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TITLE 49--TRANSPORTATION
SUBTITLE VII--AVIATION PROGRAMS
PART A--AIR COMMERCE AND SAFETY
subpart i--general
CHAPTER 401--GENERAL PROVISIONS

Sec. 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, Sec. 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, Secs. 307(a), (c), (d), 308(a) (3d sentence), 1108(a), 1201, 1202, 72 Stat. 749, 750, 751, 798, 800.
40103(a)(2).....	49 App.:1304.	Aug. 23, 1958, Pub. L. 85-726, Sec.

		104, 72 Stat. 740; Oct. 4, 1984, Pub. L. 98-443, Sec. 14, 98 Stat. 1711.
49 App.:1551(b)(1)(E).		Aug. 28, 1958, Pub. L. 85-726, 72 Stat. 731, Sec. 1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, Sec. 3(e), 98 Stat. 1704.
40103(b)(1).....	49 App.:1348(a). 49 App.:1655(c)(1).	Oct. 15, 1966, Pub. L. 89-670, Sec. 6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, Sec. 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).	
40103(c).....	(no source).	
40103(d).....	49 App.:1508(a) (last sentence).	
40103(e).....	49 App.:1349(a) (3d sentence). 49 App.:1349(a) (last sentence).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, Sec. 308(a) (last sentence); added Sept. 3, 1982, Pub. L. 97-248, Sec. 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.

Regulations

Pub. L. 85-726, title VI, Sec. 613(a), (b), as added by Pub. L. 101-508, title IX, Sec. 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.'

National Airspace Redesign

Pub. L. 106-181, title VII, Sec. 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.'