

(38), (39), (40), (41), and (42) as (30), (32), (33), (35), (37), (38), (39), (40), (41), (43), (44), (45), (46), and (47), respectively.

2000—Subsec. (a)(37). Pub. L. 106-181, § 702(a), amended par. (37) generally, revising and restating provisions defining “public aircraft” to include references to qualifications found in section 40125(b) and (c).

Subsec. (a)(42). Pub. L. 106-181, § 301, added par. (42).

1997—Subsec. (a)(37)(A). Pub. L. 105-137 struck out “or” at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

1994—Subsec. (a)(30). Pub. L. 103-429 substituted “this subpart and subpart III” for “subparts I and III”.

Subsec. (a)(35). Pub. L. 103-305 struck out “for air transportation” after “charge”.

Subsec. (a)(37)(B). Pub. L. 103-411 added subpar. (B) and struck out former subpar. (B) which read as follows: “does not include a government-owned aircraft transporting passengers or property for commercial purposes.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

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

EFFECTIVE DATE OF 2000 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

Amendment by Pub. L. 103-411 effective on the 180th day following Oct. 25, 1994, see section 3(d) of Pub. L. 103-411, set out as a note under section 1131 of this title.

Amendment by Pub. L. 103-305 effective Jan. 1, 1995, see section 601(d) of Pub. L. 103-305, set out as a note under section 10521 of this title.

DEFINITIONS OF TERMS IN PUB. L. 107-71

Pub. L. 107-71, title I, § 133, Nov. 19, 2001, 115 Stat. 636, provided that: “Except as otherwise explicitly provided, any term used in this title [see Tables for classification] that is defined in section 40102 of title 49, United States Code, has the meaning given that term in that section.”

DEFINITIONS APPLICABLE TO PUB. L. 106-181

Pub. L. 106-181, § 4, Apr. 5, 2000, 114 Stat. 64, provided that: “Except as otherwise provided in this Act [see Tables for classification], the following definitions apply:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Federal Aviation Administration.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.”

DEFINITIONS APPLICABLE TO PUB. L. 103-305

Pub. L. 103-305, § 2, Aug. 23, 1994, 108 Stat. 1570, provided that: “In this Act [see Short Title of 1994 Amendment note set out under section 40101 of this title], the following definitions apply:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Federal Aviation Administration.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.”

Executive Documents

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 40103. Sovereignty and use of airspace

(a) SOVEREIGNTY AND PUBLIC RIGHT OF TRANSIT.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) USE OF AIRSPACE.—(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall—

(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed under this subsection.

(c) FOREIGN AIRCRAFT.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in section 41703 of this title.

(d) AIRCRAFT OF ARMED FORCES OF FOREIGN COUNTRIES.—Aircraft of the armed forces of a foreign country may be navigated in the United States only when authorized by the Secretary of State.

(e) NO EXCLUSIVE RIGHTS AT CERTAIN FACILITIES.—A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1101.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40103(a)(1) ..	49 App.:1508(a) (1st sentence).	Aug. 23, 1958, Pub. L. 85-726, §§307(a), (c), (d), 308(a) (3d sentence), 1108(a), 1201, 1202, 72 Stat. 749, 750, 751, 793, 800.
40103(a)(2) ..	49 App.:1304. 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, §104, 72 Stat. 740; Oct. 4, 1984, Pub. L. 98-443, §14, 98 Stat. 1711. Aug. 28, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704.
40103(b)(1) ..	49 App.:1348(a). 49 App.:1655(c)(1).	Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.
40103(b)(2) ..	49 App.:1348(c). 49 App.:1655(c)(1).	
40103(b)(3) ..	49 App.:1521. 49 App.:1522. 49 App.:1655(c)(1).	
40103(b)(4) ..	49 App.:1348(d). (no source).	
40103(c)	49 App.:1508(a) (last sentence).	
40103(d)	49 App.:1349(a) (3d sentence).	
40103(e)	49 App.:1349(a) (last sentence).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §308(a) (last sentence); added Sept. 3, 1982, Pub. L. 97-248, §524(a)(1), 96 Stat. 695.

In subsection (a)(1), the word “has” is substituted for “is declared to possess and exercise complete and” to eliminate surplus words. The word “national” is omitted as surplus. The text of 49 App.:1508(a) (1st sentence words after 1st comma) is omitted as surplus.

In subsection (a)(2), the words “of the United States” are omitted for consistency in the revised title and because of the definition of “navigable airspace” in section 40102(a) of the revised title. The words “or amending” are omitted as surplus.

In subsection (b), the word “Administrator” in section 307(a), (c), and (d) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 749, 750) is retained on authority of 49:106(g).

In subsection (b)(1) and (3)(B), the word “rule” is omitted as being synonymous with “regulation”.

In subsection (b)(1), the words “under such terms, conditions, and limitations as he may deem” are omitted as surplus. The words “In the exercise of his authority under section 1348(a) of this Appendix” in 49 App.:1522 are omitted as unnecessary because of the restatement.

In subsection (b)(2), before clause (A), the word “shall” is substituted for “is further authorized and directed” for consistency in the revised title and to eliminate unnecessary words.

In subsection (b)(3), before clause (A), the words “In the exercise of his authority under section 1348(a) of this Appendix” in 49 App.:1522 are omitted as surplus. The word “navigable” is added for clarity and consistency. In clause (A), the words “such zones or” are omitted as surplus.

In subsection (b)(4), the words “the military exception” are substituted for “any exception relating to military or naval functions” to eliminate unnecessary words and because “naval” is included in “military”. The words “applies to a regulation prescribed under”

are substituted for “In the exercise of the rulemaking authority . . . the Secretary of Transportation shall be subject to” to eliminate unnecessary words and because “rules” and “regulations” are synonymous.

Subsection (c) is added for clarity.

In subsection (d), the words “including the Canal Zone” are omitted because of the Panama Canal Treaty of 1977.

In subsection (e), before clause (1), the words “any landing area” are omitted as being included in the definition of “air navigation facility” in section 40102(a) of the revised title. The word “only” is added for clarity. In clause (2), the words “on September 3, 1982” are added for clarity.

Statutory Notes and Related Subsidiaries

REGULATIONS

Pub. L. 85-726, title VI, §613(a), (b), as added by Pub. L. 101-508, title IX, §9124, Nov. 5, 1990, 104 Stat. 1388-370, provided that:

“(a) NATIONAL DISASTER AREAS.—Before the 180th day following the date of the enactment of this section [Nov. 5, 1990], the Administrator, for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii.

“(b) EXCEPTIONS.—Regulations issued pursuant to subsection (a) shall not be applicable in the case of aircraft overflights involving an emergency or a legitimate [sic] scientific purpose.”

DYNAMIC AIRSPACE PILOT PROGRAM

Pub. L. 117-263, div. A, title X, §1093, Dec. 23, 2022, 136 Stat. 2812, provided that:

“(a) PILOT PROGRAM.—

“(1) PILOT PROGRAM REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2022], the Administrator of the Federal Aviation Administration, in coordination with the Secretary of Defense, shall establish a pilot program for the purpose of developing, testing, and assessing dynamic scheduling and management of special activity airspace in order to accommodate emerging military testing and training requirements, including—

“(A) special activity airspace for use by the Department of Defense for emerging military testing and training requirements of infrequent or limited durations; and

“(B) streamlining the process for the Department of Defense to request the designation of special activity airspace for activities described in subparagraph (A).

“(2) DEVELOPMENT, TEST, AND ASSESSMENT OF DYNAMIC AIRSPACE.—Under the pilot program established under paragraph (1), the Administrator and the Secretary shall jointly test not less than two use cases concerning temporary or permanent special activity airspace established by the Federal Aviation Administration for use by the Department of Defense that develop, test, and assess—

“(A) the availability of such airspace on an infrequent or limited duration necessary to accommodate the Department of Defense’s emerging military testing and training requirements; and

“(B) whether the processes for the Department of Defense to request special activity airspace for infrequent or limited duration military testing and training events meet Department of Defense testing and training requirements.

“(b) REQUIREMENTS.—The pilot program established by subsection (a) shall not interfere with—

“(1) the public’s right of transit consistent with national security;

“(2) the use of airspace necessary to ensure the safety of aircraft within the National Airspace System;

“(3) the use of airspace necessary to ensure the efficient use of the National Airspace System; and

“(4) Department of Defense use of special activity airspace that is established through means other than the pilot program established by subsection (a).”

“(c) REPORT BY THE ADMINISTRATOR.—

“(1) IN GENERAL.—Not later than two years after the date of the establishment of the pilot program under subsection (a)(1), the Administrator shall submit to the appropriate committees of Congress a report on the interim findings of the Administrator with respect to the pilot program.

“(2) ELEMENTS.—The report submitted under paragraph (1) shall include an analysis of the following:

“(A) How the pilot program established under subsection (a)(1) affected policies on establishing and scheduling special activity airspace with an emphasis on the impact of allocation and utilization policies to other nonparticipating aviation users of the National Airspace System.

“(B) Whether the streamlined processes for dynamic scheduling and management of special activity airspace involved in the pilot program established under subsection (a)(1) contributed to—

“(i) the public’s right of transit consistent with national security;

“(ii) the use of airspace necessary to ensure the safety of aircraft within the National Airspace System; and

“(iii) the use of airspace necessary to ensure the efficient use of the National Airspace System.

“(d) REPORT BY THE SECRETARY OF DEFENSE.—Not later than two years after the date of the establishment of the pilot program under subsection (a)(1), the Secretary shall submit to the appropriate committees of Congress a report on the interim findings of the Secretary with respect to the pilot program. Such report shall include an analysis of how the pilot program affected military testing and training.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Commerce, Science, and Transportation, the Committee on Armed Services, and the Committee on Appropriations of the Senate; and

“(B) the Committee on Transportation and Infrastructure, the Committee on Science, Space, and Technology, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

“(2) The term ‘special activity airspace’ means the following airspace with defined dimensions within the National Airspace System wherein limitations may be imposed upon aircraft operations:

“(A) Restricted areas.

“(B) Military operations areas.

“(C) Air traffic control assigned airspace.

“(D) Warning areas.

“(3) The term ‘use cases’ means a compendium of airspace utilization data collected from the development, testing, and assessment conducted under subsection (a)(1), and other test points or metrics as agreed to by the Administrator and the Secretary, within a specific geographic region as determined by the Administrator and Secretary.

“(f) DURATION.—The pilot program under subsection (a)(1) shall continue for not more than three years after the date on which it is established.”

DEPLOYMENT OF REAL-TIME STATUS OF SPECIAL USE AIRSPACE

Pub. L. 116-283, div. A, title X, §1085, Jan. 1, 2021, 134 Stat. 3877, provided that: “Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], to the maximum extent practicable, the Administrator of the Federal Aviation Administration, in coordination with the Secretary of Defense, shall enable the automated public dissemination of information on the real-time status of the activation or deactivation of military operations areas and restricted areas in a manner that is similar to the manner that temporary flight restrictions are published and disseminated.”

AIR TRAFFIC CONTROL OPERATIONAL CONTINGENCY PLANS

Pub. L. 115-254, div. B, title V, §504, Oct. 5, 2018, 132 Stat. 3353, provided that:

“(a) AIR TRAFFIC CONTROL OPERATIONAL CONTINGENCY PLANS.—Not later than 1 year after the date of enactment of this Act [Oct. 5, 2018], the Administrator [of the Federal Aviation Administration] shall review the Administration’s air traffic control operational contingency plans (FAA Order JO 1900.47E), and, as the Administrator considers appropriate, update such plans, to address potential air traffic facility outages that could have a major impact on the operation of the national airspace system, including the most recent findings and recommendations in the report under subsection (c).

“(b) UPDATES.—Not later than 60 days after the date the air traffic control operational contingency plans are reviewed under subsection (a), the Administrator shall submit to the appropriate committees of Congress [Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives] a report on the review, including any recommendations for ensuring air traffic facility outages do not have a major impact on the operation of the national airspace system.

“(c) RESILIENCY RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, and periodically thereafter as the Administrator considers appropriate, the Administrator shall convene NextGen [Next Generation Air Transportation System] program officials to evaluate, expedite, and complete a report on how planned NextGen capabilities can enhance the resiliency and continuity of national airspace system operations and mitigate the impact of future air traffic control disruptions.”

AIR SHOWS

Pub. L. 115-254, div. B, title V, §512, Oct. 5, 2018, 132 Stat. 3356, provided that: “On an annual basis, the Administrator [of the Federal Aviation Administration] shall work with representatives of [Federal Aviation] Administration-approved air shows, the general aviation community, and stadiums and other large outdoor events and venues to identify and resolve, to the maximum extent practicable, scheduling conflicts between Administration-approved air shows and large outdoor events and venues where—

“(1) flight restrictions will be imposed pursuant to section 521 of title V of division F of Public Law 108-199 (118 Stat. 343) [set out below]; or

“(2) any other restriction will be imposed pursuant to Federal Aviation Administration Flight Data Center Notice to Airmen 43621 (or any successor notice to airmen).”

AIR TRAFFIC SERVICES AT AVIATION EVENTS

Pub. L. 115-254, div. B, title V, §530, Oct. 5, 2018, 132 Stat. 3365, provided that:

“(a) REQUIREMENT TO PROVIDE SERVICES AND RELATED SUPPORT.—The Administrator [of the Federal Aviation Administration] shall provide air traffic services and aviation safety support for large, multiday aviation events, including airshows and fly-ins, where the average daily number of manned operations were 1,000 or greater in at least one of the preceding two years, without the imposition or collection of any fee, tax, or other charge for that purpose. Amounts for the provision of such services and support shall be derived from amounts appropriated or otherwise available for the [Federal Aviation] Administration.

“(b) DETERMINATION OF SERVICES AND SUPPORT TO BE PROVIDED.—In determining the services and support to be provided for an aviation event for purposes of subsection (a), the Administrator shall take into account the following:

“(1) The services and support required to meet levels of activity at prior events, if any, similar to the event.

“(2) The anticipated need for services and support at the event.”

ENHANCED AIR TRAFFIC SERVICES

Pub. L. 115-254, div. B, title V, §547, Oct. 5, 2018, 132 Stat. 3377, as amended by Pub. L. 118-15, div. B, title II, §2202(u), Sept. 30, 2023, 137 Stat. 84; Pub. L. 118-34, title I, §102(u), Dec. 26, 2023, 137 Stat. 1114, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Oct. 5, 2018], the Administrator [of the Federal Aviation Administration] shall establish a pilot program to provide air traffic control services on a preferential basis to aircraft equipped with certain NextGen [Next Generation Air Transportation System] avionics that—

“(1) lasts at least 2 years; and

“(2) operates in at least 3 suitable airports.

“(b) DURATION OF DAILY SERVICE.—The air traffic control services provided under the pilot program established under subsection (a) shall occur for at least 3 consecutive hours between 0600 and 2200 local time during each day of the pilot program.

“(c) AIRPORT SELECTION.—The Administrator shall designate airports for participation in the pilot program after consultation with aircraft operators, manufacturers, and airport sponsors.

“(d) DEFINITIONS.—

“(1) CERTAIN NEXTGEN AVIONICS.—The term ‘certain NextGen avionics’ means those avionics and related software designated by the Administrator after consultations with aircraft operators and manufacturers.

“(2) PREFERENTIAL BASIS.—The term ‘preferential basis’ means—

“(A) prioritizing aircraft equipped with certain NextGen avionics during a Ground Delay Program by assigning them fewer minutes of delay relative to other aircraft based upon principles established after consultation with aircraft operators and manufacturers; or

“(B) sequencing aircraft equipped with certain NextGen avionics ahead of other aircraft in the Traffic Flow Management System to the maximum extent consistent with safety.

“(e) SUNSET.—The pilot program established under subsection (a) shall terminate on March 8, 2024.

“(f) REPORT.—Not later than 90 days after the date on which the pilot program terminates, the Administrator shall submit to the appropriate committees of Congress [Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives] a report on the results of the pilot program.”

MAINTAINING RESTRICTIONS UNDER CERTAIN NOTAMS

Pub. L. 108-199, div. F, title V, §521, Jan. 23, 2004, 118 Stat. 343, provided that:

“(a) IN GENERAL.—The Secretary of Transportation—

“(1) shall, without regard to any fiscal year limitation, maintain in full force and effect the restrictions imposed under Federal Aviation Administration Notices to Airmen FDC 3/2122, FDC 3/2123, and FDC 2/0199; and

“(2) may not grant any waivers or exemptions from such restrictions, except—

“(A) as authorized by air traffic control for operational or safety purposes;

“(B) with respect to an event, stadium, or other venue—

“(i) for operational purposes;

“(ii) for the transport of team members, officials of the governing body, and immediate family members and guests of such team members and officials to and from such event, stadium, or venue;

“(iii) in the case of a sporting event, for the transport of equipment or parts to and from such sporting event;

“(iv) to permit a broadcast rights holder to provide broadcast coverage of such event, stadium, or venue; and

“(v) for safety and security purposes related to such event, stadium, or venue; and

“(C) to allow the operation of an aircraft in restricted airspace to the extent necessary to arrive at or depart from an airport using standard air traffic control procedures.

“(b) LIMITATIONS ON USE OF FUNDS.—None of the funds appropriated or otherwise made available by title I of this Act [div. F of Pub. L. 108-199, see Tables for classification] may be obligated or expended to terminate or limit the restrictions imposed under the Federal Aviation Administration Notices to Airmen referred to in subsection (a), or to grant waivers of, or exemptions from, such restrictions except as provided under subsection (a)(2).

“(c) BROADCAST CONTRACTS NOT AFFECTED.—Nothing in this section shall be construed to affect contractual rights pertaining to any broadcasting agreement.”

NATIONAL AIRSPACE REDESIGN

Pub. L. 106-181, title VII, §736, Apr. 5, 2000, 114 Stat. 171, provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) The national airspace, comprising more than 29 million square miles, handles more than 55,000 flights per day.

“(2) Almost 2,000,000 passengers per day traverse the United States through 20 major en route centers, including more than 700 different sectors.

“(3) Redesign and review of the national airspace may produce benefits for the travelling public by increasing the efficiency and capacity of the air traffic control system and reducing delays.

“(4) Redesign of the national airspace should be a high priority for the Federal Aviation Administration and the air transportation industry.

“(b) REDESIGN.—The Administrator [of the Federal Aviation Administration], with advice from the aviation industry and other interested parties, shall conduct a comprehensive redesign of the national airspace system.

“(c) REPORT.—Not later than December 31, 2000, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the Administrator’s comprehensive national airspace redesign. The report shall include projected milestones for completion of the redesign and shall also include a date for completion.

“(d) AUTHORIZATION.—There is authorized to be appropriated to the Administrator to carry out this section \$12,000,000 for each of fiscal years 2000, 2001, and 2002.”

§ 40104. Promotion of civil aeronautics and safety of air commerce

(a) DEVELOPING CIVIL AERONAUTICS AND SAFETY OF AIR COMMERCE.—The Administrator of the Federal Aviation Administration shall encourage the development of civil aeronautics and safety of air commerce in and outside the United States. In carrying out this subsection, the Administrator shall take action that the Administrator considers necessary to establish, within available resources, a program to distribute civil aviation information in each region served by the Administration. The program shall provide, on request, informational material and expertise on civil aviation to State and local school administrators, college and university officials, and officers of other interested organizations.

(b) INTERNATIONAL ROLE OF THE FAA.—

(1) IN GENERAL.—The Administrator shall promote and achieve global improvements in