§ 47110. Allowable project costs

(a) General Authority.— Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) Allowable Cost Standards.— A project cost is allowable—

(1) if the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor incurs related to an audit the Secretary requires under section 47121 (b) or (d) of this title and any cost of moving a Federal facility impeding the project if the rebuilt facility is of an equivalent size and type;

(2) (A) if the cost is incurred after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed;

(B) if the cost is incurred after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatibility program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements;

(C) if the Government’s share is paid only with amounts apportioned under paragraphs (1) and (2) of section 47114 (c) or section 47114 (d)(3)(A) and if the cost is incurred—

(i) after September 30, 1996;

(ii) before a grant agreement is executed for the project; and

(iii) in accordance with an airport layout plan approved by the Secretary and with all statutory and administrative requirements that would have been applicable to the project if the project had been carried out after the grant agreement had been executed; or

(D) if the cost is incurred after September 11, 2001, for a project described in section 47102 (3)(J), 47102 (3)(K), or 47102 (3)(L) and shall not depend upon the date of execution of a grant agreement made under this subchapter;

(3) to the extent the cost is reasonable in amount;

(4) if the cost is not incurred in a project for airport development or airport planning for which other Government assistance has been granted;

(5) if the total costs allowed for the project are not more than the amount stated in the grant agreement as the maximum the Government will pay (except as provided in section 47108 (b) of this title); and

(6) if the cost is for a project not described in section 47102 (3) for acquiring for use at a commercial service airport vehicles and ground support equipment owned by an airport that include low-emission technology, but only to the extent of the incremental cost of equipping such vehicles or equipment with low-emission technology, as determined by the Secretary.

(c) Certain Prior Costs as Allowable Costs.— The Secretary may decide that a project cost under subsection (b)(2)(A) of this section incurred after May 13, 1946, and before the date the grant agreement is executed is allowable if it is—
(1) necessarily incurred in formulating an airport development project, including costs incurred for field surveys, plans and specifications, property interests in land or airspace, and administration or other incidental items that would not have been incurred except for the project; or
(2) necessarily and directly incurred in developing the work scope of an airport planning project.

(d) Terminal Development Costs.—

(1) The Secretary may decide that the cost of terminal development (including multi-modal terminal development) in a nonrevenue-producing public-use area of a commercial service airport is allowable for an airport development project at the airport—

(A) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

(i) all the safety equipment required for certification of the airport under section 44706 of this title;

(ii) all the security equipment required by regulation; and

(iii) provided for access, to the area of the airport for passengers for boarding or exiting aircraft, to those passengers boarding or exiting aircraft, except air carrier aircraft;

(B) if the cost is directly related to moving passengers and baggage in air commerce within the airport, including vehicles for moving passengers between terminal facilities and between terminal facilities and aircraft; and

(C) under terms necessary to protect the interests of the Government.

(2) In making a decision under paragraph (1) of this subsection, the Secretary may approve as allowable costs the expenses of terminal development in a revenue-producing area and construction, reconstruction, repair, and improvement in a nonrevenue-producing parking lot if—

(A) except as provided in section 47108(e)(3), the airport does not have more than .05 percent of the total annual passenger boardings in the United States; and

(B) the sponsor certifies that any needed airport development project affecting safety, security, or capacity will not be deferred because of the Secretary’s approval.

(e) Letters of Intent.—

(1) The Secretary may issue a letter of intent to the sponsor stating an intention to obligate from future budget authority an amount, not more than the Government’s share of allowable project costs, for an airport development project (including costs of formulating the project) at a primary or reliever airport. The letter shall establish a schedule under which the Secretary will reimburse the sponsor for the Government’s share of allowable project costs, as amounts become available, if the sponsor, after the Secretary issues the letter, carries out the project without receiving amounts under this subchapter.

(2) Paragraph (1) of this subsection applies to a project—

(A) about which the sponsor notifies the Secretary, before the project begins, of the sponsor’s intent to carry out the project;

(B) that will comply with all statutory and administrative requirements that would apply to the project if it were carried out with amounts made available under this subchapter; and

(C) that meets the criteria of section 47115(d) and, if for a project at a commercial service airport having at least 0.25 percent of the boardings each year at all such airports, the Secretary decides will enhance system-wide airport capacity significantly.

(3) A letter of intent issued under paragraph (1) of this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriation laws.

(4) The total estimated amount of future Government obligations covered by all outstanding letters of intent under paragraph (1) of this subsection may not be more than the amount authorized to
carry out section 48103 of this title, less an amount reasonably estimated by the Secretary to be
needed for grants under section 48103 that are not covered by a letter.

(5) Letters of intent.— The Secretary may not require an eligible agency to impose a passenger
facility fee under section 40117 in order to obtain a letter of intent under this section.

(6) Limitation on statutory construction.— Nothing in this section shall be construed to
prohibit the obligation of amounts pursuant to a letter of intent under this subsection in the same
fiscal year as the letter of intent is issued.

(f) Nonallowable Costs.— Except as provided in subsection (d) of this section and section 47118 (f)
of this title, a cost is not an allowable airport development project cost if it is for—

(1) constructing a public parking facility for passenger automobiles;
(2) constructing, altering, or repairing part of an airport building, except to the extent the building
will be used for facilities or activities directly related to the safety of individuals at the airport;
(3) decorative landscaping; or
(4) providing or installing sculpture or art works.

(g) Use of Discretionary Funds.— A project for which cost reimbursement is provided under
subsection (b)(2)(C) shall not receive priority consideration with respect to the use of discretionary
funds made available under section 47115 of this title even if the amounts made available under
paragraphs (1) and (2) of section 47114 (c) or section 47114 (d)(3)(A) are not sufficient to cover the
Government’s share of the cost of the project.

(h) Nonprimary Airports.— The Secretary may decide that the costs of revenue producing
aeronautical support facilities, including fuel farms and hangars, are allowable for an airport
development project at a nonprimary airport if the Government’s share of such costs is paid only with
funds apportioned to the airport sponsor under section 47114 (d)(3)(A) and if the Secretary determines
that the sponsor has made adequate provision for financing airside needs of the airport.

Footnotes

1 So in original. Probably should be “compatibility”.
2 See References in Text note below.

2427.)

Historical and Revision Notes

Pub. L. 103–272

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<td>47110(a)</td>
<td>49 App.:2212(a) (1st, last sentences).</td>
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<td>47110(b)</td>
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49 USC 47110

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see http://www.law.cornell.edu/uscode/uscprint.html).

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In subsection (a), the words “for airport development or airport planning” are omitted because of the definition of “project” in section 47102 of the revised title. The text of 49 App.:2212(a) (last sentence) is omitted as surplus because of 49:322(a).

In subsection (b)(1), the word “approved” is omitted as surplus because a project that was not approved could not be carried out in compliance with a grant agreement. The words “in compliance with the grant agreement made for the project under this subchapter” are substituted for “in conformity with the terms and conditions of the grant agreement entered into in connection with the project” to eliminate unnecessary words. The word “sponsor” is substituted for “recipient” for clarity.

In subsection (b)(2)(A), the words “with respect to the project” are omitted as unnecessary because “the grant agreement” means “the grant agreement made for the project” referred to in clause (1) of this subsection. The words “under the project” are omitted as surplus.

Subsection (b)(3) is substituted for “in the opinion of the Secretary it is reasonable in amount, and if the Secretary determines that a project cost is unreasonable in amount, the Secretary may allow as an allowable project cost only so much of such project cost as the Secretary determines to be reasonable” to eliminate unnecessary words.

Subsection (b)(5) is substituted for “except that in no event may the Secretary allow project costs in excess of the definite amount stated in the grant agreement except to the extent authorized by section 2211 (b) of this Appendix” for consistency in this section.

In subsection (c), before clause (1), the words “The Secretary may decide that a project cost . . . is allowable” are substituted for “However, the allowable costs of a project . . . may include . . . and the allowable costs of a project . . . may include” for clarity and consistency in the revised title. The words “incurred after May 13, 1946, and before the date the grant agreement is executed” are substituted for “which were incurred prior to the execution of the grant agreement and subsequent to May 13, 1946” and “which were incurred subsequent to May 13, 1946” to eliminate unnecessary words. In clause (1), the words “preparation of”, “acquisition of”, “by the sponsor specifically in connection with the accomplishment of the project for airport development” are omitted as surplus. The words “property interests in land or airspace” are substituted for “land or interests therein or easements through or other interests in airspace” to eliminate unnecessary words.

In subsection (d)(1), before clause (A), the words “The Secretary may decide that the cost . . . is allowable” are substituted for “the Secretary may approve, as allowable project costs” and “The Secretary shall approve project costs allowable under paragraph (1) of this subsection” for clarity and consistency in this section. In clause (B), the words “the boundaries of” are omitted as surplus. In clause (C), the words “and conditions” are omitted as being included in “terms”.

- 4 -
In subsection (d)(2), the words “In making a decision under paragraph (1) of this subsection, the Secretary may approve as allowable costs” are substituted for “In the case of a commercial service airport . . . the Secretary may approve, under the preceding sentence as allowable project costs” for consistency in this subsection.

In subsection (e)(1), the word “sponsor” is substituted for “applicant” for consistency. The words “stipulated as” and “Subject to the provisions of this paragraph” are omitted as surplus. The word “reimburse” is substituted for “make payments under paragraph (2) of this subsection” and “pay” for clarity. The words “payable on account of such project in accordance with such letter of intent” are omitted as surplus.

In subsection (e)(2), before clause (A), the text of 49 App.:2212(d)(1)(C) (last sentence) is omitted as obsolete.

In subsection (e)(3), the words “A letter of intent issued” are substituted for “action” for clarity. The word “deemed” before “an obligation” is omitted as surplus.

In subsection (f)(2), the words “of a hangar or” are omitted as being included in “airport building”.

**Pub. L. 103–429**

The source credits for all of subsection (b) are included for clarity though only subsection (b)(2) is affected by the amendment. The source credits for 49:47110(c) are included to correct a mistake on p. 405 of H. R. Rept. 103–180 (103d Cong., 1st Sess., July 15, 1993).

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In subsection (b)(2)(C)(ii), the words “before the cost is incurred” are added for clarity.

### References in Text

Subpars. (J), (K), and (L) of section 47102 (3), referred to in subsec. (b)(2)(D), were repealed and new subpars. (J), (K), and (L) were added or designated, by Pub. L. 108–176, title I, § 159(b)(1), Dec. 12, 2003, 117 Stat. 2510.

### Amendments

2005—Subsec. (d)(2)(A). Pub. L. 109–115, which directed amendment of section 47110 (d)(2)(A), without specifying the title to be amended, by substituting “(A) except as provided in section 47108 (e)(3), the” for “(A) the”, was executed to this section, to reflect the probable intent of Congress.

2003—Subsec. (b)(1). Pub. L. 108–176, § 145, inserted “and any cost of moving a Federal facility impeding the project if the rebuilt facility is of an equivalent size and type” before semicolon at end.


Subsec. (g). Pub. L. 108–176, § 149(b)(2), inserted “or section 47114 (d)(3)(A)” after “of section 47114 (c)” and substituted “of the project” for “of project”.


49 USC 47110

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see http://www.law.cornell.edu/uscode/uscodeuscprint.html).

2000—Subsec. (e)(2)(C). Pub. L. 106–181, § 127(1), added subpar. (C) and struck out former subpar. (C) which read as follows: “the Secretary decides will enhance system-wide airport capacity significantly and meets the criteria of section 47115 (d) of this title.”

Subsec. (e)(5). Pub. L. 106–181, § 127(2), added par. (5) and struck out former par. (5) which read as follows: “A letter of intent issued under paragraph (1) of this subsection may not condition the obligation of amounts on the imposition of a passenger facility fee.”

1996—Subsec. (b)(2)(C). Pub. L. 104–264, § 144(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “if the Government’s share is paid only with amounts apportioned under section 47114 (c)(1)(A) and (2) of this title and if the cost is incurred—

“(i) during the fiscal year ending September 30, 1994;

“(ii) before a grant agreement is executed for the project but according to an airport layout plan the Secretary approves before the cost is incurred and all applicable statutory and administrative requirements that would apply to the project if the agreement had been executed; and

“(iii) for work related to a project for which a grant agreement previously was executed during the fiscal year ending September 30, 1994;”.

Subsec. (g). Pub. L. 104–264, § 144(b), added subsec. (g).

1994—Subsec. (b)(2). Pub. L. 103–429 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “if the cost is incurred—

“(A) after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed; or

“(B) after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatibility program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements;”.

Subsec. (g). Pub. L. 103–305 added par. (6).

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


Effective Date of 1996 Amendment

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

Letters of Intent for Airport Security Improvement Projects


“(a) The Under Secretary of Transportation for Security may issue a letter of intent to an airport committing to obligate from future budget authority an amount, not more than the Federal Government’s share of the project’s cost, for an airport security improvement project (including interest costs and costs of formulating the project) at the airport. The letter shall establish a schedule under which the Under Secretary will reimburse the airport for the Government’s share of the project’s costs, as amounts become available, if the airport, after the Under Secretary issues the letter, carries out the project without receiving amounts under Chapter 471 of title 49 [United States Code].

“(b) The airport shall notify the Under Secretary of the airport’s intent to carry out the airport security improvement project before the project begins.

“(c) A letter of intent may be issued under this section only if—

“(1) The airport security improvement project to which the letter applies involves the replacement of baggage conveyer systems or the reconfiguration of terminal baggage areas in order to install explosive detection systems; and

“(2) The Under Secretary determines that the project will improve security or will improve the efficiency of the airport without lessening security.
“(d) A letter of intent issued under this section is not an obligation of the Government under section 1501 of title 31 [United States Code], and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

“(e) The Government’s share of the project’s cost shall be 75 percent for a project at an airport having at least 0.25 percent of the total number of passenger boardings each year at all airports and 90 percent for a project at any other airport.

“(f) Nothing in this section shall be construed to prohibit the obligation of amounts pursuant to a letter of intent under this section in the same fiscal year as the letter of intent is issued.

“(g) The Under Secretary shall notify the House and Senate Committees on Appropriations, the House Transportation and Infrastructure Committee, and the Senate Commerce, Science, and Transportation Committee at least 3 days prior to the issuance of a letter of intent under this section.

“(h) There is authorized to be appropriated to carry out this section $500,000,000 in each of fiscal years 2003, 2004, 2005, 2006, and 2007.”

**Letters of Intent; Duration of Authority and Approval by Congress**

Pub. L. 102–388, title III, § 320, Oct. 6, 1992, 106 Stat. 1546, provided that: “The authority conferred by section 513(d) of the Airport and Airway Improvement Act of 1982, as amended [see subsec. (e) of this section], to issue letters of intent shall remain in effect subsequent to September 30, 1992. Letters of intent may be issued under such subsection to applicants determined to be qualified under such Act [substantially repealed by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379, and reenacted by first section thereof as this subchapter]: Provided, That, notwithstanding any other provision of law, all such letters of intent in excess of $10,000,000 shall be submitted for approval to the Committees on Appropriations of the Senate and the House of Representatives; the Committee on Commerce, Science, and Transportation of the Senate; and the Committee on Public Works and Transportation [now Committee on Transportation and Infrastructure] of the House of Representatives.” Similar provisions were contained in the following prior appropriation acts: