

(1) and in part as provided under clause (2)' to eliminate unnecessary words.

**§ 40109. Authority to exempt**

(a) AIR CARRIERS AND FOREIGN AIR CARRIERS NOT ENGAGED DIRECTLY IN OPERATING AIRCRAFT.—(1) The Secretary of Transportation may exempt from subpart II of this part—

(A) an air carrier not engaged directly in operating aircraft in air transportation; or

(B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

(2) The exemption is effective to the extent and for periods that the Secretary decides are in the public interest.

(b) SAFETY REGULATION.—The Administrator of the Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections<sup>1</sup> 40103(b)(1) and (2) of this title when the Administrator decides the exemption is in the public interest.

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, and sections 44909(a), 44909(b), and 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) LABOR REQUIREMENTS.—The Secretary may not exempt an air carrier from section 42112 of this title. However, the Secretary may exempt from section 42112(b)(1) and (2) an air carrier not providing scheduled air transportation, and the operations conducted during daylight hours by an air carrier providing scheduled air transportation, when the Secretary decides that—

(1) because of the limited extent of, or unusual circumstances affecting, the operation of the air carrier, the enforcement of section 42112(b)(1) and (2) of this title is or would be an unreasonable burden on the air carrier that would obstruct its development and prevent it from beginning or continuing operations; and

(2) the exemption would not affect adversely the public interest.

(e) MAXIMUM FLYING HOURS.—The Secretary may not exempt an air carrier under this section from a provision referred to in subsection (c) of this section, or a regulation or term prescribed under any of those provisions, that sets maximum flying hours for pilots or copilots.

(f) SMALLER AIRCRAFT.—(1) An air carrier is exempt from section 41101(a)(1) of this title, and the Secretary may exempt an air carrier from another provision of subpart II of this part, if the air carrier—

(A)(i) provides passenger transportation only with aircraft having a maximum capacity of 55 passengers; or

(ii) provides the transportation of cargo only with aircraft having a maximum payload of less than 18,000 pounds; and

(B) complies with liability insurance requirements and other regulations the Secretary prescribes.

(2) The Secretary may increase the passenger or payload capacities when the public interest requires.

(3)(A) An exemption under this subsection applies to an air carrier providing air transportation between 2 places in Alaska, or between Alaska and Canada, only if the carrier is authorized by Alaska to provide the transportation.

(B) The Secretary may limit the number or location of places that may be served by an air carrier providing transportation only in Alaska under an exemption from section 41101(a)(1) of this title, or the frequency with which the transportation may be provided, only when the Secretary decides that providing the transportation substantially impairs the ability of an air carrier holding a certificate issued by the Secretary to provide its authorized transportation, including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title.

(g) EMERGENCY AIR TRANSPORTATION BY FOREIGN AIR CARRIERS.—(1) To the extent that the Secretary decides an exemption is in the public interest, the Secretary may exempt by order a foreign air carrier from the requirements and limitations of this part for not more than 30 days to allow the foreign air carrier to carry passengers or cargo in interstate air transportation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers' reservations systems to the extent practicable;

(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

(C) review the exemption at least every 30 days (or, in the case of an exemption that is necessary to provide and sustain air transportation in American Samoa between the islands

<sup>1</sup> So in original. Probably should be "section".

of Tutuila and Manu'a, at least every 180 days) to ensure that the unusual circumstances that established the need for the exemption still exist.

(3) RENEWAL OF EXEMPTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days.

(B) EXCEPTION.—The Secretary may renew an exemption (including renewals) under this subsection that is necessary to provide and sustain air transportation in American Samoa between the islands of Tutuila and Manu'a for not more than 180 days.

(4) CONTINUATION OF EXEMPTIONS.—An exemption granted by the Secretary under this subsection may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.

(h) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary may act under subsections (d) and (f)(3)(B) of this section only after giving the air carrier notice and an opportunity for a hearing.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1104; Pub. L. 104–287, §5(65), Oct. 11, 1996, 110 Stat. 3395; Pub. L. 115–254, div. B, title IV, §402, div. K, title I, §1991(c)(1), Oct. 5, 2018, 132 Stat. 3328, 3627.)

In this section, the words “requirements of”, “term”, and “or limitation” are omitted as surplus. The word “rule” is omitted as being synonymous with “regulation”. The word “unreasonable” is substituted for “undue” for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(1), before clause (A), the words “by order” are omitted as unnecessary because of 5:ch. 5, subch. II. The word “exempt” is substituted for “relieve” for consistency in this section.

In subsection (a)(2), the words “that the Secretary decides” are added for clarity.

In subsections (b), (c), and (f)(1)(B), the words “from time to time” are omitted as unnecessary.

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

In subsection (d), before clause (1), the words “to the extent” are omitted as surplus.

In subsection (f)(1), before clause (A), the words “Subject to paragraph (5) of this subsection” and “in air transportation” are omitted as surplus. The words “the Secretary may exempt” are substituted for “as may be prescribed in regulations promulgated by the Board” for clarity and to eliminate unnecessary words. In clause (A)(ii), the word “capacity” is omitted as surplus. In clause (B), the word “reasonable” is omitted as surplus. The word “prescribes” is substituted for “adopt” for consistency in the revised title and with other titles of the Code. The words “in the public interest” are omitted as surplus.

In subsection (f)(2), the words “by regulation” are omitted as surplus. The word “payload” is substituted for “property” for consistency in this subsection. The words “specified in this paragraph” are omitted as surplus.

In subsection (f)(3), the words “the State of” are omitted as surplus.

In subsection (f)(3)(A), the words “under this subsection” are substituted for “from section 1371 of this title or any other requirement of this chapter”, the words “2 places” are substituted for “points both of which are”, and the word “between” is substituted for “one of which is in . . . and the other in”, to eliminate unnecessary words.

In subsection (f)(3)(B), the word “only” is added for clarity. The words “promulgated by the Board”, “by such air carrier to points within such State”, and “but not limited to” are omitted as surplus. The word “Alaska” is substituted for “such State” for clarity. The cross-reference is to section 41732(b)(1)(B) to correct an error in the source provisions. The cross-reference in 49 App.:1386(b)(6) to 49 App.:1389(c)(2) should have been to 49 App.:1389(f)(2). This error was not corrected when 49 App.:1389 was restated by section 202(b) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–223, 101 Stat. 1508). The comparable provision is 49 App.:1389(k)(1)(A)(ii), restated as section 41732(b)(1)(B).

In subsection (g), the word “exemption” is substituted for “authorization” and “authority” for clarity and consistency.

In subsection (g)(1), before clause (A), the words “required”, “a period”, and “to the extent necessary” are omitted as surplus. The word “mail” is omitted as being included in “cargo”. In clause (B), before subclause (i), the words “for example” are omitted as surplus.

In subsection (g)(3), the words “a period” are omitted as surplus.

In subsection (h), the words “The Secretary may act under subsections (d) and (f)(3)(B) of this section” are added because of the restatement. The word “notice” does not appear in 49 App.:1386(b)(6) (words between 5th and 6th commas) but is made applicable to both of the restated source provisions for consistency with subchapter II of chapter 5 of title 5, United States Code. The words “opportunity for a” are added for consistency in the revised title.

HISTORICAL AND REVISION NOTES  
PUB. L. 103–272

| Revised Section | Source (U.S. Code)                                                                                                                                        | Source (Statutes at Large)                                                                                                                                                                                                                                                                                                                               |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 40109(a) .....  | 49 App.:1301(3) (proviso).<br>49 App.:1386(b)(3).<br>49 App.:1551(b)(1)(E).                                                                               | Aug. 23, 1958, Pub. L. 85–726, §§101(3) (proviso), 307(e), 416(b)(2), 72 Stat. 737, 750, 771.<br>Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §416(b)(3)–(6); added Oct. 24, 1978, Pub. L. 95–504, §§31(b), 32, 92 Stat. 1732.<br>Aug. 23, 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. |
| 40109(b) .....  | 49 App.:1348(e).<br>49 App.:1551(b)(1)(E).<br>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.                                                                                                                                                                                                                                              |
| 40109(c) .....  | 49 App.:1386(b)(1).                                                                                                                                       | Aug. 23, 1958, Pub. L. 85–726, §416(b)(1), 72 Stat. 771; restated Oct. 24, 1978, Pub. L. 95–504, §31(a), 92 Stat. 1731.                                                                                                                                                                                                                                  |
| 40109(d) .....  | 49 App.:1551(b)(1)(E).<br>49 App.:1386(b)(2) (less words between 6th and 7th commas, proviso).<br>49 App.:1551(b)(1)(E).<br>49 App.:1386(b)(2) (proviso). |                                                                                                                                                                                                                                                                                                                                                          |
| 40109(e) .....  | 49 App.:1551(b)(1)(E).<br>49 App.:1386(b)(4), (5), (6) (less words between 5th and 6th commas).                                                           |                                                                                                                                                                                                                                                                                                                                                          |
| 40109(f) .....  | 49 App.:1551(b)(1)(E).<br>49 App.:1386(b)(7).                                                                                                             |                                                                                                                                                                                                                                                                                                                                                          |
| 40109(g) .....  | 49 App.:1551(b)(1)(E).<br>49 App.:1386(b)(2) (words between 6th and 7th commas), (6) (words between 5th and 6th commas).                                  |                                                                                                                                                                                                                                                                                                                                                          |
| 40109(h) .....  | 49 App.:1551(b)(1)(E).                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                          |

## PUB. L. 104-287

This amends 49:40109(c) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 1105), to include in the cross-reference sections enacted after the cutoff date for the codification of title 49 as enacted by section 1 of the Act (Public Law 103-272, 108 Stat. 745), and to make it easier to include future sections in the cross-reference by restating it in terms of chapters.

**Editorial Notes**

## AMENDMENTS

2018—Subsec. (b). Pub. L. 115-254, §1991(c)(1)(A), struck out “, 40119, 44901, 44903, 44906, and 44935-44937” before “of this title”.

Subsec. (c). Pub. L. 115-254, §1991(c)(1)(B), substituted “sections 44909(a), 44909(b), and” for “sections 44909 and”.

Subsec. (g)(2)(C). Pub. L. 115-254, §402(1), added subpar. (C) and struck out former subpar. (C) which read as follows: “review the exemption at least every 30 days to ensure that the unusual circumstances that established the need for the exemption still exist.”

Subsec. (g)(3), (4). Pub. L. 115-254, §402(2), added pars. (3) and (4) and struck out former par. (3) which read as follows: “The Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days. An exemption may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.”

1996—Subsec. (c). Pub. L. 104-287, §5(65)(B), substituted “sections 44909 and 46301(b)” for “section 46301(b)”.

Pub. L. 104-287, §5(65)(A), substituted “chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714),” for “sections 41301-41306, 41308-41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705-41709, 41711, 41712, and 41731-41742.”

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-287 effective July 5, 1994, see section 8(1) of Pub. L. 104-287, set out as a note under section 5303 of this title.

## AUTHORITY TO GRANT EXEMPTIONS TO GOVERNMENT AIRCRAFT

Pub. L. 103-411, §3(b), Oct. 25, 1994, 108 Stat. 4237, provided that:

“(1) IN GENERAL.—The Administrator of the Federal Aviation Administration may grant an exemption to any unit of Federal, State, or local government from any requirement of part A of subtitle VII of title 49, United States Code, that would otherwise be applicable to current or future aircraft of such unit of government as a result of the amendment made by subsection (a) of this section [amending section 40102 of this title].

“(2) REQUIREMENTS.—The Administrator may grant an exemption under paragraph (1) only if—

“(A) the Administrator finds that granting the exemption is necessary to prevent an undue economic burden on the unit of government; and

“(B) the Administrator certifies that the aviation safety program of the unit of government is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government.”

**§ 40110. General procurement authority**

(a) GENERAL.—In carrying out this part, the Administrator of the Federal Aviation Administration—

(1) to the extent that amounts are available for obligation, may acquire services or, by

condemnation or otherwise, an interest in property, including an interest in airspace immediately adjacent to and needed for airports and other air navigation facilities owned by the United States Government and operated by the Administrator;

(2) may construct and improve laboratories and other test facilities; and

(3) may dispose of any interest in property for adequate compensation, and the amount so received shall—

(A) be credited to the appropriation current when the amount is received;

(B) be merged with and available for the purposes of such appropriation; and

(C) remain available until expended.

(b) PURCHASE OF HOUSING UNITS.—

(1) AUTHORITY.—In carrying out this part, the Administrator may purchase a housing unit (including a condominium or a housing unit in a building owned by a cooperative) that is located outside the contiguous United States if the cost of the unit is \$300,000 or less.

(2) ADJUSTMENTS FOR INFLATION.—For fiscal years beginning after September 30, 1997, the Administrator may adjust the dollar amount specified in paragraph (1) to take into account increases in local housing costs.

(3) CONTINUING OBLIGATIONS.—Notwithstanding section 1341 of title 31, the Administrator may purchase a housing unit under paragraph (1) even if there is an obligation thereafter to pay necessary and reasonable fees duly assessed upon such unit, including fees related to operation, maintenance, taxes, and insurance.

(4) CERTIFICATION TO CONGRESS.—The Administrator may purchase a housing unit under paragraph (1) only if, at least 30 days before completing the purchase, the Administrator transmits to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

(A) a description of the housing unit and its price;

(B) a certification that the price does not exceed the median price of housing units in the area; and

(C) a certification that purchasing the housing unit is the most cost-beneficial means of providing necessary accommodations in carrying out this part.

(5) PAYMENT OF FEES.—The Administrator may pay, when due, fees resulting from the purchase of a housing unit under this subsection from any amounts made available to the Administrator.

(c) DUTIES AND POWERS.—When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration may—

(1) notwithstanding section 1341(a)(1) of title 31, lease an interest in property for not more than 20 years;

(2) consider the reasonable probable future use of the underlying land in making an award for a condemnation of an interest in airspace;

(3) construct, or acquire an interest in, a public building (as defined in section 3301(a) of