (1), the words ''For purposes of this subsection, the term . . . (B) 'direct operating expenses' includes'' are omitted because of the restatement. The words ''for any period'' and ''during such period'' are omitted as surplus. In clause (2), the words ''under the agreement'' and ''during any labor strike'' are omitted as surplus.

REFERENCES IN TEXT

The Railway Labor Act, referred to in par. (3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

### § 42112. Labor requirements of air carriers

(a) DEFINITIONS.—In this section—

(1) ''copilot'' means an employee whose duties include assisting or relieving the pilot in manipulating an aircraft and who is qualified to serve as, and has in effect an airman certificate authorizing the employee to serve as, a copilot.

(2) ''pilot'' means an employee who is—

(A) responsible for manipulating or who manipulates the flight controls of an aircraft when under way, including the landing and takeoff of an aircraft; and

(B) qualified to serve as, and has in effect an airman certificate authorizing the employee to serve as, a pilot.

(b) DUTIES OF AIR CARRIERS.—An air carrier shall—

(1) maintain rates of compensation, maximum hours, and other working conditions and relations for its pilots and copilots who are providing interstate air transportation in the 48 contiguous States and the District of Columbia to conform with decision number 83, May 10, 1934, National Labor Board, notwithstanding any limitation in that decision on the period of its effectiveness;

(2) maintain rates of compensation for its pilots and copilots who are providing foreign air transportation or air transportation only in one territory or possession of the United States; and

(3) comply with title II of the Railway Labor Act (45 U.S.C. 181 et seq.) as long as it holds its certificate.

(c) MINIMUM ANNUAL RATE OF COMPENSATION.—A minimum annual rate under subsection (b)(2) of this section may not be less than the annual rate required to be paid for comparable service to a pilot or copilot under subsection (b)(1) of this section.

(d) COLLECTIVE BARGAINING.—This section does not prevent pilots or copilots of an air carrier from obtaining by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1160.)

HISTORICAL AND REVISION NOTES

| *Revised Section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 42112(a) ..... | 49 App.:1371(k)(5). | Aug. 23, 1958, Pub. L. 85–726, §401(k), 72 Stat. 756. |
| 42112(b), (c) | 49 App.:1371(k)(1), (2), (4). | |
| 42112(d) ..... | 49 App.:1371(k)(3). | |

In subsection (a), the words ''properly'' and ''currently'' are omitted as surplus.

In subsection (b), the word ''providing'' is substituted for ''engaged in'' for consistency in the revised title. In clause (1), the words ''48 contiguous States and the District of Columbia'' are substituted for ''the continental United States (not including Alaska)'' for clarity and consistency in the revised title. In clause (2), the words ''overseas or'' are omitted as obsolete. The word ''only'' is substituted for ''wholly'' for consistency. In clause (3), the words ''as long as it holds'' are substituted for ''upon the holding'' for clarity.

In subsection (c), the words ''under subsection (b)(1) of this section'' are substituted for ''said decision 83 . . . engaged in interstate air transportation within the continental United States (not including Alaska)'' to eliminate unnecessary words.

In subsection (d), the words ''or other employees'' are omitted as unnecessary because this section only applies to pilots and copilots.

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b)(3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title II of the Act was added by act Apr. 10, 1936, ch. 166, 49 Stat. 1189, and is classified generally to subchapter II (§181 et seq.) of chapter 8 of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

LABOR INTEGRATION

Pub. L. 110–161, div. K, title I, §117, Dec. 26, 2007, 121 Stat. 2382, provided that:

''(a) LABOR INTEGRATION.—With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers; except that—

''(1) if the same collective bargaining agent represents the combining crafts or classes at each of the covered air carriers, that collective bargaining agent's internal policies regarding integration, if any, will not be affected by and will supersede the requirements of this section; and

''(2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions.

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

''(1) AIR CARRIER.—The term 'air carrier' means an air carrier that holds a certificate issued under chapter 411 of title 49, United States Code.

''(2) COVERED AIR CARRIER.—The term 'covered air carrier' means an air carrier that is involved in a covered transaction.

''(3) COVERED EMPLOYEE.—The term 'covered employee' means an employee who—

''(A) is not a temporary employee; and

''(B) is a member of a craft or class that is subject to the Railway Labor Act (45 U.S.C. 151 et seq.).

''(4) COVERED TRANSACTION.—The term 'covered transaction' means—

''(A) a transaction for the combination of multiple air carriers into a single air carrier; and which

''(B) involves the transfer of ownership or control of—

''(i) 50 percent or more of the equity securities (as defined in section 101 of title 11, United States Code) of an air carrier; or

''(ii) 50 percent or more (by value) of the assets of the air carrier.

''(c) APPLICATION.—This section shall not apply to any covered transaction involving a covered air carrier that took place before the date of enactment of this Act [Dec. 26, 2007].

''(d) EFFECTIVENESS OF PROVISION.—This section shall become effective on the date of enactment of this Act and shall continue in effect in fiscal years after fiscal year 2008.''

## SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

### § 42121. Protection of employees providing air safety information

(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(3) testified or is about to testify in such a proceeding; or

(4) assisted or participated or is about to assist or participate in such a proceeding.

(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

(1) FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Federal Aviation Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION; PRELIMINARY ORDER.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) REQUIREMENTS.—

(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavor-

able personnel action alleged in the complaint.

(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) FINAL ORDER.—

(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding $1,000.

(4) REVIEW.—

(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(6) ENFORCEMENT OF ORDER BY PARTIES.—

(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of an air carrier, contractor, or subcontractor who, acting without direction from such air carrier, contractor, or subcontractor (or such person's agent), deliberately causes a violation of any requirement relating to air carrier safety under this subtitle or any other law of the United States.

(e) CONTRACTOR DEFINED.—In this section, the term ''contractor'' means a company that per-

forms safety-sensitive functions by contract for an air carrier.

(Added Pub. L. 106–181, title V, § 519(a), Apr. 5, 2000, 114 Stat. 145.)

EFFECTIVE DATE

Subchapter applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

## CHAPTER 423—PASSENGER AIR SERVICE IMPROVEMENTS



ESTABLISHMENT OF ADVISORY COMMITTEE FOR AVIATION CONSUMER PROTECTION

Pub. L. 112–95, title IV, § 411, Feb. 14, 2012, 126 Stat. 88, provided that:

''(a) IN GENERAL.—The Secretary of Transportation shall establish an advisory committee for aviation consumer protection to advise the Secretary in carrying out activities relating to airline customer service improvements.

''(b) MEMBERSHIP.—The Secretary shall appoint the members of the advisory committee, which shall be comprised of one representative each of—

''(1) air carriers;

''(2) airport operators;

''(3) State or local governments with expertise in consumer protection matters; and

''(4) nonprofit public interest groups with expertise in consumer protection matters.

''(c) VACANCIES.—A vacancy in the advisory committee shall be filled in the manner in which the original appointment was made.

''(d) TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

''(e) CHAIRPERSON.—The Secretary shall designate, from among the individuals appointed under subsection (b), an individual to serve as chairperson of the advisory committee.

''(f) DUTIES.—The duties of the advisory committee shall include—

''(1) evaluating existing aviation consumer protection programs and providing recommendations for the improvement of such programs, if needed; and

''(2) providing recommendations for establishing additional aviation consumer protection programs, if needed.

''(g) REPORT TO CONGRESS.—Not later than February 1 of each of the first 2 calendar years beginning after the date of enactment of this Act [Feb. 14, 2012], the Secretary shall transmit to Congress a report containing—

''(1) the recommendations made by the advisory committee during the preceding calendar year; and

''(2) an explanation of how the Secretary has implemented each recommendation and, for each recommendation not implemented, the Secretary's reason for not implementing the recommendation.

''(h) TERMINATION.—The advisory committee established under this section shall terminate on September 30, 2015.''

DISCLOSURE OF SEAT DIMENSIONS TO FACILITATE THE USE OF CHILD SAFETY SEATS ON AIRCRAFT

Pub. L. 112–95, title IV, § 412, Feb. 14, 2012, 126 Stat. 89, provided that: ''Not later than 1 year after the date of enactment of this Act [Feb. 14, 2012], the Administrator of the Federal Aviation Administration shall initiate a rulemaking to require each air carrier operating under part 121 of title 14, Code of Federal Regulations, to post on the Internet Web site of the air carrier the maximum dimensions of a child safety seat that can be used on each aircraft operated by the air carrier to enable passengers to determine which child safety seats can be used on those aircraft.''

### § 42301. Emergency contingency plans

(a) SUBMISSION OF AIR CARRIER AND AIRPORT PLANS.—Not later than 90 days after the date of enactment of this section, each of the following air carriers and airport operators shall submit to the Secretary of Transportation for review and approval an emergency contingency plan in accordance with the requirements of this section:

(1) An air carrier providing covered air transportation at a commercial airport.

(2) An operator of a commercial airport.

(3) An operator of an airport used by an air carrier described in paragraph (1) for diversions.

(b) AIR CARRIER PLANS.—

(1) PLANS FOR INDIVIDUAL AIRPORTS.—An air carrier shall submit an emergency contingency plan under subsection (a) for—

(A) each airport at which the carrier provides covered air transportation; and

(B) each airport at which the carrier has flights for which the carrier has primary responsibility for inventory control.

(2) CONTENTS.—An emergency contingency plan submitted by an air carrier for an airport under subsection (a) shall contain a description of how the carrier will—

(A) provide adequate food, potable water, restroom facilities, comfortable cabin temperatures, and access to medical treatment for passengers onboard an aircraft at the airport when the departure of a flight is delayed or the disembarkation of passengers is delayed;

(B) share facilities and make gates available at the airport in an emergency; and

(C) allow passengers to deplane following an excessive tarmac delay in accordance with paragraph (3).

(3) DEPLANING FOLLOWING AN EXCESSIVE TARMAC DELAY.—For purposes of paragraph (2)(C), an emergency contingency plan submitted by an air carrier under subsection (a) shall incorporate the following requirements:

(A) A passenger shall have the option to deplane an aircraft and return to the airport terminal when there is an excessive tarmac delay.

(B) The option described in subparagraph (A) shall be offered to a passenger even if a flight in covered air transportation is diverted to a commercial airport other than the originally scheduled airport.

(C) Notwithstanding the requirements described in subparagraphs (A) and (B), a passenger shall not have an option to deplane an aircraft and return to the airport terminal in the case of an excessive tarmac delay if—

(i) an air traffic controller with authority over the aircraft advises the pilot in