Next Generation Air Transportation System Financing Reform Act of 2007

Section-by-Section Analysis

Sec. 1. Title. This section provides that the short title of the bill is the "Next Generation Air Transportation System Financing Reform Act of 2007, and sets for the table of contents for the bill.

Sec. 2. Title 49 Reference. This section provides that, except where otherwise expressly provided, any references to sections or provisions are made to title 49, United States Code.

Sec. 3. Effective Date. This section provides that, unless otherwise stated, the amendments made by this Act are effective upon enactment.

Title I--Authorizations

Sec. 101. Air Traffic Functions, Safety and Operations, Research and Development, General Fund. This section adds a revised chapter 482 to the finance portion of title 49 to authorize appropriations for the FAA's programs.

Air Traffic Organization (new §48201). This section provides an authorization for appropriations for fiscal years 2008 through 2010 for the FAA's Air Traffic Organization (ATO) from two sources: the Airport and Airway Trust Fund (AATF or Trust Fund), and user fees (funding from the general fund is authorized separately under §48204). More specifically, because aviation fuel taxes paid by General Aviation will be deposited in the Trust Fund, an authorization for appropriations from the Trust Fund is provided so that such funds may be made available to support air traffic control (ATC) services. Beginning in fiscal year 2009, air traffic user fees will be available for appropriation to support the provision of ATC services. It should be noted that overflight fees are to be subsumed in the new user fees air traffic control services. A separate authorization for the essential air service (EAS) program is provided in Title VIII of this bill, effective in fiscal year 2009. Finally, funds from the General Fund may be appropriated to the ATO for ATC services deemed to benefit the general public such as those provided to public or military aircraft. Amounts appropriated under this section would remain available until expended.

Safety and operations authorizations (new §48202). An authorization for appropriations for fiscal years 2008 through 2010 for FAA safety functions, services to the commercial space industry and staff offices is also included with funding coming from the Trust Fund and user fees (both the air traffic and the registration and certification funds). Funds for safety and operations from the general fund are authorized separately under §48204. Amounts appropriated under this section would remain available until expended.

Civil Aviation Research and Development (new §48203). This section provides an authorization from the Trust Fund for conducting civil aviation research and development for fiscal years 2008 through 2010, and as above, stipulates that amounts appropriated under this section remain available until expended. Funds from the general fund for research and development are authorized separately under §48204

General Fund (new section 48204). Finally, this new section provides an overall maximum authorization for general fund appropriations for FAA programs and a general description of the types of activities or services that such funding would support. Specifically those activities not recovered by new fees to be established under chapter 453 of this title starting in FY 2009, or funded through taxes from the Trust Fund (authorizations for fees and Trust Fund funds are provided by §§48201-48203) relating to air traffic control services provided to public users such as military and public aircraft whose flights serve the public good, safety and certification services which help create a safe and reliable air transportation system that benefits the general public, aviation research and development, flight service stations, low-activity air traffic control towers, commercial space services, and other activities of the FAA that benefit the general public. This could include certain research activities that primarily relate to aviation safety improvements, or to support Flight Service Stations, which provide safety related services primarily to general aviation users.

Sec. 102. Airport Improvement Program. This section specifies contract authority levels through fiscal year 2010 for Airport Improvement Program (AIP) grants and extends the authority to make AIP grants from the Airport and Airway Trust Fund through fiscal year 2010. The obligation authority is also extended until 2010. This section also provides a specific authorization from the AIP program of $15 million for the Airport Cooperative Research Program (ACRP). This represents a $5 million increase for this Program, originally authorized by *Vision 100* for funding from the aviation Trust Fund as a pilot program (see related provision under title VI). The additional funding would be dedicated to airport environmental research.

Sec. 103. Airline Data and Analysis. This section would authorize funding for fiscal years 2008 through 2010 to support airline data collection and analysis by the Bureau of Transportation Statistics (BTS), which is now a part of the Research and Innovative Technology Administration. It also provides that, in FY2009 when an increase in funding is authorized, the Secretary shall reform, by the most efficient means available, the aviation economic data program in order to lower costs for taxpayers and improve program performance.

Sec. 104. Office of Commercial Space Transportation. The FAA's Office of Commercial Space Transportation is currently authorized through fiscal year 2009. Consistent with the three-year term of authorizations provided by this bill, this section would provide an authorization for that Office for fiscal year 2010.

Sec. 105. Transition. In support of the transition to the new system of user fees, this section provides for a short-term authorization from the general fund, not to exceed $1.36

billion, for the FAA during the initial two months of fiscal year 2009 when there will be a gap of time between when user fees are assessed to users of FAA services and when such fees are paid to the agency. The amount of the transition costs will be based on the projected total sum of fees that will be collected for services provided during the first sixty days after the transition to the new user fee system. However, the FAA Administrator is to recover these funds during fiscal year 2009 once the new user fee system is established through the imposition and collection of a surcharge on the fees in an amount and manner that will "repay" the general fund by the close of fiscal year 2009.

Title II--User Fee Authority

Sec. 201. Fees. This section establishes a schedule of fees in chapter 453 of title 49, United States Code.

Basis and Computation of Air Traffic Related Fees

Beginning in fiscal year 2009, the Administrator is directed to establish and periodically adjust a schedule of fees to cover the costs of providing air traffic control and related activities. The Administrator must also establish a process for collecting such fees. Except as specified, the owners or operators of aircraft will be responsible for paying the fees. The basis for computing the fees depends upon the type of airspace through which the aircraft is operating or the type of operation being conducted. For operations conducted in the enroute and oceanic environment, the Administrator may base the fee on distance traveled, or other methods consistent with our treaties and international agreements. The Administrator may also impose a surcharge on such fees during fiscal year 2009 to repay any loan amounts that may be required to support the initial transition to the user fee system.

For operations conducted in terminal airspace, a number of factors may be considered by the Administrator in establishing the fee. The operator may be charged a fee based on the weight of the aircraft being operated, and for takeoffs and landings at airports with greater than 100,000 passenger boardings annually. Because of its complexity, a special fee may be imposed for aircraft operating in terminal airspace for a large hub airport. Finally, in order to reduce delays, the Administrator may also vary the fee at a large hub with the time of day or day of the week, or for a particular large hub airport if: the operation is conducted in terminal airspace that is congested and that congestion is due to limitations on the capacity of the airports involved; and such fees would help reduce delays in the national airspace system. In making a determination to vary the fee because of congestion, the Administrator must develop and use quantitative standards. Also, the Administrator may establish different fees for night time operations.

The fees established and imposed by the Administrator in accordance with the above parameters must be based on the best available data derived from the agency's cost accounting and cost allocation systems. The term "costs" is defined for purposes of this provision and will include costs associated with the operation, maintenance, depreciation, debt service, and overhead expenses for the services provided, including the facilities and

equipment used in such services, and the projected costs for the period during which the services are provided. However, the Administrator may impose fees that are sufficient to pay for the costs of providing air traffic control and related services and facilities and equipment in the event that there is an unexpected decrease in aircraft operations or other event that affects the payment of projected receipts. The Administrator is not required to vary the fee based on the altitude at which the aircraft operates, but may impose a lower fee for aircraft that are equipped with avionics that the Administrator determines would improve safety or increase capacity. Also, each year, the Administrator will be required to provide for an independent review to validate that the agency used actual costs for the year and compiled those costs in compliance with its cost allocation methodology. Finally, subject to appropriation, the fees are to be credited as off-setting collections to an Air Traffic Organization account in the Treasury and made available to pay the costs of FAA services.

There are a number of operators who are exempt from the established fees. All military, other public use, and air ambulance aircraft are not subject to a fee. General aviation aircraft will continue to pay a fuel tax and will not be subject to a fee for services, except if the operation is through terminal airspace for a large hub airport, in which case the operation may be subject to the fee established for services provided in such airspace. However, this exemption from payment of most ATC user fees would not be effective if the level of fuel tax paid by general aviation falls below the level that would cover the costs of their use of ATC services, i.e. that provided for in title IX of this bill (70.0 cents per gallon) (unless a lower rate is the result of adjustments to the level of tax by the FAA. See §902).

To assist the FAA in determining who is obligated to pay fees or fuel taxes, a person required to file a flight plan must specify in the plan whether the flight is a commercial, general aviation, or public or military aircraft operation.

Finally, this section grants the Administrator authority to exempt Canadian domestic flights that overfly U.S. airspace if that is in the public interest (for instance, if Canada exempts from its fees U.S. domestic flights that overfly Canadian airspace).

Payment of Air Traffic Related Fees

All fees imposed and amounts collected are payable to the Administrator who shall establish the procedure for collection of the fees. The procedure must establish the frequency of payment, deadlines for payment, the maximum amount of fees that a person may have outstanding on account, and any other necessary conditions that the Administrator may stipulate. If an operator fails to pay the fee by the deadline or is out of compliance with any required condition, including providing correct information about the commercial or GA nature of the flight, the Administrator has several options. The Administrator may assess interest charges on amounts that have not been paid by the deadline. Alternatively, the Administrator may require the operator to pay applicable fees more frequently, or offset any amounts owed by withholding any other funds owed or due to the person. Except in cases of an emergency, the Administrator has the option

of reducing or withholding air traffic and related services to a delinquent operator with 24 hours notice. In the case of foreign carriers, any reduction or withholding of services will be implemented as soon as possible in accordance with international agreements. Finally, the Administrator may impose a civil penalty or take other appropriate enforcement action for non-payment.

If the Administrator makes a reasonable determination that an operator will not pay for fees assessed in a timely manner, the Administrator may either require the operator to pay applicable fees more frequently, or withhold or reduce air traffic and related services upon 24 hours notice unless there is an emergency. In the case of foreign carriers, any reduction or withholding of services will be implemented as soon as possible in accordance with international agreements.

Should an operator seek review of the Administrator's action for non-payment, the operator shall be required to continue to pay for air traffic control and related services pending resolution.

Prior to imposing or adjusting a fee, the Administrator must consult with air carriers, including foreign carriers to the extent required in international agreements, and with other persons who are subject to paying fees. In addition, the Administrator must consult with, and seek the recommendations of, the newly established Air Transportation System Advisory Board (Board) on the type and level of the fee prior to imposing or adjusting it. The Administrator may not assess or modify fees unless they have either been recommended for approval by the Board or the Administrator publishes in the Federal Register a written explanation of the Administrator's action, along with a summary of the views of the Board. If an individual objects to the fees established, or the amount of such fees, by the Administrator, the decision may only be appealed to the Secretary of Transportation. The Secretary shall disapprove the proposed fees if the Secretary finds that they are not based on appropriate costs, do not fairly allocate costs among users, are unreasonably discriminatory to a particular category of users, or are not in accordance with the agency's strategic business plan. The Board may periodically recommend to the Administrator an adjustment of the fees in order to meet the needs of the FAA or users of the system. The decision of the Administrator to impose or adjust a fee is effective 60 days after the decision unless disapproved by the Secretary. The decision of the Secretary is a final agency action that is not subject to judicial review.

Nothing in this section shall be construed as affecting fees previously authorized by this chapter.

The rulemaking requirements of title 5, U.S. Code, do not apply to the actions of the Secretary, the Administrator, or the Board under this section.

"Air ambulance aircraft" is defined as rotorcraft in an operation to provide emergency medical services and fixed wing aircraft that are equipped for and exclusively dedicated to providing acute care medical services.

Definitions for different parts of the airspace—enroute, terminal and oceanic—are also provided.

Certification, Registration, and Related Fees

Beginning in fiscal year 2009, the Administrator shall impose fees to pay for the costs of 25 listed activities in the areas of certification and registration. Twelve activities have a specified amount to be charged to the operator for receiving the service. Thirteen activities are identified for which fees will be collected, but do not have an amount to be charged specified. The charge for these activities will be determined based on the available data derived from the agency's cost accounting and cost allocation systems that measure all costs associated with capital, operation and maintenance, depreciation and overhead, including projected costs for the period during which the services will be provided. The Administrator may also impose a surcharge on such fees during fiscal year 2009 to repay any loan amounts that may be required to support the initial transition to the user fee system. The Administrator may also establish additional fees that are necessary to cover the cost of aviation regulation, certification and related services not included in the enumerated list, including any additional cost of providing services outside the United States.

The Administrator shall periodically adjust the fees established in this section in response to each of three circumstances. The first is to account for changes in the Consumer Price Index published by the Secretary of Labor. The second is in response to data revealing that the cost of providing the service is higher or lower than the data that was used to establish the fee in effect. The third is when the Board recommends an adjustment in the fee. Finally, the fees are to be credited as off-setting collections to a Safety and Operations account in the Treasury and, subject to appropriation, made available to pay the costs of FAA services.

All fees imposed and amounts collected are payable to the Administrator who shall establish the procedure for collection of the fees. Procedures similar to those applicable to air traffic services fees are also applicable to safety registration and certification fees, including enforcement authority for non-payment of fees.

Should an operator seek review of the Administrator's action for non-payment, the operator shall be required to continue to pay for certification, registration, and related services pending resolution of the appeal.

The procedure for imposing the registration and certification related fees is the same as that for imposing air traffic control and related service fees.

The rulemaking requirements of title 5, U.S. Code do not apply to the actions of the Secretary, the Administrator, or the Board under this section.

Rules of construction

New section 45307 would provide that the fees computed, established, imposed, adjusted, or approved under this chapter shall be governed by the provisions of this

chapter and not the provisions of 9701 of title 31, United States Code (fees and charges for government services and things of value).

Borrowing Authority.
In order to accelerate the transition to the Next Generation Air Transportation System, which will require substantial capital investments, a new provision, new section 45308 would authorize, during fiscal years 2013 through 2017, limited borrowing authority for the Secretary, through the Department of the Treasury, to finance capital investments in the facilities and equipment of the air traffic control system to be owned and operated by the FAA. This proposed authority would contribute to a more businesslike funding structure, leverage limited resources, and accelerate NextGen transition by aligning payment for a project with the benefits that project generates and providing greater flexibility to take advantage of capital investment opportunities as technology changes. Examples of specific projects that may be appropriate for debt financing include safety-critical and mission-essential software and systems that controllers and traffic flow managers will use to support trajectory based operations in the NextGen system, enhancements to the global positioning system (GPS) technology related to civil aviation, surveillance technology for homeland security and defense, and future facility consolidation. This authority would be capped at a maximum of $5 billion of principal debt, and all indebtedness issued under this authority must be repaid by the end of fiscal year 2017.

Sec. 202. Conforming Amendments. A conforming amendment modifies chapter 453 to include titles for the three new sections being added. In addition, a conforming amendment to section 46301 is included to permit the Administrator to issue civil penalties for non-payment of the fees established. Also, effective October 1, 2008, provisions authorizing current fee collections, including separate authority for overflight fees, are repealed in view of the broader fee authority provided by this bill.

Title III--Airport Improvement Program Amendments

Sec. 301. Reform of PFC authority. This section provides for comprehensive reform of the passenger facility charge (PFC) program. Most significantly, it would expand PFC eligibility to include any capital cost that an airport could pay for with airport revenue and remove almost all approval criteria in current statute. This would recognize that PFC revenue is locally-based while at the same time preserve the original concept of PFCs as an additional source of funding for airport capital planning and development. This section would also allow airports to increase PFC levels to up to a maximum of $6.00, a change that reflects not only impacts of inflation since the last statutory increase but would also be intended to help airports meet increased capital needs identified in the FAA's latest *National Plan of Integrated Airport Systems* (NPIAS). The one exception to the $6 cap would be to allow an airport sponsor that is selected to participate in the new pilot program for transfer of navigational equipment to adopt a $7 PFC. (see sec. 318).

This provision would also broaden PFC eligibility requirements to specifically include intermodal ground access projects (such as rail transit links to an airport), including privately owned projects that are available for public use and otherwise eligible.

This provision provides for further streamlining of the PFC review and approval procedures. Current law requires an application and approval of each PFC project (or amendment to a project) that sometimes involves prolonged reviews and delays. That approach would be replaced with a three-tier system:

"Old" projects: Airports would be required to submit an annual "status report" on PFCs which would include information on how PFCs were used in the previous year and how an airport intends to use PFCs in the coming year. If all projects proposed for collection in the coming year had been approved under old system or were subject to second or third tier procedures before submission on a prior annual status report, no further action would be required and an airport could implement its plan.

New projects: If an airport is proposing a PFC for a new project (not previously approved or subject to 2nd or 3rd tier during a prior year) the airport must provide a local notice and comment period for carriers operating at the airport and a local public notice and comment period before filing its PFC status report. The airport can still implement the proposed collection, with the filing of the status report, but interested persons may file an objection with the FAA. If the FAA disapproves the project based on the objection, the airport's authority to collect for the new project would be terminated.

New intermodal ground access projects: This type of project is defined as public or privately owned rail project that is a component of, or connects to, a general transit system. For these projects, before an airport may use PFC revenue on the project, DOT approval would still be required.

In addition to the above, this section would change the references in the current statute to "passenger facility fees" to "passenger facility charges" to reflect the original formulation of the program and conform the statutory language to the terms commonly used in the industry. It would also eliminate the "short-term lease" exception in current law to the general prohibition on exclusive use terminal leases to carriers. This change will promote more competition in terminal lease arrangements at airports. However, in order to achieve the security benefits of accelerated deployment of explosive detection systems (EDS), an exception to the general prohibition on exclusive use leases would be added to the law for retrofitting baggage systems or terminal space to accommodate in-line EDS.

Along with the increased flexibility and streamlining of processes for implementing PFCs, this provision would also provide explicit authority for the FAA to investigate complaints of non-compliance with PFC requirements. This approach more closely resembles the same approach that current law provides for oversight of the use of other locally generated airport revenue including rates and charges.

Finally, this provision would extend the sunset date of the current non-hub airport PFC pilot program until adoption of final regulations for the new streamlined review procedures called for by this proposal.

Sec. 302. Amendments to AIP definitions. This section makes several amendments to section 47102 to update terms and add terms that are used in the airport improvement program (AIP). The first amendment would conform the definition of airport development relating to firefighting and rescue equipment with recent final rulemaking for airport certification requirements (14 CFR parts 121 and 139) for airports serving scheduled air carrier operations in aircraft designed for more than 9 (not 20 as the current law describes) passenger seats but less than 31 passenger seats. The definition of airport development would be further amended to broaden eligibility to include mobile fuel truck containment systems if such systems are required by EPA rule.

The second amendment would add a definition of "general aviation airport".

The third amendment adds a definition of "revenue producing aeronautical support facilities" which is referenced in section 47110 (allowable project costs) so that nonprimary airports may use their entitlements to build or rehabilitate new facilities that can help generate revenue on their airports. The expansion of the definition allows more flexibility to build these facilities.

The last amendment would add a definition of "terminal development" as part of technical amendments to consolidate statutory provisions on terminal development currently scattered throughout chapter 471.

Sec. 303. Amendments to Grant Assurances. This section makes two improvements to required grant assurances (section 47107) for AIP projects. First, a limited exception to a current requirement would be allowed to permit an airport owner to use AIP entitlement funds to move or replace a facility when the need to relocate or replace it was beyond the owner's control (such as new design standards that render the facility a safety hazard). Second, language is added to the part of the provision dealing with the disposition of proceeds from the sale of land that an airport acquired a noise compatibility purpose but no longer needs for that purpose. Current law would require that the proceeds proportional to the federal government's share of the land acquisition be returned to the Airport and Airway Trust Fund (Trust Fund). This change would allow the Secretary to permit other uses of the government's share of the proceeds, giving priority, in descending order, to the following: reinvestment in another noise compatibility project at the airport; reinvestment in another environmentally related project at the airport; reinvestment in another otherwise eligible AIP project at the airport; transfer to another public airport for a noise compatibility project; and, finally, payment to the Trust Fund.

Sec. 304. Government's share of project costs. This section would make several changes to current requirements for the Federal government's matching share of Airport Improvement Program (AIP) projects. Current law provides, depending on the type of project involved, the government's share be either a set percentage of a projects costs or a maximum percentage of a projects costs (i.e. the government may fund "up to" a percentage). In order to leverage AIP funds more efficiently and provide support for a broader number and type of projects, this section would adopt the latter, more flexible

option of providing a maximum percentage share for the government's participation for all categories of projects.

This section would also lower the government's maximum project share for airfield pavement and rehabilitation projects for runways, taxiways and aprons at large and medium hub airports (from 75% to 50%), but would retain a maximum share of 75% for all other types of projects at such large and medium hub airports.

A new provision would be added to allow for up to a 95% government share of a project costs at a nonprimary airport that will no longer receive minimum entitlement funds under the bill's proposal to amend the apportionment formulas under section 47114 (see section 306). There are approximately 800 airports in the NPIAS that have less than 10 based aircraft that would be affected by the changes to the nonprimary entitlement provision of section 47114. These airports would still be eligible for AIP grants. Allowing for a higher government match should help these airports adapt to the funding changes.

A special rule would be added to allow for primary small hub airports that have increased operations and are reclassified as medium hub airports to retain for two years their eligibility for up to a 90% government share of projects costs. This should ease the transition to the new status.

Finally, the bill would allow the temporary increase, enacted as part of *Vision 100*, in the Federal share from 90% to 95% for certain projects at small airports to expire as scheduled at the end of FY 2007. Such special rule is no longer justified because aviation activity and the economy have recovered from the attacks of September 11, 2001. Also, AIP funds could be used over a broader range of projects with such a change.

Sec. 305. Amendments to allowable projects costs. This section would delete the provision (47110(d)) in current law that describes what costs for terminal development are allowable under the AIP program. That subsection would be moved, *without substantive change,* to section 47119 (Terminal development costs) in order to consolidate language into one provision of the chapter. Having terminal development related provisions in both 47110 and 47119 has led to confusion and problems with interpretation.

A new subsection is added to 47110 as subsection (d) relating to the relocation of airport-owned facilities, making such relocation an allowable cost if the sponsor must move a facility because of design standards beyond the sponsor's control. This is similar to a change made to the grant assurances provision.

Finally, a conforming change is made to subsection (f) to conform a cross-reference to the military airport program, and to subsection (h) to refer to the expanded definition of revenue producing support facilities added to section 47102 (see section 302 above).

Sec. 306. Simplification and Reform of Apportionment Formulas. The purpose of the amendments in this section is twofold: to simplify the formulas for distributing Airport Improvement Program funds, which have grown complicated over the recent authorizations, and to better target funding to the Nation's airports with the greatest needs by gradually ending outdated subsidies, setting a minimum discretionary fund level that reflects actual needs, setting a minimum unassigned state apportionment, eliminating the "trigger" in current formulas, and returning the Federal project share to a maximum of 90% for small airport projects, which had been raised to 95% after September 11, 2001 to assist airports in their recovery efforts. We also propose to increase the current cap for passenger facility charges (PFCs) from $4.50 to $6.00. This will help airports to generate more local funds for necessary capital projects and also become more self-sustaining.

Large and Medium Hubs. This section makes numerous changes to the apportionment formulas set forth in 49 U.S.C. §47114. Paragraph (1) would phase out AIP passenger entitlement funds for large hub and medium hub primary airports after two years, ending such distributions by FY 2010. During the transition period (FY 2008 and 2009), passenger entitlements would be reduced by 50% from levels in effect during FY 2006 (see also discussion in next paragraph). The phase-out of these primary entitlement funds (now amounting to $247 million) will be offset more than four-fold by the increase in the PFC cap (see section 301), which could make available $1.075 billion in potential resources. The existing small airport fund that is supported by returned large and medium hub passenger entitlements would be reoriented as a separate small/nonhub discretionary fund (see section 310).

Repeal of the trigger. For small hub and nonhub primary airports, paragraph (1) authorizes passenger entitlement funds for each fiscal year, beginning in FY 2008. It also removes the funding "trigger" in current law that would substantially reduce the amounts of entitlements to airports if the overall AIP funding level falls below $3.2 billion. With removal of the $3.2 B. trigger, this section simplifies the formulas by also eliminating the lower formula levels that would apply if the trigger were activated. What remains is a single set of formulas for passenger entitlements—those that have applied under current law when the AIP program was authorized at $3.2 B. or above. Similarly, this section eliminates another aspect of the "trigger" relating to the minimum and maximum apportionment for the smallest primary airports. It would eliminate the lower dollar levels for that category and retain the $1 million/$26 million levels in current law that are tied to an AIP level of $3.2 billion and above. As noted above, there is a special transitional rule for medium and large hub airports. The transitional rule provides large and medium hub airports with the level of apportionment funding they would have received if the "trigger" remained in place and AIP were funded below $3.2 billion.

Virtual Primaries. In order to eliminate outdated subsidies, paragraph (1) of this section would also repeal or "sunset" section 47114(c)(1)(F), a special rule enacted after September 11, 2001 that allowed airports to keep their status as primary airports (and thus their funding entitlements) even though their passenger levels fell below the required minimums. There are 44 airports that qualified for this "virtual primary" status. In fiscal year 2008, seven years after the September 11th attack, it is no longer likely that these

virtual primaries will attain primary status. With the special rule's repeal, these airports would revert to non-primary entitlement funding.

Cargo Apportionment. No change is proposed for the current apportionment formula for cargo airports, but, in line with changes noted above, this section eliminates a "trigger" related provision that set a limit on apportionments to a single airport.

State Apportionment. This section would restore the state apportionment to a meaningful level by separating it from the apportionment for nonprimary airports (which is also reformed), setting the level at 10%of AIP, and providing for a minimum level of $300,000,000 per fiscal year. If the overall level of AIP results in a State apportionment of below the $300 million level, the Secretary would be directed to take funds, on a prorated basis, from the nonprimary program, to make up the difference.

General Aviation Apportionment. Under current formulas, all general aviation (GA) airports from very large busy facilities like Teterboro, N.J, Van Nuys, CA, or Centennial, CO, to very small, rural airfields with only three based, propeller-driven aircraft, qualify for the same maximum $150,000 annual entitlement, regardless of need. In order to better target AIP funding to where it is needed, this section would modify the current non-primary entitlement program by providing for tiered funding levels based on airport size and aviation activity. The entitlement would range from $400,000 per fiscal year for the largest GA airports to $100,000 for those airports with 10 to 49 based aircraft. Airports with less than 10 based aircraft would not be eligible for a guaranteed annual apportionment. These airports would continue to qualify for state apportionment and discretionary funds, and would retain the 95% federal share scheduled to sunset at the end of FY 2007.

Alaska Supplemental. This section would retain the supplemental apportionment for Alaska and, similar to the changes above, simplify the formula by removing the "trigger" to double the minimum apportionment level if the AIP level is $3.2 billion or above and instead simply provide for doubling the level.

PFC Turnback. Because this section phases out passenger entitlements for large and medium hub airports after two years, this section makes a conforming change to the PFC turnback provision, by referencing this transition status and limiting the turnback for such airports fiscal years 2008 and 2009. Also, this section would increase the turnback percentage for PFCs above $4.50 from 75% to 100%. The increase in percentage is consistent with the approach taken in AIR-21, when the maximum PFC was increased to $4.50. AIR-21 increased the turnback from 50% at $3.00 to 75% for levels above $3.00. The added PFC revenue from increasing a PFC to $6.00 will more than offset the additional entitlement turnback.

Environmental set-aside. This section would also broaden the uses for what is commonly referred to as the "noise set-aside" to include water quality mitigation projects that are approved as part of an environmental record of decision (ROD) for an airport project and for carrying out projects authorized as part of a new environmental research

pilot program (to be proposed as part of a separate bill concerning FAA programs). In addition to projects allowed under current law (noise mitigation, compatible land use planning, compliance with Americans with Disability Act requirements, air quality improvements such as low-emission fuel systems, gate electrification, and vehicle conversion), this section's changes would make these AIP funds more flexible so as to be available for a broader environmental uses. To recognize the broader eligibility of the set-aside, it would be referred to as the environmental set-aside. It also would change how the set-aside is apportioned from the current 35% of the AIP discretionary fund to 8% of all AIP apportioned funds. This change results in a more stable funding stream for the environmental program because each year the amount of the discretionary fund varies depending not only on the overall funding level but also due to the amount of "carryover" of unused entitlements.

Sec. 307. Minimum amount for the discretionary fund. This section would increase the minimum amount of the AIP discretionary account and eliminate an obsolete formula. Current law sets that minimum at $148 million plus a calculated amount based on Letters of Intent prior to January 1, 1996. Instead, the minimum would be set at a level of $520 million. This increase is necessary to cover Letter of Intent commitments and high priority safety, capacity, environmental and security projects, such as runway safety area projects and new Operational Evolutionary Plan (OEP) runways.

Sec. 308. Funding of space transportation infrastructure grants program. Chapter 703 of title 49 currently authorizes the Secretary to make grants for commercial space infrastructure development. Section 70305 authorizes appropriations of up to $10 million per year. To date, funds have not been appropriated for this grant program. This section would amend section 47115 to authorize the funding of the program from funds made available for AIP. There is a growing trend toward the development of spaceports co-located with airports (dual-use sites). The FAA has licensed two such dual-use sites in the last two years, and additional proponents are now in pre-application. Project justification and other standards under chapter 703 of title 49 differ substantially from those applicable to AIP projects. To assure that commercial space projects can be funded, this section would authorize the Secretary to issue AIP discretionary grants for projects under chapter 703. The section specifies that the Secretary is to apply the standards of Chapter 703 in issuing the grants and to consult with the FAA's Office of Commercial Space Transportation before issuing the grant. The authority to issue grants is limited to $10 million annually, consistent with the amount authorized for the program in section 70305.

Sec. 309. Repeal of old small airport fund. This section would repeal the existing small airport fund that is supported by returned large and medium hub passenger entitlements. Instead, it would be reoriented as a separate small/nonhub discretionary fund in section 47117(e) (see section 310).

Sec. 310. Creation of new small airport set-aside, and repeal of the military and reliever airport set-asides. In furtherance of reforming and streamlining the AIP grant program, this section makes several changes to the special apportionment categories in current law under section 47117. More flexibility is needed in some areas while some of

these small set-asides have outlived their initial purpose and hinder the FAA's flexibility to direct AIP discretionary funds where they are needed most. The noise set-aside is broadened and moved to section 47114 (see description above in section 306). The second change would eliminate a separate category of funding for developing current or former military airports, known as the MAP set-aside. A separate set-aside is no longer needed given that these airports compete well for AIP funding (normally receiving significantly more funding than the set-aside provides). No change is made to MAP airports' expanded eligibility for their relatively unique type of projects; that is preserved, but there would not be a separate set-aside for them (see section 311 below).

This section would also eliminate the small set-aside (approximately $5 million/year) for reliever airports. This special category is no longer needed because generally these airports have high activity and will be receiving more entitlement funds under our funding proposal far in excess of this obsolete set-aside and will also compete well for discretionary AIP funds.

The final change is to create a new small airport set-aside. This is a replacement for the small airport fund (current §47116 that is repealed above by section 306), which is currently based on PFC collections at large and medium hub airports. This new small airport set-aside would be for projects at small hub, nonhub, nonprimary commercial service, reliever or general aviation airports. It would be tied to the level of AIP discretionary funds, specifically set at 20% of discretionary funds. The existing small airport fund has proved successful In directing AIP funds to small airports that are most reliant on AIP support to finance their capital needs. With the elimination of passenger entitlements in 2010, the funding source for the current small airport fund will be eliminated. This section preserves the benefits of the small airport fund by establishing a dedicated small airport set-aside out of discretionary funds. This section also would preserve FAA's ability to give nonprimary airports discretionary grants under this category even if such airports are located in an AIP block grant State.

Sec. 311. Military Airports Program (MAP). This section makes conforming changes to section 47118 to reflect that there would no longer be a special set-aside from the AIP discretionary fund for MAP airports (see section above), but that the special eligibilities for funding of certain projects at these airports would still be maintained. In addition, this section would increase the number of general aviation airports that could be designated for the MAP program from the one to up to three. There are strong candidates among GA airports that could participate in this program. Obsolete language in section 47118 would also be repealed.

Sec. 312. Sale of private airport to public sponsor. This section would amend section 47133 (Restriction on use of revenue) to facilitate the sale of a private airport, which has in the past received AIP funds for improvement projects, to a public entity such as a State or local government. If a private owner wishes to dispose of the airport, a sale to a public sponsor usually benefits the airport through more stable and reliable ownership. Under current law, if an owner of a private airport sells to a public entity, the proceeds of the sale must be treated as airport revenue with all the restrictions that attach to such a

characterization. Removal of such treatment would facilitate these sales without undermining revenue diversion protections. This amendment would be applicable to grant assistance provided to private airports back to October 1, 1996.

Sec. 313. Sunset of Airport Security Program. Section 47137, which provides for the testing and evaluation of airport security systems and technology, was enacted in AIR-21, prior to the events of 9/11 and the establishment of the Department of Homeland Security (DHS) and the Transportation Security Administration (TSA). Since the activities described in section 47137 have been assumed by DHS/TSA, this section of the bill would sunset this authority at the end of FY 2008.

Sec. 314. Sunset of pilot program for purchase of airport development rights. Section 47138, enacted as part of Vision 100, established a pilot program (for a maximum of 10 airports) to allow grants to a State (or political subdivision of a State) to help purchase the development rights related to a privately owned, public use airport, so as to help keep an airport open and operating. It has not been a successful pilot program and this section would sunset the authority at the end of FY 2007. If a privately owned airport has a role to play in the national airport system, the FAA believes that a better approach to support that airport is to find a public sponsor to purchase the airport rather than to purchase the development rights.

Sec. 315. Extension of grant authority for land using planning and projects. Section 47141, which was enacted as part of Vision 100, authorizes grants to States and local governments to support planning and projects with a goal of reducing noncompatible land uses around airports. Due to a slow start-up for the program, only two grants have been made so far. In order to test this concept further, this section would extend this authority, now scheduled to sunset at the end of FY 2007, for three additional fiscal years.

Sec. 316. Midway Island Airport. This section provides a 3-year extension of the current authorization, now scheduled to expire October 1, 2007, for the Secretary to enter into a reimbursable agreement with the Secretary of the Interior to provide AIP discretionary funds (at a maximum level of $2.5 million per fiscal year) for airport development projects at Midway Island Airport

Sec. 317. Pilot program for airport takeover of air navigation facilities. Currently, the ownership and responsibility for maintenance and operations of runway lighting and navigational aid systems (navaids) and weather equipment is generally split between FAA and the airport. The airport is responsible for runway lighting, and FAA is responsible for navaids and weather equipment. Navaids and weather equipment are physically located on-airport and are closely related to the operation of the airfield. Therefore, it is reasonable to have the airport take responsibility for them. However, airports have limited incentive to assume responsibilities currently belonging to the FAA. To test the concept, it will be necessary to offer incentives to an airport to encourage participation.

This section would authorize a new pilot program permitting the FAA to transfer to up to 10 medium or large hub airports terminal area air navigation equipment, such as instrument landing systems and approach lighting systems. As an incentive for airports to participate, FAA would transfer the ownership of the facilities at no cost to the airport and, where needed, the FAA's property interest in the land on which the equipment is located. In addition, participating airports would be able to charge a maximum PFC of $7, one dollar more than the maximum proposed for airports generally (see section 301). In turn, the airport would commit to operate and maintain all of the covered equipment at the airport in accordance with FAA standards, allow periodic FAA inspections, and replace the equipment when needed.

The provision includes explicit authority for airports to add to their airfield rate base any costs of owning and operating the equipment.

Sec. 318. ADS-B Support Pilot Program. This section would authorize a pilot program to promote non-Federal ownership and maintenance of ground-based equipment necessary for one of the FAA's air traffic modernization systems, Automatic Dependent Surveillance-Broadcast (ADS-B). ADS-B gives an aircraft with the requisite data uplink/downlink and cockpit display capabilities the same information about other aircraft in the vicinity as air traffic control now receives. Under this pilot program, acquisition of this equipment will be eligible for Airport Improvement Program (AIP) grants, even though the ground station is not airport-specific. Project sponsorship would be open to a state, a metropolitan planning agency (MPO) or any consortium of two or more state or local governments (including airport sponsors). Projects would be funded out of state apportionment funds at a 90% Federal Share. Although funded out of state apportionments, the ADS-B ground station could benefit any category of public use airport. To approve a project for funding, FAA would need to find that the project provides a benefit to the National Airspace System (NAS). Projects funded under this program would supplement Federal ADS-B ground station deployment. States, regions and airports would benefit because the program would provide ADS-B coverage to areas that would not be reached under the FAA's direct procurement. The provision includes language to provide flexibility in contracting to the FAA and project sponsor to permit the most efficient acquisition of ground stations funded under the pilot program.

Sec. 319. AIP eligibility for the Metropolitan Washington Airports. This section would extend the current eligibility (now authorized through FY 2008) of the Metropolitan Airports Authority, which oversees both Ronald Reagan Washington National Airport and Washington Dulles International Airport, for Airport Improvement Program (AIP) grants through fiscal year 2010.

Sec. 320. Miscellaneous Amendments. This section makes a number of non-controversial amendments to chapter 471 to update provisions, remove outdated or obsolete language, or clarify provisions.

Subsection (a) Technical changes to the NPIAS. This subsection makes technical changes to section 47103, the *National Plan of Integrated Airport Systems* (NPIAS), in

order to remove obsolete language and update the provision to conform to what the FAA is currently including in the NPIAS. For example, the NPIAS now works with only categories of airports so the language in section 47103(a) that references "each airport" is deleted in favor of a reference to the "airport system". Similarly, further amendments to 47103(a) reflect that the NPIAS does not try to forecast trends in other transportation sectors, but instead forecasts how airports connect to other modes of transportation (e.g. an airport and a transit system). Section 47103(b) is amended to delete two references that are obsolete: the NPIAS does not consider how tall structures reduce safety and capacity (that is done separately under FAA Order 7460, which requires coordination for any construction of structures over 200 feet or within 20,000 feet of an airport); and the NPIAS no longer takes into account Short/Takeoff and Landing operations, etc. (that is a dated requirement). Finally, in subsection 47103(d), the language is clarified to state that the NPIAS must be published every 2 years, not just the "status" of the plan.

Subsection (b), Project grant agreements. This section would make a conforming change to section 47108(e)(3) to delete the reference to the "small airport fund" since the formula changes proposed by this bill would replace that fund with a new discretionary fund.

Subsection (c), Update of definition for veteran's preference. This amendment adds veterans from the current Afghanistan/Iraq conflict to the definition of those veterans eligible for employment preference on AIP projects.

Subsection (d), Consolidation of terminal development provisions. This technical amendment would consolidate in one provision (section 47119) language on terminal development costs by moving, *without any substantive change*, the current text of 47110(d) regarding terminal development costs to section 47119 as subsection (e). (see also section 305 for corresponding amendment to 47110). It would also add a provision that would cap the amount of discretionary AIP funds that could support terminal development projects at nonhub or small hub primary airports.

Subsection (e), Annual Report. This amendment would conform the requirements for the annual report on the AIP program to current practice as to timing for the submission of the report and its content.

Subsection (f), Correction to emission credits provision. This provision corrects an inaccurate cross-reference in section 47139 (enacted by Vision 100), under which an airport is able to "bank" credits when the airport does air quality work that is not required, but is "surplus". However, section 47139 references a provision (sec. 47103(3)(F)), which is for required air quality work, not surplus work. It also deletes a typo and references to section 47140, a pilot program that is proposed to be repealed (see below).

Subsection (g), Repeal of Airport ground support equipment emissions retrofit pilot program. This section would repeal this pilot program, thereby eliminating such retrofit projects from eligibility for AIP funds. The program only resulted in one project. However, such activities would remain eligible for funding by passenger facility charge

(PFC) revenue.

Subsection (h), Correction to Surplus Property Authority. This amendment would remove restrictive language added by *Vision 100* that was intended to address concerns over disposal of land due to particular military base closures occurring at that time. Removal of the obsolete restriction will add FAA's effort to support the conversion of military airports to civilian use.

Subsection (i), Airport Capacity Benchmark Reports; Definition of joint use airport. This amendment provides for a reference to updated versions of the FAA's Airport Capacity Benchmark reports (not just the original 2001 Report. Also, for purposes of subchapter III of chapter 471 (aviation development streamlining), this section would provide a definition of "joint use airport", meaning a DOD airport that has both military and civil aircraft operations.

Subsection (j), Conforming amendment to civil penalty assessment authority. This provision makes a conforming amendment to section 46301 (FAA civil penalty assessment authority) to clarify that the FAA has civil penalty assessment authority with regard to violations of a provision (section 46319) that was added by *Vision 100* that provides for a $10,000 per day civil penalty for permanently closing an airport listed in the National Plan of Integrated Airport Systems (NPIAS) without 30 days notice to the FAA.

Subsection (k), Funding for administrative expenses for airport programs. This provision codifies language that recurs each year in the agency's appropriations that provides for the use of AIP funds for FAA's administrative expenses for airport-related activities.

Title IV—Management and Organization

Sec. 401. Air Transportation System Advisory Board. This section revises subsection (p) of section 106 of title 49, United States Code, to replace the Management Advisory Council (MAC) and the Air Traffic Services Committee (ATS Committee) with a new comprehensive, advisory Board, the Air Transportation System Advisory Board (Board). Currently, the MAC functions as an oversight resource for management, policy, spending, and regulatory matters related to safety, security, and system efficiency. The ATS Committee oversees the administration, management, conduct, direction, and supervision of the air traffic control system.

The intent of this provision is to replace the MAC and ATS with a governance structure that provides more accountability to those who are directly paying for the services they receive.

Sec. 106(p)(2) establishes the composition of the 13 member Board, which includes the FAA Administrator and a representative of the Department of Defense. The public is represented by three individuals representing the public interest, and eight representatives of a spectrum of stakeholders who would have a significant interest in the decisions of

the agency. The non-government representatives are appointed by the Secretary. The bill provides that the Board's recommendations are subject to the Administrator's and the Secretary's approval/disapproval. Sec. 106(p)(3) establishes requirements for membership, including U.S. citizenship and professional expertise in areas identified in sec. 106(p)(3)(B).

Sec. 106(p)(4) defines the functions of the Board. The Board reviews and provides advice on safety programs (including the agency's strategic plan for its safety programs), budget, and cost accounting. It also reviews and makes recommendations on the agency's non-safety related strategic planning, and the operational and performance metrics of the air traffic control system (ATC). The Board also reviews and makes recommendations on ATC modernization plans and major procurements (i.e. a project costing 100,000,000 or more), and fees authorized under Title II. It also provides advice on the selection of the Chief Operating Officer and the selection and compensation of the managers of the Air Traffic Organization (ATO). The ATO Chief Operating Officer would be appointed by the FAA Administrator with the recommendation of the Board and would be accountable for ATO performance, with pay and job security tied to the achievement of detailed performance goals that have been reviewed by the Board.

The composition and responsibilities of the Board ensure broad public participation in setting user fee rates, making major capital infrastructure decisions, and the development and adoption of ATO's operational and performance metrics. Similar oversight by the Board applies to other parts of the FAA that are substantially funded by user fees. However, the fundamental operational, safety, policy and other responsibilities and decision-making authority of the FAA are retained by the FAA Administrator and the Secretary. Under sec. 106(p)(7), the Administrator and the Secretary may approve or disapprove any action or function of the Board. For example, the Secretary has the authority to reject or modify the kind and level of user charges recommended by the Board.

Sec. 106(p)(5) provides that the Federal Advisory Committee Act does not apply to the Board or such aviation rulemaking advisory committees as designated by the Administrator.

Sec. 106(p)(6) establishes the administrative framework for the Board, such as length of terms of members, procedures for filling vacancies and removal from office. Section 106(p)(6)(F) exempts Board members from personal liability under State or Federal law as a result of their service on the Board. Sec. 106(p)(6)(G) establishes ethics requirements. In particular, public interest group representatives self-certify that they do not have a financial interest in an aviation or aeronautical enterprise except in a diversified mutual fund or an interest that is exempt from section 208 of title 18.

Sec. 402. Facilitation of NEXTGEN services by private sector. This section sets forth factors that the FAA would consider in determining whether to accept the provision of air traffic services by the private sector or to require the use of such services, including the

effect on the safety and efficiency of the National Airspace System, competition, the role of general aviation and the widespread use of such services at affordable rates.

Sec. 403. Reimbursable Agreements. This section makes a minor change to section 106(m), to clarify the FAA's authority under that section (along with the FAA's broad contract authority under section 106(l)(6)) to enter into reimbursable interagency agreements. This is necessary to correct any confusion resulting from language added to 106(m) by Congress after the terrorist attacks of September 11th. Congress added the last sentence in 106(m) to expressly allow FAA to provide services, equipment, etc. to other agencies "without reimbursement." This was intended, for example, to allow FAA to provide services and personnel to the newly created Transportation Security Administration, without reimbursement. Such language was never intended to alter FAA's pre-existing authority to enter into interagency agreements that required reimbursement. This section clarifies the last sentence of 106(m) by making it clear that the FAA may perform work for other agencies "with or without" reimbursement.

Sec. 404. Definition of Air Navigation Facility. The statutory definition of an "air navigation facility" is used in a number of contexts, but one of the most important is determining the eligibility for funding. This section updates and broadens the definition of an air navigation facility so that it is clear its scope includes the many capital expenses directly related to the acquisition or improvement of such facilities for the current or future National Airspace System.

Sec. 405. Improved Management of Property Inventory. This section would amend section 40110(a) to make it clear that FAA's current authority to purchase and sell property needed for airports and air navigation facilities includes the authority to retain funds associated with disposal of property. Currently, proceeds from property disposal are often not available, and as a result, because of costs associated with disposal (e.g. demolition, environmental audits, asbestos abatement, etc.), some properties remain in the FAA's active inventory for long periods of time—unnecessarily.

Sec. 406. Clarification to Acquisition Reform Authority. This section repeals a provision of law that conflicts with the FAA's procurement reform authority that Congress granted FAA in 1996. The FAA now has broad flexibility to use procedures other than competitive procedures in various compelling circumstances, e.g., in response to an emergency such as a hurricane or other natural or man-made disaster when there could be multiple sources of supply but there is insufficient time to run a competition. We seek no change to that flexibility. However, we do seek to repeal conflicting language that predated the 1996 reforms. Paragraph 40110(c)(4) is an obsolete grant of authority to FAA, which, prior to procurement reform, was needed. Paragraph (c)(4) was an exception to a law that now no longer applies to the FAA. Having this exception "still on the books" could lead to confusion that FAA's authority is restricted. Such a restriction would mean that FAA could not limit competition in response to an emergency, as noted above, or could not set-aside procurements for small businesses or disabled veteran-owned businesses or small businesses owned and controlled by socially and economically disadvantaged businesses. Similarly, we could not restrict competition

even if an international agreement requires us to do so, or use any of the other bases provided for in the Competition in Contracting Act, as other federal agencies may do. Accordingly, this section would repeal of 40110(c)(4).

Sec. 407. Assistance to Foreign Aviation Authorities. This provision clarifies the FAA's current authority to provide air traffic services abroad, whether or not the foreign entity is private or governmental, and that the FAA may participate in any competition to provide such services. It also clarifies that the Administrator may allow foreign authorities to pay in arrears rather than in advance. It also clarifies that any payment for such assistance may be credited to the current applicable appropriations account.

Sec. 408. Presidential Rank Award Program. In 1996, the FAA reformed its personnel system under special authority provided by Congress (now codified under 49 U.S.C. 40122), which exempted the FAA from many requirements of the Federal government's personnel system under title 5, United States Code. As a "non-title 5" agency, the FAA cannot now participate in the Presidential Rank Award Program. This provision would change that and, through an amendment to section 40122 that takes into account the minor differences in nomenclature between the FAA's new personnel system and the title 5 system, allow the FAA's executives and senior professionals to participate in the Program.

Sec. 409. Realignment and Consolidation of Aviation Facilities and Services. This section would create a specific process for the comprehensive study and analysis of the how the FAA might realign and consolidate its services and facilities to help reduce capital, operating, maintenance, and administrative costs on an agency-wide basis with no adverse effect on safety. This authority would help the FAA, as Congress has directed, to operate in a more business-like fashion, maximizing the efficient operation of the agency. Any realignments or consolidations recommended by the Administrator under this section would only be implemented after a thorough review by a newly created Commission of experts, and the opportunity for the public, and ultimately, Congress, to examine the recommendations.

Section 410 would authorize the Secretary to establish an independent, five-member Commission, to be known as the Realignment and Consolidation of Aviation Facilities and Services Commission (Commission). This Commission would conduct an independent review and analysis of the FAA's recommendations for realignment of facilities or services and make its own recommendations to the President. FAA would conduct analyses of proposed realignment or consolidations of agency facilities and services and make recommendations, along with their justifications, to the Commission. The Commission would review the Administrator's recommendations, seek public comment, and, after completing its review, forward its recommendations to the President in a formal report outlining its findings and conclusions. If the recommendations are accepted by the President, the proposal would be transmitted to Congress. There would also be a process under which the President could recommend changes to the Commission, and the Commission could reconsider and revise its recommendations. After such reconsideration, the President could then forward recommendations to

Congress. If the President declines to send any recommendations (based on the Commission's initial recommendations or on revised ones) to Congress, the process would end. However, if recommendations are sent to Congress, unless Congress passes a joint resolution objecting to the total package of recommendations within 60 days (as defined in the section) from the time the President sends the report, the recommendations would be considered accepted and the Administrator would implement them.

This authority and process is in addition to, and would not change, the Secretary's existing authority under 49 U.S.C. 44503 to take whatever actions necessary to reduce costs and expenditures, consistent with the highest degree of safety.

Sec. 410. Operational and approach procedures by third parties through delegation. This section would expand the Administrator's authority to delegate to non-government third parties the ability to develop aircraft operating procedures to take advantage of capacity enhancing technologies and capabilities, while maintaining or improving safety of flight operations. This authority is consistent with existing authority the Administrator has to designate to third parties the ability to examine, test, and inspect activities associated with the issuance and oversight of certificates issued by the FAA (see section 44702).

Sec. 411. Judicial review of NTSB decisions involving denial of airman certificates. Since the early 1990's, the FAA has had authority to seek judicial review of NTSB decisions that are issued under sections 44709 and 46301(d)(5) of title 49, which involve orders of suspension and revocation, and civil penalties against airman. This section of the bill would add corresponding authority to seek judicial review of NTSB decisions involving airman certificate denials. As with the current judicial review authority (FAA has filed petitions for review of only three NTSB cases), the FAA does not anticipate there would be many decisions that would be appealed under this new provision. However, FAA believes that such opportunity should be permitted if the agency thought it was in the interest of our safety enforcement program.

Sec. 412. Release of abandoned type certificate data. The FAA routinely receives requests from individuals and vintage airplane club members for aircraft certification data relating to older aircraft in order to maintain the airworthiness of their aircraft. In some instances the owner of record of the type certificates (and/or supplemental type certificates) cannot be found. This section would clarify that FAA may release such data, without the consent of the owner of record, if the FAA first determines that there has been no proprietary interest exercised over the data for three years, that the type certificate owner has not been located, and that it would enhance safety if the data were released to aircraft operators in order to safely maintain and operate their vintage aircraft.

Sec. 413. Design Organization certificates. This section extends the timeline for FAA to begin to issue design organization certificates by one year and ensures that the statute permits all the privileges originally envisioned by the industry and the FAA under the scope of a certified design organization (CDO) when the law was originally passed, including production.

Sec. 414. Contract Tower Program. This section would replace obsolete language in section 47124, the provision governing the FAA's contract tower program. Section 47124 has been amended over time which has resulted in inconsistent use of terms. Specifically, it would replace two references in subsection 47124(b)(1) and (2) to "Visual Flight Rules level I air traffic control towers" with the term "nonapproach" control tower—a term used in the remainder of 47124 (in paragraphs (b)(3) and (4)). Since 1998 there have been no "level I" towers in the National Airspace System (that designation is no longer used), and there is no clear, definitive understanding of what a "Visual Flight Rules" tower is. The use of these obsolete references has led to significant confusion in ongoing litigation involving the contract tower program. On the other hand, there is a clear understanding of what a "nonapproach control tower is: a tower that is not responsible for using radar to separate air traffic. Use of that more accurate reference consistently throughout subsection (b) will help to end confusion and help avoid future litigation.

Sec. 415. Enhanced oversight of the JPDO. The Joint Planning and Development Office (JPDO) was established by *Vision 100* in order to improve coordination and integration of programs supporting the Next Generation Air Transportation System (NextGen). This provision enhances the oversight and coordination in several ways. It provides that the Director of the JPDO would be a voting member of the FAA's Joint Resources Council and the ATO's Executive Council. It also would provide that the FAA develop and publish each year a consolidated operational evolution partnership that gives a detailed description of how the FAA is implementing NextGen and also include in the annual report to Congress how the JPDO agencies respective budgets support specific operational improvements for NextGen.

Title V--Aviation Safety, Security, Capacity and Connectivity improvements

Sec. 501. Disclosure of data to Federal agencies in interest of national security. This section would clarify that the FAA has limited authority to release data and reports that are culled from the FAA's systems of records, which are subject to the Privacy Act (5 U.S.C. § 552), to other Federal agencies in the interest of national security. Following the events of September 11, 2001, a cooperative intergovernmental approach to ensuring aviation security was developed. The FAA remains responsible for regulating the use of navigable airspace including establishing security provisions that allow maximum use of navigable airspace by civil aircraft consistent with national security. As part of these responsibilities that FAA has gathered data on security airspace violations. The data, which is compiled from various FAA systems of records, includes identifying information of certificate holders who commit violations of the airspace security restrictions. The data is used to track statistical trends with regard to violations of the airspace including data on repeated violations committed by individuals, aircraft, and aircraft owners. It is this type of information that would be provided to other security and law enforcement agencies upon request as part of the cooperative effort to ensure airspace and national security.

Sec. 502. Access to criminal history records. The FBI recently notified FAA that a statutory clarification is necessary for the FAA to continue to have access to the National Crime Information Center (NCIC), and consequently State data bases as well, that contain criminal history information (e.g. arrests, convictions, warrants, etc.). This was due to the fact that the positions of FAA special agents were reclassified (in March 2001) when criminal investigations were consolidated within the Department of Transportation's Office of Inspector General. FAA security personnel are no longer classified as "criminal investigators" and thus do not meet the strict interpretation of the FBI's statute and implementing regulations that govern access of other governmental entities to the NCIC. Nevertheless, the FAA performs numerous functions, both investigatory and regulatory as part of its civil and administrative responsibilities, that protect the safety and security of the National Airspace System and assists and supports the law enforcement community. These duties include: congressionally mandated support of narcotics smuggling interdiction; vetting of new student pilots and existing FAA pilot certificate holders, including foreign pilots who are gaining access to aircraft within the U.S. airspace; detection of the movement of stolen aircraft; providing cover support for undercover airmen and aircraft operations; support of Presidential security; completion of criminal background checks of persons applying for security clearances or requesting unescorted physical access to critical national airspace system (NAS) infrastructure sites, and a variety of other sensitive Airman Certificates; and other measures in support of aviation security.

This section would provide statutory authority for the FAA to continue to access the NCIC and related State criminal history databases so that FAA may continue to perform its critical safety and security functions. Specifically, certain designated FAA staff would have permission to access Federal, State and local law enforcement databases, use their radio, data link or warning systems, and receive government communications, at least to the same extent and in the same manner as State and local police officers in a State. The FAA recognizes that criminal investigations should only be carried out by agents with law-enforcement authority and does not intend to use this access to conduct criminal investigations.

Sec. 503. Allocation of operating authorizations at LaGuardia. The FAA currently has authority under 49 U.S.C. 40103 to establish limits on operations at congested airports to ensure the safe and efficient use of airspace, and has exercised such authority to establish limits at several airports, most recently at Chicago O'Hare and LaGuardia. This proposal would change that approach with respect to LaGuardia by providing an opportunity for the operator of the airport—the Port Authority of New York and New Jersey (Port Authority) to assume a greater role. This section would amend title 49, United States Code, to add a new provision (section 41724) that would authorize the Secretary to first determine whether the use of a market-based mechanism (such as an auction or congestion pricing) is appropriate to allocate flight operations (take-offs or landings, commonly known as "operating authorizations") at LaGuardia Airport. If such a determination is made, then the Port Authority would be given permission to implement the market-based mechanism. If the Port Authority failed to do so within a year of

receiving such permission, the Secretary could implement appropriate measures at the airport, in accordance with the requirements of the pilot program authorized by section 504.

Prior to any use of a market-based mechanism at LaGuardia, the Secretary would issue a rule to establish the terms and conditions of the selected market-based allocation mechanism. Consistent with section 40101 of title 49, the regulation would protect the public interest by placing maximum reliance on competitive market forces, avoiding unreasonable industry concentration, encouraging entry into air transportation markets by new and existing air carriers, and ensuring passengers in small communities and rural and remote areas have access to affordable, scheduled air transportation.

If the Port Authority implements a market-based mechanism and such mechanism produces annual revenue in excess of associated administrative costs, the Port Authority would have to deposit the excess revenue in an escrow account. It could then use those funds on otherwise eligible airport related projects (that meet the definition of a PFC project) or any other project that the Secretary finds is in the public interest..

Finally, for clarity purposes, the provision sets forth rules of construction in order to describe how the provision would operate with existing authorities, including providing that establishing a flight operation limit or use of a market-based mechanism shall not be considered a major Federal action for environmental review purposes, and that any expenditures of funds under this provision would be in addition to AIP funds or other Federal assistance.

Sec. 504. Pilot program for market-based mechanisms. This section would add a new provision to chapter 417 to authorize the Secretary to approve and evaluate market-based mechanisms, such as auctions or congestion pricing, for domestic flights at a limited number of airports (15). For airports experiencing congestion that results in delays affecting the regional airspace, this section would allow participating airports to charge aircraft operators a congestion fee to the extent necessary to achieve a target reduction in congestion and operating delays at the airport. The amount of the fee would be set by the airport operator and collected by the operator and must be reasonable and not unjustly discriminatory. Any surplus revenue that results would be placed in an escrow account to be used only for airport related projects (as defined under the PFC program) or any other project the Secretary finds is in the public interest.

For airports experiencing congestion that results in more widespread delays to the National Airspace System (NAS), the program would allow the Secretary to adopt a market-based congestion management program directly. At these airports, the FAA would determine and implement the market-based mechanism for that airport. If a fee is adopted, and if surplus revenue results, the FAA would be required to deposit such funds in an special account in the Treasury for use on capacity enhancing or delay reducing projects in the region (preferred alternative) or the Nation.

Title VI—Environmental Stewardship and Streamlining

Sec. 601. Airport Cooperative Research Program (ACRP). This provision would provide a permanent authorization for the ACRP, which was originally established as a pilot research program under *Vision 100.* Since *Vision 100*, environmental R&D has assumed greater urgency—given the need to reduce the growth of significant environmental impacts at airports as aviation activity grows. This proposal would provide for the ACRP to enhance R&D support specifically related to airport needs. Funding for the ACRP is increased from $10 million to $15 million per year, of which at least $5 million is specifically targeted to research related to the airport environment.

Sec. 602. State Block Grant Program. The FAA administers the state block program by authorizing participating states once a year to receive a block of funds for any eligible non-primary airport project. This is not a federal action for purposes of the National Environmental Policy Act because the FAA exercises no control over the subsequent use of grants issued to states under the state block grant program. See, 40 CFR 1508.18. "Nevertheless, FAA, in consultation with CEQ, determined it to be good environmental policy and stewardship to require SBGP states that are not subject to state laws comparable to NEPA to consider the environmental consequences that SGGP actions would cause. As a result, each SBGP [state] has contractually committed to consider the environmental effects of their actions as noted below." FAA NEPA Implementing Instructions for Airport Actions, paragraph 212.

Accordingly, this section would codify current practice that State participants in the AIP State Block Grant program (SBGP) have responsibility and authority to comply with NEPA and other applicable environmental requirements for projects at non-commercial service airports within the purview of the block grant program. Currently eight states participate in the program (Illinois, Michigan, Missouri, North Carolina, Pennsylvania, Tennessee, Texas and Wisconsin). It would also clarify that other Federal agencies must recognize State environmental review analyses for SMGP projects. The FAA would remain responsible for completing the Federal environmental review process for actions that are outside the program. Also, this provision would make a minor change to §47128(a) by replacing the term "regulations" with "guidance" because the FAA has issued guidance in the form of the Airport Improvement Program Handbook, 5100.38, to implement its airport improvement program. This is a ministerial change and does not impact the state block grant program or the Secretary's ability to place requirements on the States under 49 USC §47128.

Sec. 603. Airport funding of special studies or reviews. *Vision 100* codified authority of the FAA to enter into reimbursable agreements with airport sponsors to fund additional FAA staff and/or contract support (using airport funds or AIP funds received by the airport) to help streamline environmental reviews for airport capacity projects. This provision would broaden that authority (section 47173) to include voluntary agreements with airports that request FAA support to conduct special environmental studies that have research and development aspects for ongoing environmental reviews. It would also include similar studies resulting from approved Part 150 program (noise mitigation) measures or environmental mitigation commitments in an agency record of decision or a

finding of no significant impact. It would not include projects where there is no FAA action or involvement that would trigger the work.

Sec. 604. Environmental mitigation demonstration pilot program. This section would authorize a new pilot program which would allow the FAA to fund six projects at public-use airports that would take promising environmental research concepts that have been proven in the laboratory into the actual airport environment for demonstration. Eligible projects would demonstrate whether research would measurably reduce or mitigate aviation impacts on noise, air quality or water quality in the airport environment. For example, a project could demonstrate new operating procedures that are currently in the developmental stage that offer promising near term environmental improvements. FAA would publish information on best practices based on the results of the projects. Selection priority may be given to those projects that are most cost-beneficial and those implemented by a consortium of entities (public and private). Funding would come from the environmental (known as the "noise") set-aside of the AIP discretionary fund. FAA would fund 50 per cent of the project costs except that a maximum Federal contribution of $2.5 million per project would apply.

Sec. 605. Grant eligibility for assessment of flight procedures. This section would encourage the implementation of environmentally-beneficial aircraft flight procedures at airports by supporting with AIP assistance the environmental review of airport-proposed procedures that are approved by the FAA under 14 CFR part 150, Airport Noise Compatibility Planning. Currently, the environmental review under the National Environmental Policy Act (NEPA) of airport development measures approved under part 150 is AIP-eligible, but not the NEPA review of flight procedures. Accordingly, NEPA reviews of flight procedures are often resource-poor and accordingly delayed, to the extent that airport operators are discouraged from proposing them. Operational procedures offer the most promise for near-term environmental improvements pending new technologies. For example, the use of air traffic procedures to mitigate noise has proven highly successful, such as the Potomac River approach used at Ronald Reagan Washington National Airport. There is a need to enhance funding mechanisms to encourage and utilize operational procedures to a greater extent. This section would also authorize the FAA to accept funds, including AIP grant funds (also PFC revenue, which follows AIP eligibility) from an airport sponsor to hire staff or obtain services in order to provide timely environmental reviews for such flight procedures. This is similar to authority the FAA has under section 47173 for environmental activities related to AIP projects.

Sec. 606. Research Consortium for lower energy, emissions and noise (CLEEN) technology partnership. The vision for sustainable aviation growth for the Next Generation air transportation system is to reduce environmental constraints that impede National Aviation System development. Preliminary computations show that aviation noise and emissions are likely to grow by 140-200% under future aviation growth scenarios unless aggressive actions are taken to control and reduce aviation's environmental footprint.. Historically, most of the substantial aviation environmental gains have come from new technologies. We are currently facing larger research and

development challenges at a time when we need to make larger technological leaps. Our goal is to have a fleet of quieter, cleaner aircraft that operate more efficiently with less energy. Solutions that involve technology improvements in engines and airframes in a foreseeable timeframe require successful maturation and certification of new technologies within the next 5-8 years. We seek to have a world-class research consortium that can pursue technology goals to significantly reduce aviation noise, emissions, and fuel consumption.. This section would add a new provision to chapter 475 to direct the FAA to enter into a cooperative agreement with the Partnership for AiR Transportation Noise and Emissions Reduction (PARTNER) Center of Excellence to form a research consortium for the development, maturing and certification for continuous lower energy, emissions and noise (CLEEN) engine and airframe technology. The work is to be carried out over the next decade and funding for the program is to come from the FAA's NGATS program.

Sec. 607. Amendments to Air Tour Management Program. This section would make several changes to the current title 49 provision (section 40128) that governs commercial air tour operations over national parks, based on recommendations from a recent GAO report and proposals from FAA and the National Park Service (NPS) to improve and streamline the current legislation. GAO specifically suggested legislation to exempt national parks that have low levels of air tour activity and an absence of other safety and environmental problems from the requirement to have an air tour management plan. This section would exempt parks with 50 or fewer annual air tour flights, with a provision for the NPS Director to overrule an exemption on a park-specific basis based on concerns regarding the protection of park resources or visitor experiences. Similarly, there would be a proposed voluntary agreement option to a more formal air tour management plan. There would also be more flexible provisions allowing the FAA and NPS to increase the number of operations or allow new entrant air tour operators under interim operating authority conditions before an air tour management plan has been established at a park. More interim operating authority flexibility is desirable because interim operating authority conditions are likely to prevail in a number of parks for longer periods of time than envisioned when this legislation was enacted. The additional interim operating flexibility includes considerations by NPS of the environmental impacts on park resources and by the FAA of impacts on aviation safety and the national aviation system. Also included in this section in order to facilitate administration of the requirements of §40128, is a reporting requirement by commercial air tour operators with regard to the number of commercial air tours over parks.

Title VII—Aviation Insurance

Sec. 701. General Authority. In the immediate aftermath of the attacks of September 11th, the Secretary was authorized to reimburse airlines for increases in the cost of in-force commercial insurance coverage ending before October 1, 2002. Under the terms of the statute, the authority to make payments expired 180 days later (in 2002). The FAA implemented the statute and ultimately paid out approximately $66 million for these purposes. Because the authority is no longer needed, subsection (1) of this section

repeals the obsolete subsection (b) of section 44302. A conforming amendment is also made to section 44303(a), which references this now obsolete authority.

Current law (section 44302(f), added by section 1202 of the Homeland Security Act of 2002, Nov. 25, 2002) requires the FAA, for insurance that was in effect on Nov. 25, 2002, to provide U.S. airlines aviation insurance until August 31, 2006 from the first dollar of loss at capped premium rates. This requirement then becomes discretionary on the part of the FAA, until Dec. 31, 2006. Subsection (2) of this provision would modify current requirements in the furtherance of the objective to gradually transition airlines from government provided war risk insurance to privately provided insurance. Subsection (2) would repeal the requirement that coverage in an insurance provided by the FAA begin with the first dollar of any covered loss that is insured. This would allow the FAA to set deductible levels thereby allowing commercial insurers to provide some war risk coverage for U.S. airlines. We believe this is an appropriate first step in moving airlines to return to reliance on the private insurance market within the next two years, assuming continuing market improvement, or as soon as possible, and reducing the indirect subsidy to the aviation industry that government provided insurance represents. Commercial war risk insurance is now available.

Sec. 702. Five-year extension of third party liability cap and ban on punitive damages. Following the terrorist attacks of 9/11, DOT requested Congress to limit the third party liability of airlines for acts of terrorism. Current law (section 44303(b)) allows the Secretary to limit an airline's third-party liability to $100 million and also prohibits punitive damages against either an airline or the Government for any cause resulting from a terrorist event. A principal objective of the limitation was to encourage commercial insurance companies to provide a reasonably priced amount of third party war risk insurance by defining the maximum third party liability exposure of the airline for a single event. The provision was later expanded by Congress at the request of aircraft manufacturers and aircraft engine manufacturers to permit DOT to similarly limit third-party liability for these parties. This section extends the expiration date of this authority, now set to expire on December 31, 2006, to December 31, 2011.

Sec. 703. Reinsurance. This section of the bill makes a minor clarifying change to the reinsurance provision in title 49 to restore a phrase that was altered during the recodification of the aviation portion of title 49. When the aviation portion of title 49 was recodified (in 1995), the recodifiers intended that there be no substantive change. Authority to acquire reinsurance was clearly included in the prior version of this provision (see § 1305(a) of the Federal Aviation Act of 1958, previously codified at 49 USC § 1535(a)). However, a subtle change in wording (reference to "any insurance carrier" was changed to "the carrier") created an unintended ambiguity. Purchase of reinsurance is a common risk mitigation technique. This authority should be clearly stated because there may be situations where the FAA's aviation insurance program may want to purchase reinsurance from commercial reinsurers to supplement payment of claims from the aviation insurance revolving fund.

Sec. 704. Use of independent claims adjusters. Section 44308 provides that the FAA may use commercial insurance carriers to underwrite insurance and adjust claims. This clarifying amendment would add language to 44308(c)(1) to provide explicit authority for the FAA to have the option to use claims adjusters independent of an insurance underwriting agent. Having the flexibility to use an independent claims adjuster would, depending on the circumstances of a claim, avoid potential conflict of interest between a commercial insurance company acting as a claims adjuster for the FAA and its role as a provider of other insurance to an airline. It could also expedite claims both in the U.S. and foreign jurisdictions.

Sec. 705. Extension of program authority. This section extends the basic authority of the Secretary of Transportation to provide insurance and reinsurance under chapter 443 of title 49 for 5 years. The aviation insurance program, which has existed for decades, is now authorized through March 30, 2008. Aircraft mortgages and leases generally require that aircraft be insured for hull loss and liability. Without insurance coverage airlines cannot operate the majority of their fleet, including those committed to the Civil Reserve Air Fleet (CRAF). DOT believes the program has served the useful purposes of sustaining air commerce and national security and implementing foreign policy when commercial insurance was not available on reasonable terms. Such times included the Vietnam War, terrorist aircraft destruction in the 1970's, the first Gulf War, and in aftermath of 9/11, etc.

Title VIII—Aviation Service Improvements

Sec. 801. Competitive access reports. Vision 100, Century of Aviation Reauthorization Act, PL 108-176, requires large or medium hub airports to file semi-annual competition disclosure reports with the Secretary of Transportation ("competitive access" reports) before receiving approval of an Airport Improvement Program (AIP) grant, if the airport was unable to accommodate an airline's request for facility access. The report must explain the reason for the lack of accommodation and provide a time frame for accommodation. The competitive access report requirement terminates on October 1, 2008.

Although there have been no competitive access reports filed to date, there are several possible reasons: (1) the filing requirement itself may have deterred airports from denying access; (2) entry-friendly practices may have facilitated access; or (3) airports may have excess access capacity to accommodate requesting airlines. Maintaining the report requirement by repealing the sunset provision could help to ensure that airlines seeking to expand will have facility access. Moreover, the traveling public is likely to benefit by assurances that airport facilities will be made available to airline competitors, thereby offering more service at potentially lower fares.

This provision would extend the current sunset provision for competitive access reports until 2012.

Sec. 802. Essential Air Service reform. In addition to repealing a number of obsolete provisions, this section revises a number of existing provisions as follows:

41731. This section revises the definition of "eligible place" for communities that are eligible for essential transportation service. Eligibility would be limited to communities receiving subsidized EAS as of the date of enactment of this provision. The revised definition also disqualifies communities that are less then 70 miles from a medium or large hub airport or if the subsidy per passenger is greater than $200 and the community is less than 210 miles from the nearest medium or large hub.

41732. This section redefines EAS as transportation of passengers and cargo to a destination airport at a level of service comparable to what a community received on the date of enactment of this Act.

41733. The provision removes obsolete language concerning the timing of decisions on essential air service. This section describes: 1) the criteria that the Department would use in selecting an applicant to provide subsidized air transportation and, 2) limits the level of EAS that a community may receive to no greater than what it is currently receiving.

41734. This section establishes notice requirements for air carriers who wish to suspend service. Any carrier providing service under a contract with the Department must file a 90-day notice before suspending service. In addition, the last air carrier serving a community must file the same 90-day notice, even if the carrier was not receiving subsidy. The Department will hold that service in place and provide compensation for it, for up to 180 days, to the extent funds are available, until replacement service can be secured. Deletes existing (e), (g), (h), and (i).

41737. This section is designed to provide compensation guidelines. In prioritizing which eligible communities to pay compensation to an air carrier for service, the Secretary shall rank all compensated points in their order of relative decreasing driving distance from the nearest large or medium hub airport. If there are insufficient funds to pay for service at all the eligible communities, the Secretary shall first pay for service to the most isolated communities, in order and starting with those that do not have road access to hub airports, until the Secretary obligates no more than the amount authorized in Section 41742.

41742. Beginning in fiscal year 2009, this section creates an annual mandatory appropriation of $50 million to come from the Airport Airway Trust Fund and to carry out the EAS program and to be available until expended.

Sec. 803. Termination of DOT authority to set international mail rates. Current law requires the Department to set international mail rates to be paid by the Postal Service to U.S. carriers for the international transportation of U.S. mail. The Department believes that it should no longer prescribe the rates paid by the Postal Service to U.S. air carriers for international air transportation of U.S. mail. The Department of Transportation's rate-

setting responsibilities in this area are no longer in synch with the realities of air and mail transportation. In that regard, this function is not consistent with the principles of airline deregulation that have guided federal aviation policy for more than 25 years.

This proposal would amend title 49 to terminate the Department's responsibilities in this area. DOT's authority to set international mail rates would terminate 16 months after enactment of the provision.

Sec. 804. Air carriage of international mail. Current law requires that United States Postal Service (USPS) contracts with U.S. air carriers for the carriage of international mail "shall" be filed with DOT at least 90 days before the effective date. The contracts become effective unless DOT disapproves them in the public interest within eighty days. In practice, DOT has to send a letter stating that it will not disapprove, in each case. DOT has no basis to review the economic fairness of USPS contracts with individual U.S. carriers. Moreover, the carriers have not objected to each other's contracts, but have objected when the USPS has contracted with foreign carriers, an issue outside DOT's jurisdiction and expertise. The filing of contracts and sending of letters of non-disapproval is a burden on DOT and the carriers without any benefit. Part (a) of this provision eliminates the meaningless requirement for contract filing with the Secretary.

Current law also requires DOT to review "orders" of the Postal Service that designate carrier schedules for mail carriage, or modify them, or order new schedules. If a complaint is filed, DOT must give preference to resolving the complaint over all other cases. While the review was intended to protect air carriers, a community group in Alaska recently invoked the provisions to ask DOT to prevent a USPS decision to truck mail in a particular market, something DOT cannot do directly. The USPS has not issued "orders" dealing with specific mail schedules since deregulation in 1978. The last such order was 30 years ago. Instead, the USPS tenders mail in accordance with carrier schedules filed publicly each month that meet its service needs. Carriers and the USPS use load-planning techniques to adjust the mail to each carrier's capacity. Current law is obsolete and is no longer necessary to serve its originally intended purpose. It also encourages communities to seek DOT review of USPS practices that affect their mail and other service—something it was not intended to do. Part (b) of this proposal would repeal the obsolete provisions in 49 USC 41902.

Sec. 805. Contents of competition plans. Current law requires that no passenger facility fee or AIP grant be approved for a covered airport unless the airport has submitted to the Secretary a written competition plan. The competition plan requirement has resulted in the adoption by covered airports of many entry-friendly practices that reduced barriers to new entry and expansion by smaller carriers and enhanced competitive access. However, covered airports have complained that providing information on patterns of air service and comparative airfare levels is burdensome. This information is also publicly available. This provision would eliminate those requirements.

Sec. 806. Airport privatization. This provision would modify the current pilot program on private ownership of airports by expanding eligibility beyond the current statutory

limit of 5 airports. Authority would be given to expand the number of airport applications to 15 airports in the National Plan of Integrated Airport System (NPIAS). The provision would eliminate restrictions on program participation by airport category, e.g. general aviation or large hub. The current law limits participation to one large hub airport, and the application of Midway Airport in Chicago (now pending DOT approval) has reserved that authority.

The proposal would also eliminate the effective veto power airlines may exercise under current law to prevent privatization transactions. Current law authorizes the Secretary to exempt the selling airport sponsor from the revenue diversion prohibition only if a super-majority (at least 65 percent of the scheduled air carriers at a primary airport) approve of the sale or lease proceeds going "off-airport". The proposal would amend current law to authorize the Secretary to grant the exemption if the airport sponsor showed that it consulted with airlines using the airport. At non-primary airports, the exemption would continue to be based on consultation with at least 65 percent of the based-aircraft owners.

Finally, the proposal would eliminate the effective airline veto power to prevent fee increases higher than inflation rates. A private operator could recover a rate of return on all capital and operating investments at the airport except the lease or sale price to the public agency, which could not be added to the air carriers' rate base without carrier agreement..

Sec. 807. Clarification of air carrier fee disputes. Current law provides an expedited administrative forum for determining whether significant carrier fees levied by airports are reasonable. The provision requires complaining airlines to continue to pay disputed fees, and prohibits the charging airport from locking out complaining airlines. It also requires the charging airports to provide a mechanism such as a bond, surety or line of credit, to guarantee refunds to complaining airlines of fees determined to be unreasonable,

The Department of Transportation has treated the provision as applying to both air carriers and foreign air carriers. There is currently a pending case in which the U.S. Court of Appeals for the District of Columbia Circuit may determine whether foreign airlines are covered by section 47129. The Department has argued that excluding foreign airlines from the coverage of section 47129 would discriminate against them, contrary to the international commitments of the U.S. Government.

This provision would amend current law to clarify the applicability of section 47129 to both air carriers and foreign air carriers.

Sec. 808. Amendments to chapter 415.
Deletion of section 41501(2). This provision would repeal the obligation of air carriers and foreign air carriers to establish reasonable divisions of joint prices for foreign air transportation. The obligation dates from 1938, when the U.S. Government regulated every aspect of airline operations, including pricing. The same obligation for domestic transportation was eliminated by the 1978 Airline Deregulation Act, which sunsetted all

regulation of domestic pricing. Neither DOT nor its predecessor, the Civil Aeronautics Board, regulated the divisions of joint fares established by any carriers for foreign air transportation. In all international markets, carriers set joint prices either between themselves or through tariff conferences of the International Air Transport Association, and they divide the revenue either through individual agreement or using the formula of a standard industry prorate agreement. The U.S. Government has not been asked to intervene in either process, and it has seen no reason to do so.

Amendment of section 41502(a) and deletion of sections 41502 (b) and (c). This provision would facilitate intermodal services by codifying the DOT interpretation authorizing air carriers, including indirect air carriers such as air freight forwarders, to establish reasonable joint prices and through service with other common carriers, notably surface carriers subject to former Interstate Commerce Commission regulation. This section dates from the days of complete regulation of pricing by the U.S. Government and served three functions. Section (a) authorizes air carriers to establish reasonable joint prices and through service with other common carriers. However, section (a) limits this authority to direct air carriers, excluding indirect air carriers such as air freight forwarders from establishing joint prices with surface carriers. With the statutory elimination of ICC jurisdiction in this area and the expansion of intermodal services in both domestic and international air transportation, there is no justification for excluding indirect carriers. As a technical matter, this provision also removes reference to "subtitle IV" of title 49, which no longer exists.

This provision also would delete the requirement that the through service authorized in section (a) be subject to reasonable joint prices, classifications, rules, and practices as well as reasonable divisions of those prices. The requirement that such prices be reasonable is not applicable to domestic transportation, and to the extent applicable to foreign air transportation, is already addressed in amended section 41502(a). With respect to the division of joint prices, the same analysis applicable to section 41501(2) applies here as well.

Finally, this provision would delete as obsolete the requirement that joint prices with other common carriers be filed in tariffs with the Secretary of Transportation. The filing of such tariffs was terminated by statute for domestic transportation, and by DOT regulation for foreign air transportation.

Deletion of section 41503. This provision would delete as obsolete special interline and joint pricing authority involving State-certificated airlines. This section was adopted just prior to the Airline Deregulation Act of 1978. Its purpose was to grant "intrastate air carriers" providing "intrastate air transportation, as defined in section 40102 and repeated in 41101(b) – at that time not subject to federal economic regulation under Title II – express authority to interline with air carriers and foreign air carriers in air transportation without losing their intrastate status. There were several such carriers, which charged prices that were lower than those prescribed by the CAB for interstate air transportation. Following the ADA in 1978, those carriers became eligible for a permissive federal certificate to all domestic points and authorized foreign points with the same freedom

from economic regulation as other certificated air carriers. Moreover, section 41713, part of the ADA, pre-empted States from regulating the "rates, routes or services" of any carrier holding such a certificate. Former intrastate airlines therefore converted to certificated air carriers and the need for section 41503 became moot. Further, as a condition for the special interline authority, section 41503 regulated the joint prices that the intrastate airline could charge. Again, this provision became moot after the Airline Deregulation Act of 1978.

Deletion of section 41505. This provision would delete as obsolete requirements for joint prices involving commuter air carriers. This section was enacted prior to domestic deregulation of pricing in 1978. It requires that any prescribed uniform method of establishing joint prices and divisions of joint prices among certificated air carriers be extended to apply to commuter carriers as well, a class of small non-certificated air carriers. This requirement was effectively eliminated for domestic air transportation in 1978 with the elimination of price regulation, and prescribed methods of establishing joint prices and divisions for foreign air transportation have never been considered by the CAB or DOT in keeping with post-deregulation aviation policy.

Deletion of section 41506. This provision would delete as obsolete the requirement that air carriers and foreign air carriers file divisions of all joint prices for foreign air transportation, if the Secretary of Transportation so requires. The section substantially precedes deregulation. As noted in the analysis of section 41501(2), the filing of tariffs was terminated by statute for domestic transportation and by DOT regulation for foreign air transportation.

Deletion of section 41508. This provision would delete as obsolete Secretarial regulation of joint fare divisions for foreign air transportation. The section is also a relic of regulation. Neither the CAB nor DOT has exercised this authority, nor, so far as it is know, has either the CAB or DOT been requested to do so

Deletion of section 41510. This provision would delete as obsolete the requirement that air carriers, foreign air carriers, and ticket agents adhere to tariffs. Section (a) prohibits air carriers, foreign air carriers, and ticket agents from charging or receiving any price other than that filed in tariffs for foreign air transportation, or extending any privilege or facility required to be filed in such tariffs by the Secretary of Transportation. Section (b) prohibits any person from paying prices or receiving benefits other than as filed in tariffs. This section also substantially precedes deregulation and was amended to eliminate its applicability to domestic transportation in 1978. These requirements to adhere strictly to filed tariffs are contrary to deregulation policies, and even before the elimination of cargo tariffs and most passenger tariffs for foreign air transportation by DOT regulations, both the CAB and DOT had effectively eliminated these requirements by exemptions. This section is not necessary for DOT to comply with any bilateral aviation agreements requiring adherence to filed tariffs, should any exist.

Revised section 41504(a). The provision modifies the tariff-filing requirement to require tariff-filing only for passenger fares and conditions of service for restrictive markets

designated by the Secretary and for markets in foreign air transportation where members of the International Air Transportation Association have U.S. antitrust immunity for price coordination. The current statutory tariff-filing requirement dates from 1938, when the U.S. Government regulated every aspect of airline operations. Domestic tariff filing was eliminated by the 1978 Airline Deregulation Act, and the Department of Transportation has by regulation progressively exempted the filing of tariffs in specified international markets with the spread of open-skies agreements. Tariff-filing for cargo rates is no longer required. Retaining a statutory tariff-filing requirement for passenger fares and conditions of service only for restrictive markets designated by the Secretary, as found appropriate, will enable the Department to dispense with unnecessary tariff filings and may encourage the spread of open-skies agreements. Retaining such a requirement for all markets in foreign air transportation where members of the International Air Transportation Association (IATA) have U.S. antitrust immunity for price coordination will enable the Department, at its discretion, to monitor IATA pricing through filed tariffs,, while eliminating the requirement in markets without such immunity. Continuing this limited DOT authority may provide an incentive for carriers to cease relying on IATA price coordination as the Department examines the appropriate scope, if any, for such immunity.

Deletion of section 41509(e). The Standard Foreign Fare Level (SFFL) requirement was enacted at a time when U.S. and foreign authorities were regulating fares much more intensively and was intended to streamline regulatory review of fare filings. With the spread of open-skies agreements it has outlived its usefulness, and staff reductions make it very difficult to issue the adjustments in a timely fashion. Section (b) of this provision would amend current law to terminate the current requirement.

Title XI--Internal Revenue Code Amendments

Sec. 901. Amendment of 1986 Code. This section provides that, except where otherwise expressly provided, any references to sections or provisions are made to the Internal Revenue Code of 1986.

Sec. 902. Modifications to Tax on Aviation Fuel. Subsection (a)(1) sets the tax rate for aviation gasoline to be 70.0[1] cents per gallon starting on the transition date, which is October 1, 2008. This tax applies to all piston operations (commercial and general aviation) to finance these users' share of the air traffic control system and their contribution to the Airport Improvement Program (13.6 cents/gallon). It would generally not apply to flights that pay user fees under chapter 453 of title 49, but would apply to general aviation and commercial piston flights that only pay fees for use of terminal airspace for a large hub airport. The 70.0 cent tax rate also applies to auto gasoline used in aviation.

[1] Tax rates currently in this title are based on the proposed authorized levels for AIP, RE&D and EAS for FY 2009.

Subsection (a)(2) sets the tax rate for kerosene (jet fuel) used in commercial aviation to be 13.6 cents per gallon starting on the transition date. This tax will apply to all turbine-powered flights within the United States that do not pay the non-commercial jet fuel tax. While user fees are the mechanism proposed for these flights to finance the costs of the air traffic control system, the user fees would be based on and dedicated to the costs of air traffic control, and would not be available to support the Airport Improvement Program (AIP). Therefore, a fuel tax is proposed to finance these users' contribution to AIP, as well as to research, engineering and development (RE&D), and to the essential air service program (EAS). The proposed turbine commercial fuel tax rate is equal to the AIP, RE&D and EAS components of the proposed aviation gasoline and non-commercial jet fuel tax rates. This 13.6 cent fuel tax from all domestic and general aviation users, combined with the proposed $6.39 tax on use of international air facilities, constitute the proposed funding stream for the Airport Improvement Program and is based on the authorization levels proposed in this bill.

Subsection (a)(2) sets the tax rate for jet fuel used in noncommercial aviation to be 70.0 cents per gallon starting on the transition date. This tax applies to turbine general aviation to finance these users' share of the air traffic control system and their contribution to the AIP, RE&D and EAS programs (13.6 cents/gallon). It would generally not apply to flights that pay user fees under chapter 453 of title 49, but would apply to general aviation flights that only pay fees for use of terminal airspace for a large hub airport. Commercial users who do not have IRS registration identifying them as such, or who do not meet the requirements under current law for removing fuel "directly into the fuel tank of an aircraft," would initially pay the noncommercial aviation tax rate and then either apply to the IRS to refund the difference, or not be subject to FAA user fees for the affected flight. The "directly into the fuel tank of an aircraft" requirement will not apply to noncommercial aviation taxes starting on the transition date, when the noncommercial aviation tax rate becomes higher than the tax rate on highway diesel fuel/kerosene.

While the non-commercial jet fuel tax rate is equal to the aviation gasoline tax rate, in practice, the total fuel tax paid for a comparable flight will be significantly lower for piston aircraft than for turbine aircraft due to the lower fuel consumption of piston aircraft.

As is currently the case, the tax rate designated for the Airport and Airway Trust Fund would be increased by 0.1 cents, with that additional portion designated for the Leaking Underground Storage Tank Trust Fund.

Subsection (a)(3) proposes regular adjustments to these tax rates based on inflation and the FAA's cost allocation study to allow fuel tax collections to keep better pace with FAA costs. The tax rate for kerosene (jet fuel) used in commercial aviation (which, as noted above, would support the AIP program) would be adjusted by the rate for inflation, as measured by the consumer price index, beginning in calendar year 2010. The adjustment for a given year (e.g., 2010) is equal to the percentage increase in the Consumer Price Index (CPI) for all urban consumers for the preceding year (e.g., 2009)

measured from a base year of 2008. For instance, if the CPI for the 12 months ending August 31, 2009 registers prices 2% higher than those in the CPI for the 12 months ending August 31, 2008, then the specified tax rate (13.6 cents) would be increased by 2% (rounded to the nearest tenth of a cent) beginning on January 1, 2010. The proposed inflation adjustment is comparable to existing inflationary adjustments for the domestic segment tax and international arrival and departure tax. In addition, the tax rates in excess of the adjusted AIP tax rate for aviation gasoline and for jet fuel that is used for noncommercial aviation would be adjusted every two years by the FAA based on the costs that users who pay such taxes impose on the air traffic system as determined in the FAA's cost allocation study.

These adjustments allow the general aviation, piston, and turbine commercial AIP/RE&D/EAS fuel tax collections to keep pace with FAA costs. The air traffic user fees proposed for commercial users can be adjusted from time to time under the Administrator's authority; a comparable adjustment mechanism for the excise tax portion of FAA's funding must be written into the law.

Subsection (b)(1) sets all fuel taxes to revert to 0 cents per gallon after September 30, 2017.

Subsection (b)(2) ties the aviation fuel tax rates specified in Section 4041 of the Internal Revenue Code to those specified in Section 4081 (above).

Subsection (c) updates the limit on refunds for taxes paid on fuel used in commercial aviation to ensure that the net tax paid is the current commercial jet fuel tax rate.

Sec. 903. Modifications to Tax on Transportation of Persons by Air. Because the new system of finance system would not be effective until fiscal year 2009, subsection (a) extends the current taxes on persons and property for one year. Paragraph (b)(1)(A) reduces the existing $14.50 (as of 2006) per passenger tax on the use of international travel facilities to $6.39 as of the transition date. This reduction reflects the fact that commercial international flights would pay for their use of the air traffic control system via the proposed air traffic user fees. The $6.39 portion of the tax is retained as international flights' contribution to the Airport Improvement Program (as well as EAS and RE&D), since fuel used in commercial international flights would not be subject to the turbine commercial aviation fuel tax. This tax would apply to any turbine commercial international flight (whether by a U.S. or foreign carrier).

This tax rate will adjust for inflation, as measured by the consumer price index, beginning in calendar year 2010. This is consistent with existing inflationary adjustments for this tax, and will allow the AIP program to grow with inflation (in addition to the growth driven by increases in the numbers of international passengers).

Paragraph (b)(1)(B) terminates an existing exclusion from the tax so that this tax applies to all flights that do not pay a fuel tax, including those within the 225 mile "exclusion zone." The tax on the use of international travel facilities does not currently apply to

flights to or from Canada or Mexico, if the Canadian or Mexican endpoint is within 225 miles of the continental United States. The reason for the existing exemption is that flights within the 225 mile exclusion zone are subject to the domestic ticket tax and domestic segment tax. However, they are not subject to the commercial fuel tax. Because the tax on the use of international travel facilities under the proposal would become a financing mechanism for AIP, and flights to Canada and Mexico would be exempt from the turbine commercial aviation fuel tax that is the proposed mechanism for domestic flights to contribute to AIP, the tax on the use of international travel facilities must apply to these flights in order to maintain an AIP contribution.

Paragraph (b)(1)(C) also eliminates the special tax rate for domestic segments beginning or ending in Alaska or Hawaii starting on the transition date, as these flights would pay user fees for their use of the air traffic control system and would pay the turbine commercial fuel tax for their contribution to the Airport Improvement Program (or, in the case of turbine general aviation and piston flights, would pay the applicable fuel tax rate for both purposes).

Paragraph (b)(2) extends the applicability date of the tax on the use of international travel facilities from September 30, 2007 to September 30, 2017.

The existing 7.5% ticket tax, $3.30 (as of 2006) domestic segment tax on commercial air transportation, 7.5% tax on mileage awards, and 6.25% cargo waybill tax are allowed to expire as of the transition date. The proposed user fees and fuel tax for turbine commercial aviation and aviation gasoline tax for piston commercial aviation replace these taxes.

Sec. 904. Extension of Airport and Airway Trust Fund Expenditure Authority. Subsection (a)(1) extends the expenditure authority from the Airport and Airway Trust Fund through September 30, 2017.

Subsection (a)(2) includes any provisions in the Next Generation Air Transportation System Financing Reform Act of 2007 in the list of authorized purposes for Airport and Airway Trust Fund expenditures.

Subsection (b) extends the authority to spend money from the Airport and Airway Trust Fund to liquidate any contracts or other obligations entered into prior to October 1, 2017.

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