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Federal Aviation Administration Reauthorization: An Overview of Selected Provisions in Proposed Legislation

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Federal Aviation Administration Reauthorization: An Overview of Selected Legislative Provisions in Proposed Legislation

Summary

Funding authorization for aviation programs set forth in Vision 100 — Century of Aviation Reauthorization Act (P.L. 108-176) will expire at the end of FY2007. Also, authorization of the existing tax and fee structure that provides revenue for the aviation trust fund is set to expire at the end of FY2007. Consequently, FAA reauthorization has been identified as a priority for the first session of the 110th Congress.

The FAA's proposal, entitled The Next Generation Air Transportation System Financing Reform Act of 2007 (H.R. 1356, introduced by request), recommends a new system for financing aviation system operations and capital improvements that levies various fee-for-service charges (user fees), on primarily commercial system users, and excise taxes (primarily fuel taxes) for general aviation system users. The FAA proposes several modifications to the airport improvement program, including increases in passenger facility charges (PFCs) that airports can impose on passengers, and initiatives intended to modify and simplify the apportionment of grants to airports. The FAA proposal also recommends several management and organizational reforms, including the proposed establishment of an air transportation system advisory board, and authority to create a independent commission to make recommendations regarding the realignment and consolidation of FAA facilities and services. The proposal also includes language intended to better integrate development of the Next Generation Air Transportation System (NGATS) into the FAA's ongoing planning and acquisition activities and would allow airport and private investment in certain aviation facilities and services. The FAA proposal seeks to control congestion at certain airports through market-based mechanisms, such as slot auctions and peak-period pricing.

With regard to addressing the environmental impacts of aviation, the FAA proposal includes language that seeks to: provide funding for research into technology or processes that would reduce noise, air emissions, and water quality impacts; provide grants for programs or projects intended to mitigate or minimize regulated environmental impacts; and provide grants or specify regulatory procedures to assist airports in complying with environmental requirements. The FAA proposal also recommends establishing a consortium for fostering innovation to develop cleaner, quieter, and more efficient next-generation aircraft. Further, the FAA proposal seeks to limit the scope of the Air Tour Management Program, designed to mitigate noise and other adverse impacts from air tours over national park units, to those parks where air tour impacts have been identified as a concern or could become a more substantial issue.

The proposal includes language that would significantly modify the existing Essential Air Service Program (EAS), that subsidizes air carrier service to small and isolated communities, primarily by setting more stringent criteria for eligibility and restricting further expansion of the program. This report will be updated as required.

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CRS Aviation Policy Staff

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Bart Elias	— Next Generation Air Traffic System (NGATS) — FAA Facilities and Equipment (F&E) — FAA Management and Operations — Airport and Airspace Demand and Capacity Analysis — Aviation Safety — Aircraft Noise Policy and Quiet Aircraft Technology	RSI	7-7771
John Fischer	— FAA Financing and Aviation Taxes — Airport and Airways Trust Fund (AATF) — Essential Air Service and Small Community Air Service Development Programs — Airline Economic Issues	RSI	7-7766
Bob Kirk	— FAA Financing and Aviation Taxes — Airport and Airways Trust Fund (AATF) — Airport Improvement Program (AIP) — Airport Finance	RSI	7-7769
Linda Luther	— Airport Environmental Issues (Streamlining)	RSI	7-6852
Carol Hardy Vincent	— Air Tour Management Program — Aviation Impacts on National Parks	RSI	7-8651
Jim McCarthy	— Aircraft Emissions	RSI	7-7225
Brent Yacobucci	— Aviation Fuels — Alternative Fuels for Aircraft and Ground Support Vehicles	RSI	7-9662
Jon Shimabukuro	— Labor Law and Policy — FAA Labor Relations	ALD	7-7990
Todd Tatelman	— Aviation Law (Domestic and International)	ALD	7-4697

Federal Aviation Administration Reauthorization: An Overview of Selected Legislative Provisions in Proposed Legislation

The report is intended to provide a brief summary and analysis of major legislative provisions under consideration in the ongoing Federal Aviation Administration reauthorization process. The report is organized into six major program areas: aviation system finance; airport finance; FAA management and organizational issues; system capacity and safety; environmental issues; and miscellaneous programs and provisions. In several cases, provisions that appear in various unrelated sections of proposed legislation have been rearranged in this report in an effort to group and discuss related items in an issue-driven or programmatic context. Since this report is primarily written as a means of communicating key legislative provisions under consideration in the ongoing FAA reauthorization process, it does not go into detail regarding the specific policy issues behind these legislative proposals. However, CRS has prepared two separate reports that provide discussion of the policy context for the current FAA reauthorization debate. For an overview of various selected issues related to the current FAA reauthorization debate see CRS Report RL33789, *Federal Aviation Administration: An Abridged Look at Reauthorization Issues in the 110th Congress*, and for more detailed background on these issues, see CRS Report RL33698, *Reauthorization of the Federal Aviation Administration: Background and Issues for Congress*.

Funding authorization for aviation programs set forth in Vision 100 — Century of Aviation Reauthorization Act (P.L. 108-176, hereafter referred to as Vision 100) will expire at the end of FY2007. Also, authorization of the existing tax and fee structure that provides revenue for the aviation trust fund is set to expire at the end of FY2007. Consequently, FAA reauthorization has been identified as a priority during the first session of the 110th Congress by congressional leadership, and the legislative process toward reauthorizing the FAA began in February 2007 with the submittal to Congress of a legislative proposal by the administration and initial congressional hearings regarding FAA reauthorization.

Overview of the FAA Proposal

On February 14, 2007, the FAA submitted proposed legislation to reauthorize funding for FAA functions and related aviation programs and reform the financing of the national airspace system. The FAA's proposed bill (H.R. 1356, hereafter

referred to by bill number or as the FAA proposal)[1], entitled The Next Generation Air Transportation System Financing Reform Act of 2007, proposes a new system for financing aviation system operations and capital improvements that includes various fee-for-service charges (user fees), directed primarily at commercial system users, and excise taxes (primarily fuel taxes) for general aviation system users. The FAA proposal also includes several modifications to airport revenues, including increases in the maximum passenger facility charges (PFCs) that airports can impose on passengers, and initiatives intended to modify and simplify the apportionment of grants to airports.

The FAA proposal also recommends several management and organizational reforms, most notably the proposed establishment of an air transportation system advisory board, and the authority to create a commission, similar to the military's Base Realignment and Closure (BRAC) commissions, to make independent recommendations regarding the realignment and consolidation of various FAA facilities and services. The proposal also includes proposed statutory language intended to better integrate the work of the Joint Planning and Development Office (JPDO) on the Next Generation Air Transportation System (NGATS) design and implementation into the FAA's ongoing planning and acquisition activities. Also, the proposal includes language to increase the flexibility in delivering various air traffic services and capabilities to system users by allowing airports and private entities to play a more direct role in acquiring, deploying, and maintaining facilities and services to augment the FAA's air traffic communications, navigation, and surveillance capabilities.

With regard to addressing system and airport capacity and safety, the FAA proposal seeks statutory authority to control congestion at certain airports through market-based mechanisms, such as slot auctions and peak-period pricing. The proposal would direct the Department of Transportation (DOT) to study the appropriateness of a market-based system at New York's Laguardia Airport (LGA), and if deemed appropriate, would permit the airport operator to implement a market-based approach to controlling congestion. The FAA proposal also seeks to establish a pilot program to evaluate market-based mechanisms to relieve congestion at up to 15 other airports.

With regard to addressing the environmental impacts of aviation, the FAA proposal includes language that seeks to: provide funding for research into technology or processes that would reduce noise, air emissions, and water quality impacts; provide grants for programs or projects intended to mitigate or minimize regulated environmental impacts; and provide grants or specify regulatory procedures to assist airports in complying with environmental requirements. The FAA proposal also recommends establishing a consortium for fostering innovation to develop cleaner, quieter, and more efficient next-generation aircraft. Further, the FAA proposal seeks to limit the scope of the Air Tour Management Program, designed to mitigate noise and other adverse impacts from air tours over national park units, to

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[1] Representative Oberstar introduced the FAA proposal (H.R. 1356), by request, on March 6, 2007.

those parks where air tour impacts have been identified as a concern or could become a more substantial issue.

The FAA proposal also includes language that would significantly modify the existing Essential Air Service Program (EAS), that subsidizes air carrier service to small and isolated communities, primarily by setting more stringent criteria for program eligibility and restricting further expansion of the program.

FAA Finance

In H.R. 1356, the Next Generation Air Transportation System Financing Reform Act of 2007, the FAA proposes the most significant change in aviation finance since the federal program was created by the 1970 Act. For a detailed examination of the existing aviation finance system and the proposed changes to this system see CRS Report RL33913, A*viation Finance: Federal Aviation Administration (FAA) Reauthorization and Related Issues* by John W. Fischer. The FAA proposal provides for a three year authorization period (FY2008 - FY2010) during which the FAA would transition from its existing trust fund/general fund based financing system to a system based on new direct fees and existing excise taxes, as well as general fund monies. Although the trust fund would be continued, its overall role in funding the agency is significantly reduced. The proposal uses a mix of direct fees (referred to as user fees by the FAA and throughout this section), excise taxes, and general funds, to pay for the FAA's ATO related activities. The proposal funds the FAA's safety activities primarily from general funds, but also allows the FAA to collect user fees related to its registration and certification activities for this purpose. Excise taxes would be used to support the continued aviation trust fund which is dedicated primarily toward funding AIP, but also supports part of RE&D and Essential Air Service (EAS) programs.

The FAA proposal does not set new user fee rates for ATO services. Rather it enunciates a framework for how fees can be set and creates an Air Transportation System Advisory Board (Board) to assist the FAA Administrator in establishing appropriate fee levels and mechanisms. Ultimately, however, the Administrator would be the sole decision maker on fee setting issues.

The proposal adopts a new financial structure for the FAA that would correspond to the new program funding regime. To facilitate this structure: it would create two new accounts in the Treasury to receive the newly imposed user fees; allows for the establishment of a reserve fund; and allows the FAA to issue bonds to speed-up F&E equipment acquisition. Agency funding would still be subject to annual congressional appropriations.

The FAA proposal is controversial, and several aviation interest groups came out against it almost as soon as it was introduced.[2] The proposal, however, has

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[2] Wolfe, Kathryn. "FAA's Funding Proposal Doesn't Fly With Entire Aviation Industry, Lawmakers." *CQ Today - Transportation and Infrastructure.* Feb. 16, 2007.

supporters, especially the ATA, which views it as a positive step forward.[3] Congressional hearings on H.R. 1356, which embodies the FAA proposal, have been scheduled in both the House and the Senate.

Proposed Tax and Fee Structure

The principal feature of the FAA proposal is the creation of a direct user fee system to pay for the majority of the Agency's costs associated with its ATO activities. The FAA proposal, however, does not recommend a specific user fee structure. Instead, it lists the criteria that must be considered in setting fee levels and leaves it to the Board and ultimately the FAA Administrator to actually set the fees. The proposal requires that the Administrator consult with affected parties prior to establishing a fee structure, but gives the affected parties no further role in the process.[4]

ATO User Fees. Specific ATO user fees can be set for enroute, oceanic, and terminal area flight activity. Enroute and oceanic fees can be based on "distance traveled or any other method that is consistent with the treaties and international agreements to which the United States is a party." Since much of the rest of the world uses aircraft weight and the distance flown as part of its fee setting process, it would appear that a similar fee setting regime could be implemented here.[5] Overflight fees (for aircraft transiting U.S. airspace) would be eliminated and these flights would be subject to the enroute and oceanic fee system.

Fee setting for terminal area activities could be somewhat more complicated because the proposal would allow for fees to be differentiated at various locations and at different times of the day. Factors that could be included in the terminal fee structure can include aircraft takeoffs/landings (at airports with over 100,000 passenger boardings per year), aircraft weight, operations at a large hub airport (1% of total U.S. enplanements), time of day or day of week at congested large hubs, and different fees for daytime and nighttime operations.

User fees would be imposed on all commercial users of ATO services irrespective of aircraft type. For the purposes of determining which tax certain aircraft might pay, the applicability of IRS regulations would delineate between commercial and noncommercial users. Although GA aircraft operate outside of the ATO user fee system most of the time, they would be subject to terminal-related fees at congested large hub airports.

The FAA proposal would require that fees be set in relation to the costs incurred for providing ATO services. In setting the fees mentioned above the FAA would be prohibited from using flight altitude as a fee setting factor. Under the proposal, it

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[3] [http://www.airlines.org/news/releases/2007/statement_12-14-07.htm?PF=true]

[4] It would appear that the Board, with wide industry representation, is supposed to be part of the consultation process, although this is unstated in the bill.

[5] The airline industry, and groups such as the air cargo industry, have traditionally opposed weight-based tax structures.

could offer incentives, by way of reduced fees, for the purchase and use of equipment that enhances an aircraft's safe and efficient operation in the air traffic system. In addition, it could seek sufficient user fee revenues to establish a reserve fund to be available if system revenues fail to reach projected levels.

The ATO would also receive funding from excise taxes. The proposal suggests that a 70 cent per gallon fuel tax be imposed on all GA users (kerojet or aviation gasoline). Of this 56.4 cents per gallon is dedicated to ATO activities and 13.6 cents is reserved for the aviation trust fund. These fees are to be indexed to inflation beginning in 2009 and can be modified by the Administrator in future years. The FAA believes that it is no longer necessary to differentiate the tax rate for turbine (avgas) and piston (aviation gasoline) aircraft users because of the much higher fuel use rates of turbine aircraft.

Safety and Operations User Fees. Safety and non-ATO operations activities would be primarily funded by Treasury general funds. In addition, however, the FAA is to impose registration fees for specified services at rates detailed in the proposed legislation. By way of example, aircraft registration would be subject to a $130 fee and issuing an airman medical certificate would cost $42. Many of the activities listed here were previously provided at nominal fee levels.

Fees are also to be imposed for FAA certification activities. Specific fees for activities such as certification of a large foreign repair station or a maintenance technical school are not enumerated in the legislation. Rather, the Administrator is to set fees at levels that correspond to the costs imposed on the FAA for providing the certification service in question.

Trust Fund Excise Taxes. The largest source of revenues for the trust fund would come from a 13.6 cent per gallon tax on all aircraft irrespective of fuel type. These taxes are to be adjusted for inflation and can also be adjusted, up or down, if the FAA cost allocation process so dictates.

The other principal source of funding for the trust fund is by continuation of the international arrivals/departure fee which is set at $6.39 per event. This tax can also be adjusted for inflation and/or cost allocation reasons.

Although the FAA proposal is based primarily on direct user fees, there is a transition period during which the trust fund would continue to provide some funding for ATO and all other FAA activities, albeit at a diminishing level.

Air Transportation System Advisory Board (Board)

The FAA proposal would creates a 13 member Board charged with advising the Administrator on user fee and other issues at his or her request. The Board's membership would include the Administrator, a Department of Defense representative, three members representing "the public interest," an airport member, three airline members representing different size air carriers, a cargo airline member, a GA member, a business aviation member, and a representative of the aviation manufacturing industry. Appointment of all members is made by the Secretary of

Transportation. In addition, the proposal would prescribe the Board members terms and provides guidance on its administrative functioning.

The Board can advise the Administrator on a wide range of FAA programs and activities. At the outset, however, it would appear that the Board's principal duty is to help with the creation of the new user fee system. According to provisions of the FAA proposal, "prior to establishing or modifying fees ..... the Administrator shall consult with and seek the recommendations of the type and level of such fees." A procedure is established whereby the Administrator, who has ultimate fee setting responsibility, can disagree with the Board's recommendations and establish fees by publishing the reasons for disagreement in the Federal Register.

It would be up to the Administrator to determine how, and how much, they might wish to use the Board's expertise. There is nothing in the legislation as proposed that automatically gives the Board any power to exercise its advisory role, especially in a public forum. This is because the Board's actions would not be subject to the public meeting and other administrative provisions of Title 5 U.S.C. Further, it is not clear that the Board would have access to information about cost allocation and other subjects, except to the extent that the Administrator wishes to make this material available to the Board.

Budget and Structural Provisions

As suggested by the new tax and fee proposal, the FAA would be reorganized from a budgetary perspective. ATO assessed user fees are to be deposited into a newly created Treasury ATO account. Similarly, registration and certification fees are to be deposited in a newly created Treasury safety and operations account. The trust fund, however, remains intact.

The new user fees would require a new collection system to insure that they are deposited in the appropriate account. The Administrator would be charged with developing this system, perhaps with the help of the Board. The FAA proposal would give the Administrator some enforcement powers to assist in the collection effort long term.

FAA spending would still require annual appropriation by Congress. The relationship between the FAA and congressional appropriations committees would apparently be unchanged. From a budgetary standpoint, however, it appears that the offsetting collections process created by the proposal would remove FAA spending from the discretionary part of the budget. At least one outside source has suggested that the new funding arrangement could run afoul of the newly created pay-as-you-go rules adopted by the House of Representatives.[6] In short, it is unclear at this point how the new funding arrangement proposed here would play out as part of the congressional budget and appropriations process.

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[6] *Transportation Weekly*. "Administration FAA Bill Likely Violates House Pay-As-You-Go Budget Rule." Feb. 28, 2007, p. 13.

Congressional finance committees (House Ways and Means and Senate Finance) could lose their existing jurisdiction over some aspects of the FAA tax and fee setting. These committees would likely retain their jurisdiction over the excise taxes to be deposited in the aviation trust fund, but could have no role or oversight over the newly established user fees. Authorizing committees normally have jurisdiction over offsetting collection programs of the type that would be created for the ATO, and for safety and operations. As proposed, however, all fee-setting powers would reside with the Administrator, meaning that a specific oversight role for the authorizing committees is not defined in the legislation.

Bonding Authority. The Secretary of Transportation would have the ability to issue Treasury bonds to facilitate a rapid implementation of the NGATS program. Up to $5 billion could be issued at interest rates established by the Treasury. To finance the bonding the Secretary could increase user fees by an amount needed to repay the bonds with interest. These additional revenues would not go into the new Treasury accounts mentioned earlier, but would flow directly to the Treasury. Full repayment would be required by the end of FY2017.

The concept of using bonds to speed up the acquisition of F&E capital items has been discussed for years. The dedicated revenue stream to the ATO account would make bonding possible as part of the FAA's program for the first time. It has been argued that having this authority would allow the FAA to better program its acquisition requirements over an extended period of time, as opposed to the potential uncertainty of the annual appropriations process. In addition, access to additional funds should give the Agency the ability to pursue a number of technology and equipment upgrades at the same time. The main argument against bonding is that the interest payments make it a more expensive way to pay for infrastructure than direct appropriations would be.

Agency Funding

The FAA proposal provides overall authorization levels for the FY2008 - FY2010 period of nearly $28 billion. This number, however, cannot be meaningfully compared to previous legislation because it excludes much of the funding required by the prospectively user-fee funded ATO, and safety and operations activities. These activities would now be linked to actual system costs which cannot be determined this far in advance. To the extent that the authorized levels can be compared they suggest a significant cut in AIP and EAS funding.

Airport Financing

The Airport Improvement Program (AIP) provides federal grants for airport development and planning. AIP funding is usually limited to capital improvements related to aircraft operations. Commercial revenue-producing portions of airports and airport terminals are improvements that are generally not eligible for AIP funding. AIP money cannot usually be used for airport operational expenses or bond repayments. AIP funds are distributed either as formula grants or as discretionary grants. Small airports are much more dependent on AIP grants than large and

medium hub airports. The larger airports can more easily generate revenue from user fees and have historically had the financial wherewithal to successfully access the bond market. For background and legislative history of federal aid to airports, including a description of the AIP program, as well as an overall discussion of AIP issues, see CRS Report RL33891, *Airport Improvement Program: Issues for Congress*, by Robert S. Kirk.

The Passenger Facility Charge (PFC) program provides a source of non-federal funds intended to complement AIP spending. The PFC is a local tax imposed, with federal approval, by an airport on each boarding passenger. PFC funds can be used for a broader range of projects than AIP grants and are more likely to be used for "ground side" projects. PFCs can also be used for bond repayments.

The AIP and PFC programs are the sources of funds for airport capital development that have the most federal involvement. Other sources are bonds, state and local grants, and airport revenue.

The George W. Bush Administration has proposed major changes in both the AIP and PFC programs in its FAA reauthorization proposal. The FAA proposal would, in effect, reduce the size and scope of the AIP program, while increasing the role of PFCs in airport finance. The proposal would broaden allowable costs under both programs. The distribution of AIP grants would undergo major changes and the local matching share for AIP grants would be changed for some airports.

AIP Program Changes

The funding levels for AIP, under the FAA proposal, reflect a reduction of AIP's role in airport finance. The proposal recommends $2.75 billion for FY2008, $2.9 billion for FY2009, and $3.05 billion for FY2010. The authorization for FY2007 under Vision 100 was $3.7 billion, the amount actually made available (obligation limitation under P.L. 110-5) for AIP was $3.515 billion. The FAA's section-by-section analysis suggests that the increase in the PFC ceiling and the elimination of the AIP entitlements for large and medium airports (discussed later in this report) reduces the need for AIP funding. In recent years, the George W. Bush Administration annual budget proposals have consistently reduced spending on AIP only to have it just as consistently restored to near its authorized level by Congress. Some observers in the transportation community have suggested that cutting the popular AIP program is a way of keeping down the annual totals set forth in the FAA's reauthorization proposal. Also, given that the Administration's financing proposal for the Airport and Airway trust fund would support AIP spending through aviation fuel taxes, the lower spending for AIP, could mean that a smaller increase in the aviation fuel taxes could be proposed than if the FAA proposal funded AIP at the FY2007 authorized level of $3.7 billion.[7] Over time, the link of the AIP spending level to the fuel tax could make it difficult to increase the program's funding because this could require raising the fuel taxes that support the program. Also, should AIP be authorized at the current authorization level or higher it could change the

[7] See FAA, *Next Generation Air Transportation System Financing Reform Act of 2007: Section-by-Section Analysis*, 37.

implications of the programmatic changes in AIP proposed by the Administration, should they be enacted.

The FAA proposal made significant changes in both the entitlement formulas and in the distribution of discretionary funds.

Changes in Formula Funding. The FAA proposal would make a number of changes in the distribution of AIP funds that airports are entitled (hence the term entitlements) to based on administrative formulas.

Elimination of the $3.2 Billion AIP Program Level "Trigger". Under current law the formula apportionments (also referred to as entitlements) fund two levels of entitlements: a lower entitlement level when the overall AIP funding is below $3.2 billion and a higher level when the program is funded at $3.2 billion or more. Basically the FAA proposal eliminates the lower level in favor of the higher formula distribution levels and higher minimum and maximums (the general aviation apportionment is treated somewhat differently, see below). The proposal would also eliminate the $3.2 billion trigger itself. The trigger mechanism was designed, in part, to encourage funding of AIP above the $3.2 billion level. Since the FAA proposes funding AIP below the $3.2 billion level, not making this change would, in effect, cut most primary airports' entitlement funding in half and would reduce general aviation entitlements also. During the life of the trigger, AIP funding has always been above $3.2 billion, making the lower entitlement formulas existence a moot point since FY2001.

Primary Airport Entitlements. The FAA proposal would phase out the formula funding that is provided for large and medium hub airports under current law by FY2010. To provide a transition period for these airports, their formula funding is continued at 50% of the calculated level for FY2008 and FY2009. The section-by-section of the FAA proposal notes that this reduction is more than offset by the increase in the PFC ceiling (discussed later in this report). In addition, large and medium airports that impose PFCs above the $4.50 level are to forego or "turnback" 100% of their AIP entitlement funding during FY2008-FY2009. In FY2010, large and medium hub airports would receive no entitlement funds and therefore the turnbacks would end.

Virtual Primary Airports. The bill would also repeal the special rule, enacted after the September 11, 2001 terrorist attacks, that allowed some airports (referred to as virtual primary airports) that fell below the required minimum passenger levels needed to maintain their primary airport status but were allowed to continue receiving their primary airport entitlements. The FAA's section-by-section analysis argues that seven years after the attack it is unlikely that these 44 airports will again attain primary airport status.

General Aviation Entitlements. There are two components of the general aviation entitlements: the State Apportionment and the General Aviation apportionment (sometimes referred to as the Nonprimary Entitlement). Under current law 20% of AIP funds are to be apportioned for both components. The FAA proposal would separate the underlying funding sources of the two components and make a number of other changes. Under current law the nonprimary entitlement is

apportioned from the designated 20% of AIP funds first and then the remaining funds are used for the State Apportionment.

State Apportionment. The FAA proposal would provide 10% of the amounts made available for apportionment for the state apportionment distribution only. The state apportionment distribution would be determined as they are now (according to a state-based population and area formula). The proposal would also provide for a $300 million minimum apportionment. If the $300 million minimum could not be met, the nonprimary entitlements (see discussion below) would be reduced on a prorated basis to make funds available for the state apportionment.

The Nonprimary Entitlement. Under current law all nonprimary airports receive the lessor of $150,000 or one fifth the estimated five year development costs estimated in the most recent NPIAS. The FAA proposal would change this to providing three tiers of entitlement funding distribution based on the number of registered aircraft based at the airport:

- $400,000 for airports having 100 or more based aircraft;
- $200,000 for airports having 50 to 99 based aircraft or three or more jet aircraft;
- $100,000 for airport having 10 to 49 based aircraft.

NPIAS airports with fewer than 10 aircraft would not be eligible for a nonprimary entitlement but could still qualify for state apportionment funds and could compete for discretionary grants and these grants would retain a 95% federal share. The nonprimary entitlements would not be funded from the 10% of available funds reserved for the state apportionment but would be funded from the general amounts available for apportionment under AIP (these amounts also fund the primary airport and cargo entitlements). The below-trigger language is eliminated.

Alaska Supplemental Entitlement. Under the FAA proposal the "above trigger" level of funding would be provided.

Cargo Service Airport Entitlement. Cargo service airports would continue to receive 3.5% of AIP funding (the existing, above-trigger percentage) and the landed weight-based formula would be retained. The below-trigger provision is eliminated.

Changes in Discretionary Funding. The discretionary fund includes the AIP funding that is not distributed under the apportioned entitlements as well as the forgone passenger facility charge (PFC) revenues that are not directed to the small airport fund. Related PFC changes are discussed later in this report

Minimum Discretionary Fund. The FAA proposal would set the minimum that can be made available for discretionary grants at $520 million per year. Should there be insufficient funds available after the distribution of the formula funds to achieve the $520 million the formula fund distributions would be reduced across all entitlement programs by the percentage needed to make up the discretionary fund shortfall. The total discretionary funding for FY2005 (not counting the Small Airport Fund money) was $859.3 million out of a total amount available for AIP grants of

$3.383 billion. As mentioned earlier, the FAA proposal would fund AIP at $2.75 billion for FY2008. The $520 million minimum discretionary fund level may reflect this lower proposed AIP spending.

Environmental Set-Aside. The FAA proposes to replace the discretionary fund 35% noise set-aside with a broader environmental set-aside that would be 8% of all AIP apportioned funds. Examples of projects that would be eligible are water quality mitigation projects and environmental research. Based on FY2005 AIP funding distribution the a set-aside based on 8% of apportioned funds would have provided less than the 35% discretionary fund set-aside.

Small Airport Fund. The FAA proposal would eliminate the small airport fund. The revenues supporting the fund are derived from the forgone entitlement funding from medium and large hub airports that they forego in return for the imposition of PFCs. Since the FAA is proposing to phase out the entitlements for these airports the funding source for the Small Airport Fund will no longer exist in FY2010. Small Airport Fund monies are used in a manner similar to discretionary funds.

Small Airport Set-Aside. Twenty percent of discretionary funds would be set-aside for small hub, nonhub, nonprimary commercial service, reliever, or general aviation airports. The set-aside is to compensate for the loss of the Small Airport Fund.

Military Airport Program (MAP) and Reliever Airport Set-Asides. Both these set-asides would be eliminated. The special AIP eligibilities for MAP would continue.

AIP Eligibility Changes. The FAA proposal would redefine "revenue producing aeronautical support facilities" in a way to make "fuel farms, new hangar buildings, self-service credit card aeronautical fueling systems, airplane wash racks, major rehabilitation of a hangar owned by a sponsor, or other aeronautical support facilities" AIP-eligible for nonprimary airports. Relocation of airport-owned facilities that must be moved because of design standards beyond the sponsor's control would be eligible for AIP funding. Up to $10 million in AIP grants could be made to make grants for commercial space infrastructure development. The cost of environmental review of airport-proposed environmentally-beneficial aircraft flight procedures would be AIP eligible.

AIP Grant Assurances. The FAA proposal makes two changes to AIP grant assurances under 49 U.S.C. 47107. The proposal allow for the use of AIP entitlement funds to replace or move a facility at an airport if the cause of the need was beyond the owner's control, for example, a new design standard that could make the facility a safety hazard.

The second proposed change deals with the disposition of profits made from the sale of land that was originally acquired for a noise compatibility purpose but is no longer needed for noise compatibility. Current law requires that the federal share of the proceeds, proportional to the federal share of the original land acquisition cost, be deposited in the trust fund. The proposed change would allow the proceeds to be

reinvested in another project, for, in preferential order: 1) an approved noise compatibility project at the airport; 2) an environmentally related project at the airport; 3) another eligible AIP project at the airport; 4) transfer to another airport for a noise compatibility project; or 5) payment to the trust fund.

Federal Share. The FAA proposal would make a number of changes in the federal-local matching share requirements. The proposal would change current law to add the phrase " may not exceed" to all federal share percentages. Under current law some airports' project shares were fixed percentage shares. FAA argues that this change would allow it to "leverage AIP funds more efficiently and provide support for a broader number and type of projects."[8] Some small airport advocates may be concerned that this provision could allow FAA to routinely offer discretionary grants at less than the maximum allowable (usually 90% under the FAA proposal) federal share on some projects. The FAA proposal would also lower the maximum federal share for runway, taxiway and apron (ramp) projects at large and medium hub airports from 75% to 50%. Other AIP eligible projects at these airports would retain their 75% maximum federal share. A special rule is proposed for airports recently reclassified a medium hub because of increased passenger enplanements that allows them to retain their eligibility for up to 90% federal share for two years. As mentioned earlier, under the FAA proposal, the approximately 800 NPIAS airports that have fewer than 10 based aircraft would lose their AIP formula entitlements. These airports would receive a 95% federal share on any discretionary AIP grants that they might be awarded. The FAA proposal would allow the 9/11 related increase 95% federal share for AIP grants to small airports to lapse. The federal maximum share at these airports would be 90%. As mentioned earlier, general aviation airports that have lost their nonprimary minimum entitlements because they have fewer than 10 based aircraft (approximately 800 airports) would be allowed an up to 95% federal share on their discretionary or state apportionment grants.

Passenger Facility Charges (PFCs)

The FAA proposal would expand the project eligibility for PFC funded projects and raise the cap on the amount that can be charged per boarding passenger. The proposal also includes provisions to streamline the PFC program review and approval process.

Project Eligibility. The FAA proposes to make eligible any capital cost that an airport could pay for with airport revenue eligible. The proposal would specifically make ground access projects, including rail mass transit projects (whether publically or privately owned), eligible for PFC funding. These transit projects would require DOT approval, however. The proposal would also simplify the review and approval process. Airlines may object to this broadening of PFC eligibility.

Increasing the PFC Cap. The FAA proposal would increase the maximum charge to $6 per passenger boarding. Any charge over $4.50 would require medium and large hub airports to forego 100% of their AIP entitlement funding. Airports

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[8] FAA, *Section-by-Section Analysis*, 9-10.

participating in the pilot program for the transfer of navigational equipment to airport control may adopt a $7 PFC.

Competition Plans. The FAA proposes eliminating the requirement that no AIP or PFC grant may be approved for a covered airport unless the airport has submitted a written competition plan to the FAA.

Other Airport-Related Provisions

Privatization. The FAA proposal would make changes to the Airport Privatization Pilot Program. The number of airports that could participate would be increased from 5 to 15 and there would be no restrictions by airport category (the existing program allows for only one large airport to participate and Chicago Midway airport has reserved that authority).

Since the program was enacted in 1996 (Section 149 of the Federal Aviation Reauthorization Act of 1996, P.L. 104-264), only one airport has been privatized, Stewart International Airport (New York). The FAA and others supportive of the pilot program have argued that the current program gives airlines effective veto power over privatization transactions. Current law requires that the airport sponsor may only recover from the sale or lease the amount that may be approved by at least 65% of the air carriers serving the airport; and by air carriers that account for 65% of the total landed weight at the airport for the year. The FAA proposal would eliminate these requirements and only require that the airport show the FAA that they had consulted with: for primary airports, each air carrier and foreign air carrier serving the airport and, for non-primary airports, consulted with at least 65 percent of the owners of aircraft based at the airport.

The proposal eliminates the airline approval requirement of airport fee increases that exceed inflation and eliminates the provision that requires that the percentage general aviation fee increases not be larger than the percentage increases for air carriers. Also eliminated would be the existing prohibition on the abrogation of a labor agreement in consequence of the sale or lease of an airport under the program. Finally, the private operator could set fees to recover all capital and operating costs except for the sale or lease price, which would require air carrier approval.

Sale of Private Airport to a Public Sponsor. Although written in general terms, this provision appears to facilitate the return of Stewart International Airport to public ownership (the Port Authority of New York and New Jersey plans to purchase the remainder of the lease at Stewart). Essentially, the proposed provision would exempt the proceeds (i.e. profit) from the sale of a privatized airport to a public authority from the AIP assurance that requires that all airport revenue be expended for capital and operating costs at the airport.

Airport Development Rights Pilot Program. The FAA proposal would allow this Vision 100 initiated program to expire at the end of FY2007. The pilot program allowed for the purchase of a privately owned public use airport's development rights as a means of keeping the airport open and operating. FAA argues that the program has not been a success and suggests a better strategy would

be to find a public sponsor to purchase the airport rather than just the development rights. Some general aviation supporters may still be supportive of the pilot program.

ADS-B Support Pilot Program. This FAA proposed program would allow for AIP state/insular area formula entitlement funds (at a 90% federal share) to be used for airport purchase of Automatic Dependent Surveillance-Broadcast (ADS-B) equipment. The ground stations where this equipment would be installed are not airport specific (most AIP projects are required to be within airport boundaries). ADS-B is part of FAA's air traffic modernization system. The use of AIP funds would supplement other FAA funding sources for ADS-B ground station deployment. The FAA argues that "states, regions and airports would benefit because the program would provide ADS-B coverage to areas that would not be reached under the FAA's direct procurement." Project sponsorship would be limited to states, metropolitan planning organizations (MOOS), or consortiums of two or more airports. Not more than 10 airports could apply. In the past, the use of AIP funds for air traffic equipment has met resistance by some program supporters, usually on the grounds that air traffic control capital costs are not within the AID's original programmatic intent and should be paid for elsewhere in the FAA budget.

FAA Management and Organizational Issues

In addition to the proposal to establish an air transportation system advisory board, major provisions of the FAA proposal addressing management and organizational issues include:

- Measures designed to achieve better integration of NGATS planning and implementation into the FAA's ongoing planning and acquisition activities;
- Measures to establish a mechanism for considering possible realignment and consolidation of various FAA facilities and services; and
- Provisions to increase the flexibility in the design and implementation of NGATS by allowing airports and private entities to play a more direct role in acquiring, deploying, and maintaining facilities and services to augment the FAA's air traffic communications, navigation, and surveillance capabilities.

Planning and Oversight of Next Generation Air Transportation System Development

A central issue permeating the current reauthorization debate is the adequacy of management and organizational processes to facilitate development of the NGATS. The NGATS is being developed to address system-wide capacity needs, and is scheduled to be completed prior to 2025. A provision in Vision 100 created the multi-agency Joint Planning and Development Office (JPDO) and charged it with the task of defining, developing, and implementing the NGATS plan.

Over the past three years, the JPDO has collaborated with governmental and industry partners to draft a concept for NGATS development. Some critics have argued that the pace of this effort has been too slow, while others have voiced concerned that the scope of the JPDO concept — encompassing "curbside-to-curbside" movement of airline passengers, rather than just block to block handling of all aircraft types within the national airspace system — may be inappropriate. Still others have raised concerns over the organizational and management structure of the JPDO, specifically regarding the JPDO potential lack of influence over management and budgetary processes of participating agencies. While these agencies are ultimately charged with the task of carrying out the engineering work to build the NGATS as well as the operational responsibilities to run and maintain the national airspace system and its many components, including, but not limited to air traffic control services and airport security functions, the link between their respective budgets and the NGATS program is not clearly defined.

Various options to address these concerns that have been identified include establishing a lead systems integration (LSI) entity to oversee the engineering of the NGATS systems, and possibly establishing specific reporting requirements, perhaps through the budget and appropriations process, in which the various agencies involved could identify how budgetary elements would support NGATS development and how cross-agency efforts would be coordinated and aligned.

Addressing the overarching objective of facilitating implementation of the NGATS engineering effort, the FAA proposal includes language designed to give the JPDO greater input into FAA systems development and operational decision making, by making the JPDO director a voting member of the FAA's Joint Resources Council as well as the Air Traffic Organization's (ATO's) Executive Council. The FAA proposal also includes language that would more closely integrate the JPDO's plans and progress on the NGATS with the FAA's ongoing modernization and capacity enhancement initiatives. Specifically, the FAA proposal would require an annual Operational Evolution Partnership (OEP) plan to be developed to provide details of how the FAA is implementing next generation concepts, and would also include in the FAA's annual report to Congress details on how each of the JPDO participating agencies' respective budgets will support NGATS development.

Realignment and Consolidation of FAA Facilities and Operations

The FAA proposal includes language giving the FAA authority to establish a commission, to be known as the Realignment and Consolidation of Aviation Facilities and Services Commission, that would be tasked with making independent recommendations to the President regarding the realignment and consolidation of FAA facilities and services. The commission would be comprised of five members appointed by the Secretary of Transportation to serve three-year terms, with one serving as a member-elected chairperson of the commission. In order to conduct its work, the commission would be permitted to hire experts and consultants on either a temporary or intermittent basis, subject to DOT approval.

The proposal outlines a process for evaluating and implementing recommended FAA facility and service consolidation in a manner designed to minimize political influence on the process, much like the military BRAC process which it is closely modeled after. The overall objective would be to identify and implement recommended realignment and consolidation activities that would help reduce FAA capital, operating, maintenance, and administrative costs without adversely impacting system safety.

The FAA proposal includes details of the process and a timeline for carrying out a systemwide review and implementation of realignment and consolidation of FAA facilities and services. First, within six months after establishing the commission, the commission would be required to publish its final criteria for making recommendations regarding realignment and consolidation. Thereafter, the FAA would be required to publish a list of recommendations to the commission for realignment and consolidation. The commission would subsequently review the FAA's recommendations and consider public comments on these recommendations. Based on this review, the commission would then make its own independent recommendations and justify these recommendations in a report to the President.

If the President concurs with the commissions recommendations, the President would transmit the recommendations, along with a presidential certification of approval, to Congress. If, on the other hand, the President disapproves, the President would be required to transmit to the commission and to Congress the reasons for disapproval. The commission may then address the President's report and make revised recommendations. If the President still disapproves, the entire process would then be terminated. If the President approves of all of the revised recommendations, the President would then forward them, along with indication of presidential approval to Congress. Congress, in turn, would have the opportunity to review the recommendations and would have 60 days to disapprove of the plan through passage of a joint resolution. If Congress does not disapprove, then the FAA would be statutorily required to carry out the realignment and consolidation activities detailed in the presidentially approved commission plan. The FAA would be required to initiate implementation of the approved actions within two years and would be required to complete the realignment and consolidation activities within six years.

While the proposed process closely follows the military BRAC process, which has generally been regarded as a successful approach to realignment and consolidation of military bases and units, the prospect of implementing such a process to assess FAA facilities and services may be regarded as controversial during the reauthorization debate, particularly in local regions that may stand to lose FAA facilities and jobs as an outcome of the process. Consideration of the process in legislation may also be opposed by labor organizations representing FAA employees, although nothing in current statute generally prohibits the FAA from engaging in organizational consolidation and realignment, as evidenced by the FAA's recent consolidation of its regional service areas in 2006.

Partnerships for Next Generation Technology Deployment

One option under consideration is to allow private sector investment in communications, navigation, surveillance and other services provided within the

context of the national airspace system. For example, under such provisions, telecommunications providers may opt to deploy technologies to augment in-cockpit air traffic surveillance, capabilities and datalink weather and other flight-related information to airborne aircraft. Under such a scheme, these providers may be able to offer certain fee-for-service capabilities to aircraft to augment a core set of required aircraft communication, navigation, and surveillance capabilities. Another option being considered is to allow for airport ownership and control of certain communications, navigation, and surveillance equipment that has been historically acquired, deployed, and maintained by the FAA.

In the FAA proposal, the Administration has offered language addressing these various proposals. Specifically, language in the FAA proposal would permit non-government entities to provide communications, navigation, surveillance, or other services to the extent that such arrangements would improve safety and efficiency, reduce regulatory burdens on system users, encourage competition, make these services available to the largest feasible number of users, and take into consideration the unique role served by general aviation. Further, a provision of the bill proposes that a pilot program be established at up to ten large or medium hub airports under which the FAA would transfer, without cost, ownership of terminal area navigation equipment to the airport. The participating airport would, in turn, be responsible for operation and maintenance of the equipment. Under this pilot program, airports would be required to agree that they would maintain the equipment according to FAA standards, allow the FAA to conduct periodic inspections, and upgrade facilities and equipment when they become obsolete. Airports would be permitted to recoup costs associated with operating and maintaining such equipment through PFCs, and pilot program airports would be authorized to impose a PFC of up to $7, $1 greater than the proposed PFC maximum level.

Another proposed pilot program, outlined in the FAA proposal, would be established to promote airport acquisition and deployment of Automated Dependent Surveillance — Broadcast (ADS-B) ground stations to supplement the FAA's own acquisition of these facilities (see **ADS-B Support Pilot Program**, above). Under the pilot program, airports would be eligible to receive AIP grant money to fund the acquisition and installation of ADS-B ground equipment, even though it is acknowledged that such equipment is not airport-specific. The FAA envisions ADS-B — a technology through which aircraft could transmit their precise position, direction of flight, and speed to ground stations and other aircraft — as a potential replacement for radar as the primary means for air traffic surveillance and control. The FAA also views ADS-B as a possible safety system for improving pilot situation awareness of air traffic, thereby mitigating the risk of midair collisions, particularly among general aviation aircraft.

While such provisions may expand FAA's options and flexibility with regard to deploying and maintaining next generation air traffic equipment, these approaches may raise operational issues regarding ownership and operational control of these facilities, which are anticipated to be networked and highly integrated into the NGATS. These provisions may also raise liability issues regarding cases of equipment failures and failures to perform to technical specifications.

System Capacity and Safety

System capacity and safety remain as overarching issues behind much of the reform sought in the proposed FAA reauthorization. However, in terms of requested statutory changes specifically addressing system capacity and safety issues, major provisions offered in the FAA's proposal have focused on obtaining the authority to implement market-based approaches to controlling congestion at selected high-density airports. Specifically, the FAA proposal seeks statutory authority to control congestion at certain airports through market-based mechanisms, such as slot auctions and peak-period pricing. The proposal would direct the DOT to study the appropriateness of a market-based scheme at New York's Laguardia Airport (LGA), and if deemed appropriate, would permit the airport operator, the Port Authority of New York and New Jersey, to implement a market-based approach to controlling congestion. The FAA proposal also seeks to establish a pilot program to evaluate market-based mechanisms to relieve congestion at up to 15 other airports.

Controlling Congestion at New York's Laguardia Airport

A statutory provision that set specific capacity controls in the form of "slots" at Laguardia Airport (LGA) expired on January 1, 2007. Statutory slot controls at other airports had previously expired, leaving Washington Reagan National Airport (DCA) as the only airport in the country with statutorily imposed slots.

In response to the sunset of the statutory slot provision for LGA, the FAA issued an order establishing temporary limits to prevent congestion-related delays at LGA. The FAA imposed similar restrictions at Chicago's O'Hare airport (ORD) to alleviate congestion and delay and maintain operational safety. In the FAA proposal, the Administration has drafted language that would authorize the DOT to determine whether the use of a market-based mechanism for controlling access to LGA, such as a slot auction or congestion pricing, would be an appropriate means for allocating takeoffs and landings among the airport's users. If such a mechanism is determined to be appropriate, then the DOT shall permit the Port Authority of New York and New Jersey to implement a market-based approach to controlling flights at LGA under guidelines that would be established by DOT rulemaking. The FAA proposal, however, raises some potential intergovernmental relations questions. These concern the ability of the FAA to delegate what could be considered air traffic rationing authority to the airport operator. These issues may need to be addressed before this section could be implemented.

Market-Based Strategies for Alleviating Congestion

In addition to the authority sought to implement market-based congestion controls at LGA, the FAA proposal also seeks to establish a pilot program to evaluate market-based mechanisms to relieve congestion at up to 15 other airports. As previously mentioned, besides LGA, the FAA has imposed temporary restrictions on air carrier flight operations at ORD in an effort to mitigate congestion and delay and maintain operational safety.

As airline operations become increasingly concentrated at a relatively small number of airports throughout the nation, market-based approaches have been viewed favorably by aviation experts as a means for controlling congestion. Critics, however, remain concerned that the cost of operating under these market-based schemes could negatively affect service to smaller communities. Specifically, routes to smaller communities may have more difficulty being profitable if a market-based price associated with connections to major hubs is factored into the cost of service. This may result in a loss of service to some communities if the costs of implementing market-based mechanisms make these routes unprofitable. The FAA proposal does not make any special accommodations for service to small communities in the context of these market-based approaches, although such options may be considered during congressional debate.

Environmental Issues

Aviation and airport operations have air quality, water quality, and community noise impacts. To address issues associated with these impacts, and to assist airport operators with complying with local, state, and federal regulations related to those impacts, the FAA would:

- Provide funding for research into technology or processes that would reduce noise, air emissions, and water quality impacts (§§ 102, 601, and 606);
- Provide grants for programs or projects intended to mitigate or minimize regulated environmental impacts (§ 604); and
- Provide grants or specify regulatory procedures to assist airports in complying with environmental requirements (§§ 602, 603, and 605).

Further, the FAA proposal includes provisions seeking to modify the Air Tour Management Program, a program designed to regulate commercial air tours over national park units primarily in an effort to mitigate noise and other adverse impacts. These provisions seek to narrow the scope of this program to park service units where noise or other adverse impacts from air tours has been identified or could become a more substantial issue.

Research Funding

Section 601 of the proposed legislation would permanently authorize the Airport Cooperative Research Program (ACRP).[9] The proposed legislation would increase funding from $10 million to $15 million per year (§ 102) . Five million dollars per year of the ACRP funds would be set-aside for research activities related to the airport environment, including reductions in noise and air emissions, and addressing water quality issues.

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[9] The ACRP was authorized as a four-year pilot program under Vision 100 (49. U.S.C. 44511(f)). Funds for the program are authorized under the Airport and Airway Trust Fund Authorizations, under the Airport Planning and Development and Noise Compatibility Planning and Programs.

Section 606 would require FAA to enter into a consortium with the Partnership for Air Transportation Noise and Emissions Reduction (PARTNER)[10] to develop Continuous Low Energy, Emissions and Noise (CLEEN) engine and airframe technology. Performance objectives for this technology would include a 25% increase in aircraft fuel efficiency; a 50% reduction in nitrogen oxide emissions associated with aircraft landings and takeoffs; a 10 decibel (dB) reduction, compared to 1997 levels, in subsonic aircraft noise; a feasability determination regarding the use of alternative fuels in aircraft systems; and a determination regarding the ability to retrofit or re-engine aircraft to use new engine technologies. Funding for this program would be authorized under the Next Generation Air Transportation System program at "sums as necessary to carry out [the program]."

Mitigation Grants

Section 604 of the FAA proposal would provide grants for up to six environmental mitigation demonstration pilot projects. Eligible projects would include those that would reduce aircraft noise, airport emissions, or airport water quality. The federal share of the projects would be 50% of the project costs, up to $2.5 million, and would be apportioned under the AIP.

Grants and Procedural Changes to Assist with Environmental Compliance

Section 602 of the FAA proposal would amend the state block grant program[11] by specifying that federal environmental requirements would apply to the program. The proposal also specifies that any federal agency that must grant any approval (i.e., permit or license) to a state must consult with that state during the approval process. Further, the federal agency would be required to use any state-prepared environmental analysis associated with that approval.

Sections 603 and 605 of the FAA proposal address methods of implementing and/or expediting requirements of the National Environmental Protection Act (NEPA)[12] and airport noise compatibility planning requirements (Title 14 Code of Federal Regulations (CFR), Part 150, commonly referred to as Part 150 requirements). Section 603 would amend current requirements[13] by allowing the FAA to accept funds from an airport sponsor to hire additional staff to:

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[10] PARTNER is an aviation cooperative research organization sponsored by FAA, NASA, and Transport Canada, operating out of the Massachusetts Institute of Technology.

[11] 49 U.S.C. § 47128.

[12] Among other provisions, NEPA requires airport operators to consider the environmental impact of any proposed action that may require federal funding or approvals. It also requires them to look at all reasonable alternatives to meet a given project's purpose and need, before final decisions are made. For more information, see FAA's "NEPA Implementing Instructions for Airport Projects," Order 5050.4B, April 2006, at [http://www .faa.gov/airports_airtraffic/airports/resources/publications/orders/environmental_5050_4/].

[13] 49 U.S.C. § 47173.

- conduct "special environmental studies" related to a federally funded airport project;
- conduct studies or reviews to support noise compatibility measures approved under the Part 150 requirements; and
- implement environmental mitigation efforts specified in a project's final decision delineated at the completion of the NEPA process.

Section 605 of the FAA Proposal would amend the existing noise compatibility program requirements[14] to allow grants to airport operators to assist them with meeting environmental review requirements applicable to proposals to implement flight procedures. Further, § 605 of the proposal would allow a project sponsor to provide FAA with funds to hire additional staff as necessary to expedite completion of the environmental review necessary to implement flight procedures.

The Air Tour Management Program

The National Parks Air Tour Management Act of 2000 (Title VIII, P.L. 106-181, hereafter Air Tour Act) regulates commercial air tours over most units of the National Park System. It requires the Federal Aviation Administration (FAA) and the National Park Service (NPS) to create management plans for air tours at individual park units and within a half-mile of their boundaries. The purpose of a plan is to mitigate or prevent any significant adverse impacts of commercial air tours to natural and cultural resources, visitor experiences, and adjacent tribal lands.

The Air Tour Act final rule[15] requires air tour operators to apply for authority to fly over national park and adjacent tribal lands. The FAA received applications for commercial air tours over 106 of the 390 park units, and has granted interim operating authority to all applicants. An application triggers development of an Air Tour Management Plan (ATMP) by the FAA and NPS for each unit where there is no existing plan.[16] Development of an ATMP requires an environmental analysis under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §§4321-4370f). The FAA and NPS currently are developing their first ATMPs for five areas. A January 2006 Government Accountability Office (GAO) report addressed the impact of the delay in implementing the Air Tour Act.[17] The report concluded that the delay has limited the ability of tour operators to make major business decisions. GAO identified four areas to improve implementation, including amendment of the Air Tour Act to give the agencies discretion in determining which park units may need ATMPs.

The FAA proposal includes several suggested changes affecting commercial air tours over park units (codified in 49 U.S.C. §40128) that seek to expedite and

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[14] 49 U.S.C. § 47504.

[15] 67 *Fed. Reg.* 65661 (Oct. 25, 2002).

[16] The FAA provides ATMP information on its website at [http://www.atmp.faa.gov/default.htm].

[17] The report is available on the GAO website at [http://www.gao.gov/new.items/d06263.pdf].

streamline agency actions, in part due to the difficulty in completing ATMPs. One change would allow that in lieu of an ATMP, the NPS Director and FAA Administrator could enter into a voluntary agreement with a commercial air tour operator that would govern commercial air tours over a park unit. An agreement would address protection of park resources and visitor use of parks in the context of aviation safety. It would be prepared with public review and consultation, and implemented "without further administrative or environmental process." The NPS and FAA heads could rescind a voluntary agreement if it did not adequately protect park resources, visitor experiences, or aviation safety. A second change would exempt park units with 50 or fewer annual air tour flights from the requirement for an ATMP or voluntary agreement, although the NPS Director could disallow an exemption. These provisions could be opposed as lessening public participation in the decision making process and weakening environmental analysis of agency decisions.

Other provisions in the FAA proposal would provide more interim operating authority because interim conditions have prevailed for longer than had been anticipated. One change would allow the agencies to modify interim operating authority, for instance to allow more tours, and another would allow new entrant air tour operators provided that certain conditions were met (e.g., FAA agreement of no adverse impact on aviation safety.) These decisions could be made "without further environmental process," and thus also could be opposed as reducing environmental analysis of agency actions. Still another provision in the FAA proposal would establish a reporting requirement for commercial air tour operators with regard to the number of air tours over park units and other data requested by the FAA and NPS.

Miscellaneous Programs and Provisions

The FAA proposal also includes language that would significantly modify the existing Essential Air Service Program (EAS), a DOT-managed program that subsidizes air carrier service to small and isolated communities, primarily by setting more stringent criteria for program eligibility and restricting further expansion of the program.

The Essential Air Service Program

The Essential Air Service (EAS) program provides subsidies to air carriers for providing service between selected small communities and hub airports. The program was originally established in 1978 as part of airline deregulation to ensure a minimum level of air service to smaller communities that might otherwise lose service because of economic factors. While the Bush Administration has suggested limiting EAS funding to $50 million and requiring local cost-sharing as a condition for a community's continued participation in the program, in recent years the program has grown as Congress has provided additional funding, appropriating $110 million in both FY2006 and FY2007.

Vision 100 included several mechanisms and incentives designed to move communities out of the standard EAS program. Communities have not sought to

participate in these incentive regimes, however, suggesting that the incentives themselves may need to be reconsidered if they are to be effective. Vision 100 also included a somewhat controversial provision that created a trial program that would have required community financial participation as a condition for continued access to EAS funding in some instances. Each annual appropriations bill since passage of Vision 100, however, has prevented the use of any appropriated funds to implement the cost-sharing pilot program.

The FAA proposal includes provisions to substantially modify the EAS program, primarily by setting more stringent criteria for program eligibility and restricting further expansion of the program. Specifically, the FAA proposal would limit participation to only those airports that were receiving EAS subsidy on the date of enactment of reauthorization legislation. At present, additional airports may enter into the EAS program, provided they previously had scheduled air carrier service as specified in statute.[18] The FAA also proposes to eliminate from participation any airports located less than 70 highway miles from a large or medium hub airport. Further, the FAA proposal would eliminate from the EAS program any airports that are less than 210 miles from the nearest medium or large hub whose per-passenger subsidy exceeds $200. The proposal also includes language intended to simplify the process involved in terminating air carrier service to an EAS-eligible community.

The provisions in the FAA proposal to modify the EAS program may be particularly controversial because the program has historically been viewed favorably by Congress, particularly among members representing rural states and districts. However, from a practical standpoint, the program may be difficult to justify given that per-passenger subsidies are quite high for service to certain locations receiving service, and airlines often have difficulty filling seats on many EAS routes. Therefore, while provisions in the FAA proposal to restrict expansion of the program may be particularly controversial, other options to increase EAS program flexibility and alternatives to traditional basic EAS service may be considered during congressional debate.

[18] See 49 U.S.C. §41731.