

§ 47106. Project grant application approval conditioned on satisfaction of project requirements

(a) **PROJECT GRANT APPLICATION APPROVAL.**—The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—

(1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;

(2) the project will contribute to carrying out this subchapter;

(3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter;

(4) the project will be completed without unreasonable delay;

(5) the sponsor has authority to carry out the project as proposed;

(6) if the project is for an airport that has an airport master plan that includes the project, the master plan addresses issues relating to solid waste recycling at the airport, including—

(A) the feasibility of solid waste recycling at the airport;

(B) minimizing the generation of solid waste at the airport;

(C) operation and maintenance requirements;

(D) the review of waste management contracts; and

(E) the potential for cost savings or the generation of revenue; and

(7) if the project is at an airport that is listed as having an unclassified status under the most recent national plan of integrated airport systems (as described in section 47103), the project will be funded with an amount appropriated under section 47114(d)(3)(B) and is—

(A) for maintenance of the pavement of the primary runway;

(B) for obstruction removal for the primary runway;

(C) for the rehabilitation of the primary runway; or

(D) for a project that the Secretary considers necessary for the safe operation of the airport.

(b) **AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.**—The Secretary may approve an application under this subchapter for an airport development project grant for an airport only if the Secretary is satisfied that—

(1) the sponsor, a public agency, or the Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or that good title will be acquired;

(2) the interests of the community in or near which the project may be located have been given fair consideration; and

(3) the application provides touchdown zone and centerline runway lighting, high intensity runway lighting, or land necessary for installing approach light systems that the Secretary,

considering the category of the airport and the kind and volume of traffic using it, decides is necessary for safe and efficient use of the airport by aircraft.

(c) **ENVIRONMENTAL REQUIREMENTS.**—(1) The Secretary may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

(A) only if the sponsor certifies to the Secretary that—

(i) an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the location and the location's consistency with the objectives of any planning that the community has carried out;

(ii) the airport management board has voting representation from the communities in which the project is located or has advised the communities that they have the right to petition the Secretary about a proposed project; and

(iii) with respect to an airport development project involving the location of an airport, runway, or major runway extension at a medium or large hub airport, the airport sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted; and

(B) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

(2) The Secretary may approve an application under this subchapter for an airport development project that does not involve the location of an airport or runway, or a major runway extension, at an existing airport without requiring an environmental impact statement related to noise for the project if—

(A) completing the project would allow operations at the airport involving aircraft complying with the noise standards prescribed for “stage 3” aircraft in section 36.1 of title 14, Code of Federal Regulations, to replace existing operations involving aircraft that do not comply with those standards; and

(B) the project meets the other requirements under this subchapter.

(3) At the Secretary's request, the sponsor shall give the Secretary a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

(4) The Secretary may make a finding under paragraph (1)(B) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

(d) **WITHHOLDING APPROVAL.**—(1) The Secretary may withhold approval of an application under

this subchapter for amounts apportioned under section 47114(c) and (e) of this title for violating an assurance or requirement of this subchapter only if—

(A) the Secretary provides the sponsor an opportunity for a hearing; and

(B) not later than 180 days after the later of the date of the application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred.

(2) The 180-day period may be extended by—

(A) agreement between the Secretary and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the Secretary withholding approval may obtain review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The action must be brought not later than 60 days after the order is served on the petitioner.

(e) **REPORTS RELATING TO CONSTRUCTION OF CERTAIN NEW HUB AIRPORTS.**—At least 90 days prior to the approval under this subchapter of a project grant application for construction of a new hub airport that is expected to have 0.25 percent or more of the total annual enplanements in the United States, the Secretary shall submit to Congress a report analyzing the anticipated impact of such proposed new airport on—

(1) the fees charged to air carriers (including landing fees), and other costs that will be incurred by air carriers, for using the proposed airport;

(2) air transportation that will be provided in the geographic region of the proposed airport; and

(3) the availability and cost of providing air transportation to rural areas in such geographic region.

(f) **COMPETITION PLANS.**—

(1) **PROHIBITION.**—Beginning in fiscal year 2001, no passenger facility charge may be approved for a covered airport under section 40117 and no grant may be made under this subchapter for a covered airport unless the airport has submitted to the Secretary a written competition plan in accordance with this subsection.

(2) **CONTENTS.**—A competition plan under this subsection shall include information on the availability of airport gates and related facilities, leasing and sub-leasing arrangements, gate-use requirements, gate-assignment policy, financial constraints, airport controls over air- and ground-side capacity, and whether the airport intends to build or acquire gates that would be used as common facilities.

(3) **SPECIAL RULE FOR FISCAL YEAR 2002.**—This subsection does not apply to any passenger facility fee approved, or grant made, in fiscal year 2002 if the fee or grant is to be used to improve security at a covered airport.

(4) **COVERED AIRPORT DEFINED.**—In this subsection, the term “covered airport” means a commercial service airport—

(A) that has more than .25 percent of the total number of passenger boardings each year at all such airports; and

(B) at which one or two air carriers control more than 50 percent of the passenger boardings.

(g) **CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.**—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.

(h) **EVALUATION OF AIRPORT MASTER PLANS.**—When evaluating the master plan of an airport for purposes of this subchapter, the Secretary shall take into account—

(1) the role the airport plays with respect to medical emergencies and evacuations; and

(2) the role the airport plays in emergency or disaster preparedness in the community served by the airport.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1254; Pub. L. 103–305, title I, §§ 108, 109, Aug. 23, 1994, 108 Stat. 1573; Pub. L. 106–181, title I, § 155(b), Apr. 5, 2000, 114 Stat. 88; Pub. L. 107–71, title I, § 123(a), Nov. 19, 2001, 115 Stat. 630; Pub. L. 107–296, title IV, § 426(b), Nov. 25, 2002, 116 Stat. 2187; Pub. L. 108–176, title I, § 187, title III, § 305, Dec. 12, 2003, 117 Stat. 2518, 2539; Pub. L. 112–95, title I, §§ 111(c)(2)(A)(i), 133, 134, Feb. 14, 2012, 126 Stat. 18, 22; Pub. L. 115–254, div. B, title I, §§ 148(a), 149, Oct. 5, 2018, 132 Stat. 3214, 3215.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
47106(a)	49 App.:2208(b) (1)(A)–(D).	Sept. 3, 1982, Pub. L. 97–248, § 503(a)(8), 509(b)(1)(A)–(D), (2)–(4), (5) (last sentence words after 11th comma), (6)(B)–(8), 96 Stat. 673, 683, 684.
47106(b)	49 App.:2202(a)(8). 49 App.:2208(b) (2)–(4).	
47106(c) (1)(A).	49 App.:2208(b)(6)(A).	Sept. 3, 1982, Pub. L. 97–248, § 509(b)(6)(A), 96 Stat. 684; Oct. 31, 1992, Pub. L. 102–581, § 113(b), 106 Stat. 4881.
47106(c) (1)(B).	49 App.:2208(b)(7)(A) (1st, 2d sentences).	
47106(c) (1)(C).	49 App.:2208(b)(5) (last sentence words between 11th and 12th commas and after last comma).	
47106(c)(2) ..	49 App.:2208(b)(8).	
47106(c)(3) ..	49 App.:2208(b)(6)(B).	
47106(c)(4) ..	49 App.:2208(b)(7)(A) (last sentence), (B).	
47106(c)(5) ..	49 App.:2208(b)(5) (last sentence words between 12th and last commas).	
47106(d)	49 App.:1731.	May 21, 1970, Pub. L. 91–258, 84 Stat. 219, § 31; added Feb. 18, 1980, Pub. L. 96–193, § 206, 94 Stat. 55; Sept. 3, 1982, Pub. L. 97–248, § 524(e), 96 Stat. 697.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
47106(e)	49 App.:2218(b) (related to application).	Sept. 3, 1982, Pub. L. 97-248, 96 Stat. 324, §519(b) (related to application); added Dec. 30, 1987, Pub. L. 100-223, §112(2), 101 Stat. 1504.

In subsection (a)(1), the word “reasonably” is omitted as surplus.

In subsection (a)(2), the words “carrying out” are substituted for “accomplishment of the purposes of” for consistency in the revised title.

In subsection (a)(3), the words “that portion of” are omitted as surplus.

In subsection (a)(5), the words “which submitted the project grant application” and “legal” are omitted as surplus.

In subsection (b), before clause (1), the words “for an airport” are added for clarity. In clause (1), the words “or an agency thereof” are omitted surplus. In clause (3), the words “that the Secretary . . . decides is necessary” are substituted for “when it is determined by the Secretary that any such item is required” to eliminate unnecessary words.

In subsection (c)(1)(B), before subclause (i), the words “chief executive officer” are substituted for “Governor” because this chapter applies to the District of Columbia which does not have a Governor. The words “except that the Administrator of the Environmental Protection Agency shall make the certification instead of the chief executive officer if” are substituted for “In any case where . . . certification shall be obtained from such Administrator” for clarity. Subclause (i) is substituted for “such standards have not been approved” for clarity.

In subsection (c)(2), before clause (A), the words “Notwithstanding any other provision of law” are omitted as surplus. The words “that does not involve the location of an airport or runway, or a major runway extension” are substituted for “(other than an airport development project in which paragraph (7)(A) applies)” for clarity. The words “the preparation of” are omitted as surplus. In clause (B), the words “statutory and administrative” are omitted as surplus.

In subsection (c)(4)(A), the words “to the Secretary” are added for clarity.

In subsection (c)(5), the words “full and” are omitted as surplus. The words “in writing” are omitted as surplus because of the requirement that the decision be a matter of public record.

In subsection (d)(1), the words “(as defined by section 1711(8) of this Appendix, as in effect on February 18, 1980)” are omitted because of the definition of “air carrier airport” in section 47102 of the revised title.

In subsection (d)(2), the words “Notwithstanding any other provision of the Airport and Airway Improvement Act of 1982 [49 App. U.S.C. 2201 et seq.]” and “single” are omitted as surplus.

In subsection (e)(1) and (2), the word “sponsor” is substituted for “applicant” for consistency.

In subsection (e)(1), before clause (A), the words “under this subchapter” are added for consistency in this section. The word “other” is omitted as surplus.

In subsection (e)(2)(A), the word “mutual” is omitted as surplus.

In subsection (e)(3), the words “adversely affected” are substituted for “aggrieved” for consistency in the revised title and with other titles of the United States Code. The words “the date on which” are omitted as surplus.

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(6). Pub. L. 115-254, §148(a)(2), inserted “that includes the project” before “the master plan” in introductory provisions.

Subsec. (a)(7). Pub. L. 115-254, §148(a)(1), (3), (4), added par. (7).

Subsec. (h). Pub. L. 115-254, §149, added subsec. (h). 2012—Subsec. (a)(6). Pub. L. 112-95, §133, added par. (6).

Subsec. (f)(1). Pub. L. 112-95, §111(c)(2)(A)(i), substituted “charge” for “fee”.

Subsec. (f)(2). Pub. L. 112-95, §134, struck out “patterns of air service,” after “gate-use requirements,” and “,” and airfare levels (as compiled by the Department of Transportation) compared to other large airports” after “common facilities” and inserted “and” after “ground-side capacity.”

2003—Subsec. (c)(1)(A)(iii). Pub. L. 108-176, §305(1), inserted “and” after semicolon at end.

Pub. L. 108-176, §187, added cl. (iii).

Subsec. (c)(1)(B), (C). Pub. L. 108-176, §305(2), (3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “only if the chief executive officer of the State in which the project will be located certifies in writing to the Secretary that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air and water quality standards, except that the Administrator of the Environmental Protection Agency shall make the certification instead of the chief executive officer if—

“(i) the State has not approved any applicable State or local standards; and

“(ii) the Administrator has prescribed applicable standards; and”.

Subsec. (c)(2)(A). Pub. L. 108-176, §305(4), substituted “stage 3” for “stage 2”.

Subsec. (c)(4), (5). Pub. L. 108-176, §305(5)–(7), redesignated par. (5) as (4), substituted “paragraph (1)(B)” for “paragraph (1)(C)”, and struck out former par. (4) which read as follows:

“(4)(A) Notice of certification or of refusal to certify under paragraph (1)(B) of this subsection shall be provided to the Secretary not later than 60 days after the Secretary receives the application.

“(B) The Secretary shall condition approval of the application on compliance with the applicable standards during construction and operation.”

2002—Subsec. (g). Pub. L. 107-296 added subsec. (g).

2001—Subsec. (f)(3), (4). Pub. L. 107-71, which directed the amendment of section 47106(f) by adding par. (3) and redesignating former par. (3) as (4), without specifying the Code title to be amended, was executed by making the amendments to this section, to reflect the probable intent of Congress.

2000—Subsec. (f). Pub. L. 106-181 added subsec. (f).

1994—Subsecs. (d), (e). Pub. L. 103-305 added subsec. (e), redesignated former subsec. (e) as (d), and struck out former subsec. (d) which read as follows:

“(d) GENERAL AVIATION AIRPORT PROJECT GRANT APPLICATION APPROVAL.—(1) In this subsection, ‘general aviation airport’ means a public airport that is not an air carrier airport.

“(2) The Secretary may approve an application under this subchapter for an airport development project included in a project grant application involving the construction or extension of a runway at a general aviation airport located on both sides of a boundary line separating 2 counties within a State only if, before the application is submitted to the Secretary, the project is approved by the governing body of each village incorporated under the laws of the State and located entirely within 5 miles of the nearest boundary of the airport.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

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

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as

an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

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

ENVIRONMENTAL REVIEW OF AIRPORT IMPROVEMENT PROJECTS

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

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

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

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

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

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

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

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

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

GRANTS FOR ENGINEERED MATERIALS ARRESTING SYSTEMS

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

GRANTS FOR RUNWAY REHABILITATION

Pub. L. 106-181, title V, §514(d), Apr. 5, 2000, 114 Stat. 144, provided that: “In any case in which an airport’s runways are constrained by physical conditions, the Secretary [of Transportation] shall consider alternative means for ensuring runway safety (other than a safety overrun area) when prescribing conditions for grants for runway rehabilitation.”

COMPLIANCE WITH REQUIREMENTS

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

eral law for the completion of such an assessment or study.”

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

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

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

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

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

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

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

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

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

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

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

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

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

(7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;

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

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

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