

retary of Transportation to accomplish the purposes and objectives of Titles III [former 49 U.S.C. 1341 et seq., see Disposition Table at beginning of this title] and XII [see 49 U.S.C. 40103(b)(3), 46307] thereof, is hereby extended to those areas of land or water outside the United States and the overlying airspace thereof over or in which the Federal Government of the United States, under international treaty, agreement or other lawful arrangement, has appropriate jurisdiction or control: *Provided*, That the Secretary of Transportation, prior to taking any action under the authority hereby conferred, shall first consult with the Secretary of State on matters affecting foreign relations, and with the Secretary of Defense on matters affecting national-defense interests, and shall not take any action which the Secretary of State determines to be in conflict with any international treaty or agreement to which the United States is a party, or to be inconsistent with the successful conduct of the foreign relations of the United States, or which the Secretary of Defense determines to be inconsistent with the requirements of national defense.

#### § 40121. Air traffic control modernization reviews

(a) **REQUIRED TERMINATIONS OF ACQUISITIONS.**—The Administrator of the Federal Aviation Administration shall terminate any acquisition program initiated after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996 and funded under the Facilities and Equipment account that—

- (1) is more than 50 percent over the cost goal established for the program;
- (2) fails to achieve at least 50 percent of the performance goals established for the program; or
- (3) is more than 50 percent behind schedule as determined in accordance with the schedule goal established for the program.

(b) **AUTHORIZED TERMINATION OF ACQUISITION PROGRAMS.**—The Administrator shall consider terminating, under the authority of subsection (a), any substantial acquisition program that—

- (1) is more than 10 percent over the cost goal established for the program;
- (2) fails to achieve at least 90 percent of the performance goals established for the program; or
- (3) is more than 10 percent behind schedule as determined in accordance with the schedule goal established for the program.

(c) **EXCEPTIONS AND REPORT.**—

(1) **CONTINUANCE OF PROGRAM, ETC.**—Notwithstanding subsection (a), the Administrator may continue an acquisitions program required to be terminated under subsection (a) if the Administrator determines that termination would be inconsistent with the development or operation of the national air transportation system in a safe and efficient manner.

(2) **DEPARTMENT OF DEFENSE.**—The Department of Defense shall have the same exemptions from acquisition laws as are waived by the Administrator under section 40110(d)(2) of this title when engaged in joint actions to improve or replenish the national air traffic control system. The Administration may acquire real property, goods, and services through the Department of Defense, or other appropriate agencies, but is bound by the acquisition laws and regulations governing those cases.

(3) **REPORT.**—If the Administrator makes a determination under paragraph (1), the Administrator shall transmit a copy of the determination, together with a statement of the basis for the determination, 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 Transportation and Infrastructure of the House of Representatives.

(Added Pub. L. 104-264, title II, §252, Oct. 9, 1996, 110 Stat. 3236; amended Pub. L. 106-181, title III, §307(c)(2), Apr. 5, 2000, 114 Stat. 126.)

#### REFERENCES IN TEXT

The date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, referred to in subsec. (a), is the date of enactment of Pub. L. 104-264, which was approved Oct. 9, 1996.

#### CODIFICATION

Another section 40121 was renumbered section 40124 of this title.

#### AMENDMENTS

2000—Subsec. (c)(2). Pub. L. 106-181 substituted “section 40110(d)(2) of this title” for “section 348(b) of Public Law 104-50”.

#### 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

Section effective on date that is 30 days after Oct. 9, 1996, see section 203 of Pub. L. 104-264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

Except as otherwise specifically provided, section 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 an Effective Date of 1996 Amendment note under section 106 of this title.

#### § 40122. Federal Aviation Administration personnel management system

(a) **IN GENERAL.**—

(1) **CONSULTATION AND NEGOTIATION.**—In developing and making changes to the personnel management system initially implemented by the Administrator of the Federal Aviation Administration on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration.

(2) **DISPUTE RESOLUTION.**—

(A) **MEDIATION.**—If the Administrator does not reach an agreement under paragraph (1) or the provisions referred to in subsection (g)(2)(C) with the exclusive bargaining representative of the employees, the Administrator and the bargaining representative—

- (i) shall use the services of the Federal Mediation and Conciliation Service to attempt to reach such agreement in accordance with part 1425 of title 29, Code of Federal Regulations (as in effect on the date