TITLE 49 - TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY
   subpart iii - safety
   CHAPTER 445 - FACILITIES, PERSONNEL, AND RESEARCH

§ 44502. General facilities and personnel authority

(a) General Authority.—

   (1) The Administrator of the Federal Aviation Administration may—

      (A) acquire, establish, improve, operate, and maintain air navigation facilities; and

      (B) provide facilities and personnel to regulate and protect air traffic.

   (2) The cost of site preparation work associated with acquiring, establishing, or improving an air
       navigation facility under paragraph (1)(A) of this subsection shall be charged to amounts available
       for that purpose appropriated under section 48101 (a) of this title. The Secretary of Transportation
       may make an agreement with an airport owner or sponsor (as defined in section 47102 of this title)
       so that the owner or sponsor will provide the work and be paid or reimbursed by the Secretary
       from the appropriated amounts.

   (3) The Secretary of Transportation may authorize a department, agency, or instrumentality of the
       United States Government to carry out any duty or power under this subsection with the consent
       of the head of the department, agency, or instrumentality.

   (4) Purchase of instrument landing system.—

      (A) Establishment of program.— The Secretary shall purchase precision approach
          instrument landing system equipment for installation at airports on an expedited basis.

      (B) Authorization.— No less than $30,000,000 of the amounts appropriated under section
          48101 (a) for each of fiscal years 2000 through 2002 shall be used for the purpose of carrying
          out this paragraph, including acquisition under new or existing contracts, site preparation
          work, installation, and related expenditures.

   (5) Improvements on leased properties.— The Administrator may make improvements to real
       property leased for no or nominal consideration for an air navigation facility, regardless of whether
       the cost of making the improvements exceeds the cost of leasing the real property, if—

      (A) the improvements primarily benefit the Government;

      (B) the improvements are essential for accomplishment of the mission of the Federal Aviation
          Administration; and

      (C) the interest of the United States Government in the improvements is protected.

(b) Certification of Necessity.— Except for Government money expended under this part or for
    a military purpose, Government money may be expended to acquire, establish, construct, operate, 
    repair, alter, or maintain an air navigation facility only if the Administrator of the Federal Aviation
    Administration certifies in writing that the facility is reasonably necessary for use in air commerce or 
    for the national defense. An interested person may apply for a certificate for a facility to be acquired, 
    established, constructed, operated, repaired, altered, or maintained by or for the person.

(c) Ensuring Conformity With Plans and Policies.—

   (1) To ensure conformity with plans and policies for, and allocation of, airspace by the 
       Administrator of the Federal Aviation Administration under section 40103 (b)(1) of this title, a 
       military airport, military landing area, or missile or rocket site may be acquired, established, or 
       constructed, or a runway may be altered substantially, only if the Administrator of the Federal 
       Aviation Administration is given reasonable prior notice so that the Administrator of the Federal 
       Aviation Administration may advise the appropriate committees of Congress and interested 
       departments, agencies, and instrumentalities of the Government on the effect of the acquisition,
establishment, construction, or alteration on the use of airspace by aircraft. A disagreement between the Administrator of the Federal Aviation Administration and the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration may be appealed to the President for a final decision.

(2) To ensure conformity, an airport or landing area not involving the expenditure of Government money may be established or constructed, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator may provide advice on the effects of the establishment, construction, or alteration on the use of airspace by aircraft.

(d) Public Use and Emergency Assistance.—

(1) The head of a department, agency, or instrumentality of the Government having jurisdiction over an air navigation facility owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for public use of the facility.

(2) The head of a department, agency, or instrumentality of the Government having jurisdiction over an airport or emergency landing field owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for assistance, and the sale of fuel, oil, equipment, and supplies, to an aircraft, but only when necessary, because of an emergency, to allow the aircraft to continue to the nearest airport operated by private enterprise. The head of the department, agency, or instrumentality shall provide for the assistance and sale at the prevailing local fair market value as determined by the head of the department, agency, or instrumentality. An amount that the head decides is equal to the cost of the assistance provided and the fuel, oil, equipment, and supplies sold shall be credited to the appropriation from which the cost was paid. The balance shall be credited to miscellaneous receipts.

(e) Transfers of Instrument Landing Systems.— An airport may transfer, without consideration, to the Administrator of the Federal Aviation Administration an instrument landing system (and associated approach lighting equipment and runway visual range equipment) that conforms to performance specifications of the Administrator if a Government airport aid program, airport development aid program, or airport improvement project grant was used to assist in purchasing the system. The Administrator shall accept the system and operate and maintain it under criteria of the Administrator.
<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44502(a)(3)</td>
<td>49 App.:1348(b) (2d sentence).</td>
<td>Aug. 23, 1958, Pub. L. 85–726, §§ 308(a) (1st, 2d sentences), (b), 309, 1107, 72 Stat. 750, 751, 798.</td>
</tr>
<tr>
<td>44502(b)</td>
<td>49 App.:1349(a) (1st, 2d sentences).</td>
<td>49 App.:1655(c)(1).</td>
</tr>
<tr>
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<td>49 App.:1349(b).</td>
<td>49 App.:1655(c)(1).</td>
</tr>
<tr>
<td>44502(c)(2)</td>
<td>49 App.:1350.</td>
<td>49 App.:1655(c)(1).</td>
</tr>
<tr>
<td>44502(d)</td>
<td>49 App.:1507.</td>
<td>49 App.:1655(c)(1).</td>
</tr>
<tr>
<td>44502(e)</td>
<td>49 App.:1743.</td>
<td>49 App.:2205 (notes).</td>
</tr>
</tbody>
</table>

In this section, the words “department, agency, or instrumentality of the United States Government” are substituted for “Federal department or agency” in 49 App.:1348(b), “agencies” in 49 App.:1349(b), and “department or other agency” and “Government department or other agency” in 49 App.:1507 for consistency in the revised title and with other titles of the United States Code.

In subsections (a)(1), (b), and (c), the word “Administrator” in sections 303 (c) (1st sentence), 307(b), 308(a) (1st and 2d sentences) and (b), and 309 of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 750, 751) is retained on authority of 49:106(g).

In subsection (a)(1), before clause (A), the words “within the limits of available appropriations made by the Congress” are omitted as surplus. In clause (A), the words “wherever necessary” are omitted as surplus. In clause (B), the word “necessary” is omitted as surplus.

In subsection (a)(2), the words “by the Secretary” and “to the Secretary” are omitted as surplus. The last sentence is substituted for 49 App.:2205(a)(3) (last sentence) to eliminate unnecessary words.

In subsection (a)(3), the words “subject to such regulations, supervision, and review as he may prescribe” are omitted because of 49:322(a). The words “from time to time make such provision as he shall deem appropriate” are omitted as surplus. The words “duty or power” are substituted for “function” for consistency in the revised title and with other titles of the Code. The words “the head of” are added for clarity and consistency.

In subsection (b), the words “(whether or not in cooperation with State or other local governmental agencies)” and “thereon” are omitted as surplus. The words “landing area” are omitted as being included in the definition of “air navigation facility” in section 40102(a) of the revised title. The words
“recommendation and” are omitted as surplus. The words “under regulations prescribed by him” are omitted because of 49:322(a). The word “proposed” is omitted as surplus. The word “acquired” is added for consistency in this subsection.

In subsection (c)(1), the words “In order”, “layout”, and “In case of . . . the matter” are omitted as surplus. The words “Secretary of Defense” are substituted for “Department of Defense” because of 10:133(a). The words “the Administrator of” are added because of 42:2472(a).

In subsection (c)(2), the word “layout” is omitted as surplus. The words “pursuant to regulations prescribed by him” are omitted because of 49:322(a). The words “the establishment, building, or alteration” are substituted for “such construction” for clarity and consistency in this section.

In subsection (d)(1), the words “under such conditions and to such extent as . . . deems advisable and” are omitted as surplus. The word “provide” is substituted for “be made available”, and the words “of the facility” are added, for clarity.

In subsection (d)(2), the words “All amounts received under this subsection shall be covered into the Treasury” are omitted because of 31:3302(b). The words “services, shelter . . . other” and “if any” are omitted as surplus.

In subsection (e), the words “or compact” are omitted as surplus. The words “or States” are omitted because of 1:1. The text of 49 App.:1743 (last sentence) is omitted as surplus.

In subsection (f), the words “Notwithstanding any other provision of law” and “thereafter” are omitted as surplus.

**Pub. L. 103–429**

This amends 49:44502(b) to clarify the restatement of 49 App.:1349(a) (1st, 2d sentences) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1175).

**Pub. L. 104–287, § 5(75)(A)**

This amends 49:44502(c)(1) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1175).

**Pub. L. 104–287, § 5(75)(B)**

This strikes 49:44502(e) and redesignates 49:44502(f) as 49:44502(e) because of the restatement of former 49:44502(e) as 49:40121.

**Amendments**


1996—Subsec. (c)(1). Pub. L. 104–287, § 5(75)(A), substituted “To ensure” for “To ensure that”.

Subsecs. (e), (f). Pub. L. 104–287, § 5(75)(B), redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows:

“(e) Consent of Congress.—Congress consents to a State making an agreement, not in conflict with a law of the United States, with another State to develop or operate an airport facility.”


Subsec. (b). Pub. L. 103–429 inserted “Government” before “money may be expended”.

**Effective Date of 2000 Amendment**

Effective Date of 1994 Amendment


Strategy for Staffing, Hiring, and Training Flight Standards and Aircraft Certification Staff

Pub. L. 112–55, div. C, title I, Nov. 18, 2011, 125 Stat. 646, provided in part: “That not later than March 31 of each fiscal year hereafter, the Administrator [of the Federal Aviation Administration] shall transmit to Congress a companion report that describes a comprehensive strategy for staffing, hiring, and training flight standards and aircraft certification staff in a format similar to the one utilized for the controller staffing plan, including stated attrition estimates and numerical hiring goals by fiscal year”.

Similar provisions were contained in the following prior appropriation act:

Pilot Program for Innovative Financing of Air Traffic Control Equipment


“(a) In General.—In order to test the cost effectiveness and feasibility of long-term financing of modernization of major air traffic control systems, the Administrator of the Federal Aviation Administration may establish a pilot program to test innovative financing techniques through amending, subject to section 1341 of title 31, United States Code, a contract for more than one, but not more than 20, fiscal years to purchase and install air traffic control equipment for the Administration. Such amendments may be for more than one, but not more than 10, fiscal years.

“(b) Cancellation.—A contract described in subsection (a) may include a cancellation provision if the Administrator determines that such a provision is necessary and in the best interest of the United States. Any such provision shall include a cancellation liability schedule that covers reasonable and allocable costs incurred by the contractor through the date of cancellation plus reasonable profit, if any, on those costs. Any such provision shall not apply if the contract is terminated by default of the contractor.

“(c) Contract Provisions.—If feasible and practicable for the pilot program, the Administrator may make an advance contract provision to achieve economic-lot purchases and more efficient production rates.

“(d) Limitation.—The Administrator may not amend a contract under this section until the program for the terminal automation replacement systems has been rebaselined in accordance with the acquisition management system of the Administration.

“(e) Annual Reports.—At the end of each fiscal year during the term of the pilot program, 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 how the Administrator has implemented in such fiscal year the pilot program, the number and types of contracts or contract amendments that are entered into under the program, and the program’s cost effectiveness.

“(f) Funding.—Out of amounts appropriated under section 48101 [probably means section 48101 of title 49, United States Code] for fiscal year 2004, such sums as may be necessary shall be available to carry out this section.”

Enhanced Vision Technologies

Pub. L. 106–181, title I, § 124, Apr. 5, 2000, 114 Stat. 75, provided that:

“(a) Study.—The Administrator [of the Federal Aviation Administration] shall enter into a cooperative research and development agreement to study the benefits of utilizing enhanced vision technologies to replace, enhance, or add to conventional airport approach and runway lighting systems.

“(b) Report.—Not later than 180 days after the date of the enactment of this Act [Apr. 5, 2000], the Administrator shall transmit to Congress a progress report on the work accomplished under the cooperative agreements detailing the evaluations performed to determine the potential of enhanced vision technology to meet the operational requirements of the intended application.

“(c) Certification.—Not later than 180 days after the conclusion of work under the research agreements, the Administrator shall transmit to Congress a report on the potential of enhanced vision technology to satisfy the operational requirements of the Federal Aviation Administration and a schedule for the development of performance standards for certification appropriate to the application of the enhanced vision technologies. If the Administrator certifies an enhanced vision technology as meeting such performance standards, the technology shall be treated as a navigation aid or other aid for purposes of section 47102 (3)(B)(i) of title 49, United States Code.”
Transfer by Airports of Instrument Landing Systems and Associated Equipment to Federal Aviation Administration

Pub. L. 109–115, div. A, title I, § 101, Nov. 30, 2005, 119 Stat. 2401, which provided that airports may transfer to the Federal Aviation Administration (FAA) instrument landing systems (along with associated approach lighting equipment and runway visual range equipment) which conform to FAA design and performance specifications, the purchase of which was assisted by a Federal airport-aid program, airport development aid program or airport improvement program grant, provided that the FAA accept such equipment and operate and maintain it in accordance with agency criteria, was from the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:


Cost Savings Associated With Purchase

Section 120(b) of Pub. L. 103–305 provided that: “Notwithstanding other provisions of law or regulations to the contrary, the Administrator [of the Federal Aviation Administration] shall establish, within 120 days after the date of the enactment of this Act [Aug. 23, 1994], a process through which airport sponsors may take advantage of cost savings associated with the purchase and installation of instrument landing systems, along with associated equipment, under existing or future Federal Aviation Administration contracts. The process established by the Administrator may provide for the direct reimbursement (including administrative costs) of the Administrator by an airport sponsor using grants funds under subchapter I of chapter 471 of subtitle VII of title 49, United States Code, relating to airport improvement, for the ordering of such equipment and installation or for the direct ordering of such equipment and installation by an airport sponsor, using such grant funds, from the suppliers with which the Administrator has contracted.”

Grandfather Provision for FAA Demonstration Project


“(a) In general.—Notwithstanding the termination of the personnel demonstration project for certain Federal Aviation Administration employees on June 17, 1994, pursuant to section 4703 of title 5, United States Code, the Federal Aviation Administration, subject to subsection (d), shall continue to pay quarterly retention allowance payments in accordance with subsection (b) to those employees who are entitled to quarterly retention allowance payments under the demonstration project as of June 16, 1994.

“(b) Computation Rules.—

“(1) In general.—The amount of each quarterly retention allowance payment to which an employee is entitled under subsection (a) shall be the amount of the last quarterly retention allowance payment paid to such employee under the personnel demonstration project prior to June 17, 1994, reduced by that portion of the amount of any increase in the employee’s annual rate of basic pay subsequent to June 17, 1994, from any source, which is allocable to the quarter for which the allowance is to be paid (or, if applicable, to that portion of the quarter for which the allowance is to be paid). For purposes of the preceding sentence, the increase in an employee’s annual rate of basic pay includes—

“(A) any increase under section 5303 of title 5, United States Code;

“(B) any increase in locality-based comparability payments under section 5304 of such title 5 (except if, or to the extent that, such increase is offset by a reduction of an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5304 note));
“(C) any establishment or increase in a special rate of pay under section 5305 of such title 5;
“(D) any increase in basic pay pursuant to a promotion under section 5334 of such title 5;
“(E) any periodic step-increase under section 5335 of such title 5;
“(F) any additional step-increase under section 5336 of such title 5; and
“(G) any other increase in annual rate of basic pay under any other provision of law.
“(2) Section rule.—In the case of an employee on leave without pay or other similar status for any part of the quarter prior to June 17, 1994, based on which the amount of the allowance payments for such employee under subsection (a) are computed, the ‘amount of the last quarterly retention allowance payment paid to such employee under the personnel demonstration project prior to June 17, 1994’ shall, for purposes of paragraph (1), be deemed to be the amount of the allowance which would have been payable to such employee for such quarter under such project had such employee been in pay status throughout such quarter.
“(c) Termination.—An employee’s entitlement to quarterly retention allowance payments under this section shall cease when—
“(1) the amount of such allowance is reduced to zero under subsection (b), or
“(2) the employee separates or moves to a position in which the employee would not, prior to June 17, 1994, have been entitled to receive an allowance under the demonstration project,
whichever is earlier.
“(d) Special Payment Rule.—The Administrator of the Federal Aviation Administration may make payment for the costs incurred under the program established by subsection (a) for the period between June 18, 1994, and September 30, 1994, following the end of the first full pay period that begins on or after October 1, 1994, subject to appropriations made available in fiscal year 1995.
“(e) Study of Recruitment and Retention Incentives.—The Administrator of the Federal Aviation Administration shall conduct a study of impediments that may exist to achieving appropriate air traffic controller staffing levels at hard-to-staff facilities. In conducting such study, the Administrator shall identify and evaluate the extent to which special incentives, of a financial or non-financial nature, could be useful in recruiting or retaining air traffic controllers at such facilities. The Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives not later than 180 days after the date of enactment of this Act [May 26, 1994] a report on (1) the results of such study, (2) planned administrative actions, and (3) any recommended legislation.”