

Public Law 95-504
95th Congress

An Act

To amend the Federal Aviation Act of 1958, to encourage, develop, and attain an air transportation system which relies on competitive market forces to determine the quality, variety, and price of air services, and for other purposes.

Oct. 24, 1978
[S. 2493]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Airline
Deregulation
Act of 1978.

SHORT TITLE

SECTION 1. This Act may be cited as the "Airline Deregulation Act of 1978".

49 USC 1301
note.

DEFINITIONS

SEC. 2. (a) Section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) is amended—

(1) by inserting after paragraph (13) the following new paragraphs:

"(14) 'Charter air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in charter air transportation.

"(15) 'Charter air transportation' means charter trips, including inclusive tour charter trips, in air transportation, rendered pursuant to authority conferred under this Act under regulations prescribed by the Board.;"

(2) by inserting after paragraph (32) the following new paragraph:

"(33) 'Predatory' means any practice which would constitute a violation of the antitrust laws as set forth in the first section of the Clayton Act (15 U.S.C. 12).;"

(3) by inserting after paragraph (35) the following new paragraph:

"(36) 'State agency' means that department, agency, officer, or other entity of a State government which has been designated according to State law as—

"(A) the recipient of any notice required under title IV of this Act to be given to a State agency; or

"(B) the representative of the State in any matter about which the Board is required, under such title IV, to consult with or consider the views of a State agency.;" and

(4) by striking out paragraphs (36) and (37).

(b) Section 101 of such Act is amended by renumbering the paragraphs of such section, including all references thereto, as paragraphs (1) through (41), respectively.

DECLARATION OF POLICY

SEC. 3. (a) Section 102(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1302(a)) is amended to read as follows:

“FACTORS FOR INTERSTATE AND OVERSEAS AIR TRANSPORTATION

“SEC. 102. (a) In the exercise and performance of its powers and duties under this Act with respect to interstate and overseas air transportation, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

“(1) The assignment and maintenance of safety as the highest priority in air commerce, and prior to the authorization of new air transportation services, full evaluation of the recommendations of the Secretary of Transportation on the safety implications of such new services and full evaluation of any report or recommendation submitted under section 107 of this Act.

Post, p. 1709.

“(2) The prevention of any deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public.

“(3) The availability of a variety of adequate, economic, efficient, and low-price services by air carriers without unjust discriminations, undue preferences or advantages, or unfair or deceptive practices, the need to improve relations among, and coordinate transportation by, air carriers, and the need to encourage fair wages and equitable working conditions.

“(4) The placement of maximum reliance on competitive market forces and on actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital.

“(5) The development and maintenance of a sound regulatory environment which is responsive to the needs of the public and in which decisions are reached promptly in order to facilitate adaptation of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service, and the national defense.

“(6) The encouragement of air service at major urban areas through secondary or satellite airports, where consistent with regional airport plans of regional and local authorities, and when such encouragement is endorsed by appropriate State entities encouraging such service by air carriers whose sole responsibility in any specific market is to provide service exclusively at the secondary or satellite airport, and fostering an environment which reasonably enables such carriers to establish themselves and to develop their secondary or satellite airport services.

“(7) The prevention of unfair, deceptive, predatory, or anti-competitive practices in air transportation, and the avoidance of—

“(A) unreasonable industry concentration, excessive market domination, and monopoly power; and

“(B) other conditions;

that would tend to allow one or more air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.

“(8) The maintenance of a comprehensive and convenient system of continuous scheduled airline service for small communities and for isolated areas, with direct Federal assistance where appropriate.

“(9) The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services.

“(10) The encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry.”.

(b) Section 102 of such Act is amended by adding at the end thereof the following new subsection: 49 USC 1302.

“FACTORS FOR FOREIGN AIR TRANSPORTATION

“(c) In the exercise and performance of its powers and duties under this Act with respect to foreign air transportation, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

“(1) The encouragement and development of an air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense.

“(2) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between and coordinate transportation by air carriers.

“(3) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices.

“(4) Competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense.

“(5) The promotion of safety in air commerce.

“(6) The promotion, encouragement, and development of civil aeronautics.”.

(c) That portion of the table of contents contained in the first section of such Act which appears under the side heading

“Sec. 102. Declaration of Policy : The Board.”

is amended by striking out

“(a) General factors for consideration.

“(b) Factors for all-cargo air service.”

and inserting in lieu thereof

“(a) Factors for interstate and overseas air transportation.

“(b) Factors for all-cargo air service.

“(c) Factors for foreign air transportation.”.

FEDERAL PREEMPTION

SEC. 4. (a) Title I of the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.) is amended by adding at the end thereof the following new section:

"FEDERAL PREEMPTION

"PREEMPTION

- 49 USC 1305. "SEC. 105. (a) (1) Except as provided in paragraph (2) of this subsection, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any
- 49 USC 1371. air carrier having authority under title IV of this Act to provide interstate air transportation.
- 49 USC 1371. "(2) Except with respect to air transportation (other than charter air transportation) provided pursuant to a certificate issued by the Board under section 401 of this Act, the provisions of paragraph (1) of this subsection shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska.

"PROPRIETARY POWERS AND RIGHTS

"(b) (1) Nothing in subsection (a) of this section shall be construed to limit the authority of any State or political subdivision thereof or any interstate agency or other political agency of two or more States as the owner or operator of an airport served by any air carrier certificated by the Board to exercise its proprietary powers and rights.

"(2) Any aircraft operated between points in the same State (other than the State of Hawaii) which in the course of such operation crosses a boundary between two States, or between the United States and any other country, or between a State and the beginning of the territorial waters of the United States, shall not, by reason of crossing such boundary, be considered to be operating in interstate or overseas air transportation.

"EXISTING STATE AUTHORITY

"(c) When any intrastate air carrier which on August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air transportation received from the Board under title IV of this Act, until modified, suspended, amended, or terminated as provided under such title.

"DEFINITION

"(d) For purposes of this section, the term 'State' means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and any territory or possession of the United States."

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading

"TITLE I—GENERAL PROVISIONS"

is amended by adding at the end thereof

"Sec. 105. Federal preemption.

"(a) Preemption.

"(b) Proprietary powers and rights.

"(c) Existing State authority.

"(d) Definition."

REPORT ON SUBSIDY COST-SHARING, STUDY OF LEVEL OF AIR SAFETY,
AND REPORT ON AIR CARRIER MARKETING OF TOURS

SEC. 5. (a) Title I of the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.) is further amended by adding at the end thereof the following new sections:

“REPORT ON SUBSIDY COST-SHARING

“SEC. 106. Not later than January 1, 1980, the Board and the Secretary of Transportation, shall, separately or jointly, submit a comprehensive report to the Congress on the feasibility and appropriateness of devising formulas by which States and their political subdivisions could share part of the costs being incurred by the United States under sections 406 and 419 of this Act. Such report shall include any recommendations of the Board and the Secretary for the implementation of such cost-sharing formulas. 49 USC 1306.

49 USC 1376.
Post, p. 1732.

“SAFETY STUDY

“POLICY

“SEC. 107. (a) The Congress intends that the implementation of the Airline Deregulation Act of 1978 result in no diminution of the high standard of safety in air transportation attained in the United States at the time of the enactment of such Act. 49 USC 1307.

“REPORT

“(b) Not later than January 31, 1980, and each January 31 thereafter, the Secretary of Transportation shall prepare and submit to the Congress and the Board a comprehensive annual report on the extent to which the implementation of the Airline Deregulation Act of 1978 has affected, during the preceding calendar year, or will affect, in the succeeding calendar year, the level of air safety. Each such report shall, at a minimum, contain an analysis of each of the following: *Ante*, p. 1705.

“(1) All relevant data on accidents and incidents occurring during the calendar year covered by such report in air transportation and on violations of safety regulations issued by the Secretary of Transportation occurring during such calendar year.

“(2) Current and anticipated personnel requirements of the Administrator with respect to enforcement of air safety regulations.

“(3) Effects on current levels of air safety of changes or proposals for changes in air carrier operating practices and procedures which occurred during the calendar year covered by such report.

“(4) The adequacy of air safety regulations taking into consideration changes in air carrier operating practices and procedures which occurred during the calendar year covered by such report.

Based on such report, the Secretary shall take those steps necessary to ensure that the high standard of safety in air transportation referred to in subsection (a) of this section is maintained in all aspects of air transportation in the United States.

"RECOMMENDATIONS"

"(c) Not later than January 31, 1980, and each January 31 thereafter, the Secretary of Transportation shall submit to the Congress and the Board recommendations with respect to the level of surveillance necessary to enforce air safety regulations and the level of staffing necessary to carry out such surveillance. The Secretary of Transportation's recommendations shall include proposals for any legislation needed to implement such recommendations.

"REGULATIONS AND INSPECTION PROCEDURES"

Review and
report to
congressional
committees.

49 USC 1371.

"(d) Not later than July 1, 1979, the Secretary of Transportation shall complete a thorough review, and submit a report thereon to the appropriate authorizing committees of the Congress and to the Administrator, of the safety regulations and inspection procedures applicable to each class of air carriers subject to the provisions of title IV of this Act, in order to ensure that all classes of air carriers are providing the highest possible level of safe, reliable air transportation to all the communities served by those air carriers. Based on such review, the Administrator shall promulgate such safety regulations and establish such inspection procedures as the Administrator deems necessary to maintain the highest standard of safe, reliable air transportation in the United States.

"REPORT ON AIR CARRIER MARKETING OF TOURS"

49 USC 1308.

"Sec. 108. Not later than May 1, 1979, the Board shall prepare and submit a report to the Congress which sets forth the recommendations of the Board on whether this Act and regulations of the Board should be amended to permit air carriers to sell tours directly to the public and to acquire control of persons authorized to sell tours to the public. The report shall evaluate the effects on the following groups of allowing air carriers to sell tours:

- "(1) The traveling public.
- "(2) The independent tour operator industry.
- "(3) The travel agent industry.
- "(4) The different classes of air carriers."

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading

"TITLE I—GENERAL PROVISIONS"

is amended by adding at the end thereof

"Sec. 106. Report on subsidy cost-sharing.

"Sec. 107. Safety study.

"(a) Policy.

"(b) Report.

"(c) Recommendations.

"(d) Regulations and inspection procedure.

"Sec. 108. Report on air carrier marketing of tours."

APPLICATION FOR CERTIFICATE

SEC. 6. Section 401(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(b)) is amended—

- (1) by striking out "and shall be so verified"; and
- (2) by inserting "and upon any community affected" immediately before the period.

ROUTE APPLICATIONS

SEC. 7. (a) Section 401(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(c)) is amended to read as follows:

"ROUTE APPLICATIONS

"(c) (1) Upon the filing of any application pursuant to subsection (b) of this section, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. The Board shall—

Public notice.

"(A) set such application for a public hearing;

"(B) begin to make a determination with respect to such application under the simplified procedures established by the Board in regulations pursuant to subsection (p); or

"(C) dismiss such application on the merits;

not later than ninety days after the date the application is filed with the Board. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of the certificate requested by such application. Any order of dismissal of an application issued by the Board without setting such application for a hearing or beginning to make a determination with respect to such application under such simplified procedures, shall be deemed a final order subject to judicial review in accordance with the provisions of section 1006 of this Act.

49 USC 1486.

"(2) If the Board determines that any application should be set for a public hearing under clause (A) of the second sentence of paragraph (1) of this subsection, an initial or recommended decision shall be issued not later than one hundred and fifty days after the date of such determination by the Board. Not later than ninety days after the initial or recommended decision is issued, the Board shall make its final order with respect to such application. If the Board does not act within such ninety-day period—

Final order.

"(A) in the case of an application for a certificate to engage in interstate or overseas air transportation, the initial or recommended decision shall become the final decision of the Board and shall be subject to judicial review in accordance with the provisions of section 1006 of this Act; and

"(B) in the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President pursuant to section 801 of this Act.

49 USC 1461.

"(3) Not later than the one-hundred-eightieth day after the Board begins to make a determination with respect to an application under the simplified procedures established by the Board in regulations pursuant to subsection (p) of this section, the Board shall issue its final order with respect to such application.

"(4) If an applicant fails to meet the procedural schedule adopted by the Board in a particular proceeding, the applicable period prescribed in paragraph (2) or (3) of this subsection may be extended by the Board for a period equal to the period of delay caused by the applicant. In addition to any extension authorized by the preceding sentence, in extraordinary circumstances, the Board may, by order delay an initial or recommended decision for not to exceed thirty days beyond the final date on which the decision is required to be made."

(b) The amendments made by subsection (a) of this section shall

49 USC 1371 note.

49 USC 1371. apply to any application filed under section 401(b) of the Federal Aviation Act of 1958 on or after the one-hundred-eightieth day after the date of enactment of this Act.

(c) That portion of the table of contents contained in the first section of such Act which appears under the side heading

“Sec. 401. Certificate of public convenience and necessity.”

is amended by striking out

“(c) Notice of application.”

and inserting in lieu thereof

“(c) Route applications.”

ISSUANCE OF CERTIFICATE

SEC. 8. Paragraphs (1), (2), and (3) of section 401(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)(1)-(3)) are amended to read as follows:

“(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation—

“(A) in the case of interstate or overseas air transportation, is consistent with the public convenience and necessity; and

“(B) in the case of foreign air transportation, is required by the public convenience and necessity; otherwise such application shall be denied.

“(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods—

“(A) in the case of an application for interstate or overseas air transportation, as is consistent with the public convenience and necessity; and

“(B) in the case of an application for foreign air transportation, as may be required by the public convenience and necessity; if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

“(3) In the case of an application for a certificate to engage in charter air transportation, the Board may issue a certificate to any applicant, not holding a certificate under paragraph (1) or (2) of this subsection on January 1, 1977, authorizing interstate air transportation of persons, which authorizes the whole or any part thereof—

“(A) in the case of an application for interstate or overseas air transportation, for such periods, as is consistent with the public convenience and necessity; and

“(B) in the case of an application for foreign air transportation, for such periods, as may be required by the public convenience and necessity;

if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.”.

THROUGH SERVICE AND JOINT FARES

SEC. 9. Paragraph (4) of section 401(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)(4)) is amended to read as follows:

“(4) (A) Notwithstanding any other provision of this Act, any citizen of the United States who undertakes, within any State, the carriage of persons or property as a common carrier for compensation or hire with aircraft capable of carrying thirty or more persons pursuant to authority for such carriage within such State granted by the appropriate State agency is authorized—

“(i) to establish services for persons and property which includes transportation by such citizen over its routes in such State and transportation by an air carrier or a foreign air carrier in air transportation; and

“(ii) subject to the requirements of section 412 of this title, to enter into an agreement with any air carrier or foreign air carrier for the establishment of joint fares, rates, or services for such through services. 49 USC 1382.

“(B) The joint fares or rates established under clause (ii) of subparagraph (A) of this paragraph shall be the lowest of—

“(i) the sum of the applicable fare or rate for service in the State approved by the appropriate State agency, and the applicable fare or rate for that part of the through service provided by the air carrier or foreign air carrier;

“(ii) a joint fare or rate established and filed in accordance with section 403 of this Act; or 49 USC 1373.

“(iii) a joint fare or rate established by the Board in accordance with section 1002 of this Act.”. 49 USC 1482.

UNUSED AUTHORITY

SEC. 10. (a) Section 401(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is amended by adding at the end thereof the following new paragraph:

“(5) (A) Except as provided in subparagraphs (B) and (G) (i) of this paragraph, if an air carrier is authorized by its certificate to provide round trip service nonstop each way between any two points in the forty-eight contiguous States or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week for at least thirteen weeks during any twenty-six-week period (other than such a period during which service was interrupted by a labor dispute which lasted more than six weeks) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least thirteen weeks during such twenty-six-week period, pursuant to published flight schedules, by no more than one other air carrier, then the Board shall issue a certificate to the first applicant who, within thirty days after the last day of such twenty-six-week period, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

“(B) Except as provided in subparagraph (G) (ii) of this paragraph, if an air carrier is authorized to provide seasonal round trip service nonstop each way between any two points in the forty-eight contiguous States in interstate air transportation or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week during half of the weeks during such season (other than such a season during which service was interrupted by a labor dispute which lasted more than 25 per centum of such season) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least half of the weeks during such season, pursuant to published flight schedules, by no more than one other air carrier, then the Board shall issue a certificate to the first applicant who, within thirty days after the last day of such season, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

Final order.

“(C) With respect to any application which is submitted pursuant to subparagraph (A) or (B) of this paragraph, except as provided in subparagraph (G), the Board shall issue a final order granting such certificate within fifteen days of the date of such application.

“(D) Except as provided in subparagraphs (E) and (G) (i) of this paragraph, if an air carrier is authorized by its certificate to provide round trip service nonstop each way between any two points in the forty-eight contiguous States or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week for at least thirteen weeks during any twenty-six-week period (other than such a period during which service was interrupted by a labor dispute which lasted more than six weeks) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least thirteen weeks during such twenty-six-week period, pursuant to published flight schedules, by two or more other air carriers, then the Board, subject to subparagraph (F) of this paragraph, shall issue a certificate to the first applicant who, within thirty days after the last day of such twenty-six-week period, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

“(E) Except as provided in subparagraph (G) (ii) of this paragraph, if an air carrier is authorized to provide seasonal round trip service nonstop each way between any two points in the forty-eight contiguous States in interstate air transportation or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week during half of the weeks during such season (other than such a season during which service was interrupted by a labor dispute which lasted more than 25 per centum of such sea-

son) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least half of the weeks during such season, pursuant to published flight schedules, by two or more other air carriers, then the Board, subject to subparagraph (F) of this paragraph, shall issue a certificate to the first applicant who, within thirty days after the last day of such season, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

“(F) (i) Except as provided in subparagraph (G) of this paragraph, with respect to any application which is submitted pursuant to subparagraph (D) or (E) of this paragraph, the Board shall issue a final order granting such certificate within sixty days of the date of such application, unless the Board finds that the issuance of such certificate is inconsistent with the public convenience and necessity. Prior to issuing such final order, the Board shall afford adequate notice and opportunity for interested persons to file appropriate written evidence and argument, but the Board need not hold oral evidentiary hearings.

Notice.

“(ii) For purposes of clause (i) of this subparagraph, there shall be a rebuttable presumption that any transportation covered by an application for a certificate submitted pursuant to subparagraph (D) or (E) of this paragraph is consistent with the public convenience and necessity.

“(G) (i) If, after the failure of any air carrier to provide the minimum level of service between any pair of points for the period of time specified in subparagraph (A) or (D) of this paragraph and before the Board receives an application from any applicant for a certificate under such subparagraph to provide air transportation between such points, the Board receives notice from such air carrier that it intends to commence service within thirty days of such notice and to provide a minimum of five round trips per week for thirteen consecutive weeks between such points and the Board has not previously received notice from such air carrier with respect to such points, the Board shall not approve such application for a certificate to provide service between such points during such thirteen-week period based upon such failure, unless such air carrier fails to provide such service during such thirteen-week period.

Notice.

“(ii) If, after the failure of any air carrier to provide the minimum level of service between any pair of points for the period of time specified in subparagraph (B) or (E) of this paragraph and before the Board receives an application from any applicant for a certificate under such subparagraph to provide air transportation between such points, the Board receives notice from such air carrier that it intends to commence service within fifteen days of the first day of the next season and to provide a minimum of five round trips per week for the first half of such season between such points and the Board has not previously received notice from such air carrier with respect to such points, the Board shall not approve such application for a certificate to provide service between such points during the first half of such period based upon such failure, unless such air carrier fails to provide such service during the first half of such period.

Revocation of
certificate.

“(H) (i) Whenever the Board issues a certificate pursuant to subparagraph (A) or (D) of this paragraph, the air carrier receiving such certificate shall commence service pursuant to such certificate within forty-five days of such issuance. If such air carrier fails to commence service within such period, the Board shall revoke such certificate.

Revocation of
certificate.

“(ii) Whenever the Board issues a certificate pursuant to subparagraph (B) or (E) of this paragraph to provide seasonal service, the air carrier receiving such certificate shall commence service pursuant to such certificate within fifteen days after the beginning of the first such season which begins on or after the date of such issuance. If such air carrier fails to commence service within such period, the Board shall revoke such certificate.

“(I) Not more than one certificate shall be issued under this paragraph for round trip nonstop service between two points in interstate air transportation based upon the failure of the same air carrier to provide such service between such points.

“(J) Whenever the Board issues a certificate pursuant to subparagraph (A) of this paragraph based upon the failure of any air carrier to provide the round trip service described in such subparagraph, the Board shall suspend the authority of such air carrier to provide such service, and suspend the authority of any other air carrier which failed to provide such service during the same twenty-six-week period for twenty-six weeks after the date of issuance of such certificate pursuant to subparagraph (A), or until such time within such twenty-six weeks as the air carrier to which a certificate is issued under such subparagraph fails to provide such service at a minimum of five round trips per week for at least thirteen weeks, whichever first occurs, except that the Board shall not suspend the authority of such air carriers under this subparagraph if the Board finds that such suspension is not necessary to encourage continued service between such points by the air carrier which received a certificate under subparagraph (A).”

(b) Section 401(f) of such Act is amended by striking out “hereinafter provided” and inserting in lieu thereof “provided in this section”.

FILL-UP RIGHTS

SEC. 11. Section 401(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is further amended by adding at the end thereof the following new paragraph:

“(6) Any air carrier holding a valid certificate to engage in foreign air transportation is authorized, on any scheduled flight in foreign air transportation, to transport persons, property, and mail between points in the United States between which it is authorized to operate during such flight. The authority described in the preceding sentence shall be limited to one round-trip flight per day between any such pair of points, unless the Board authorizes more than one round-trip flight per day between any such pair of points.”

AUTOMATIC MARKET ENTRY PROGRAM

SEC. 12. Section 401(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is further amended by adding at the end thereof the following new paragraph:

“(7) (A) After the first business day of each of the calendar years 1979, 1980, and 1981 and before the thirtieth day of such calendar year—

“(i) any air carrier which (I) has operated during the preceding calendar year in accordance with a certificate issued by the Board under this section which has been in force during such entire preceding calendar year, and (II) has provided air transportation of persons during such calendar year; and

“(ii) any intrastate air carrier which has a valid certificate or license issued by a State regulatory authority to engage in intrastate air transportation and which has operated more than one hundred million available seat-miles in intrastate air transportation in the preceding calendar year;

may apply to the Board for a certificate under this subparagraph to engage in nonstop service between any one pair of points in interstate or overseas air transportation (other than a pair of points either point of which is in the State of Hawaii) in addition to any pair of points authorized by any existing certificate or license held by such air carrier or intrastate air carrier, except that no air carrier may apply to engage in nonstop service between such pair of points if any air carrier has filed written notice to the Board pursuant to subparagraph (C) of this paragraph with respect to such pair of points. Not later than the sixtieth day after the date on which the Board receives an application from an applicant under this subparagraph, the Board shall issue a certificate to such applicant for the nonstop service specified in such application, unless within such sixty-day period the Board determines that the applicant is not fit, willing, and able to provide such nonstop service and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board issued under this Act.

“(B) Not later than the one-hundred-twentieth day of calendar year 1979, 1980, or 1981, any air carrier which submitted an application to the Board in accordance with subparagraph (A) of this paragraph in such calendar year and—

“(i) which did not receive a certificate to provide service between the pair of points set forth in the application because of a determination by the Board under such subparagraph (A); or

“(ii) which received a certificate to provide service between such pair of points, but was not the only air carrier to receive a certificate under such subparagraph (A) during such calendar year to provide nonstop service between such pair of points;

may reapply to the Board for a certificate to engage in nonstop service between any one pair of points in interstate or overseas air transportation (other than the pair of points specified in the first application submitted to the Board by such air carrier in such calendar year and other than a pair of points either point of which is in the State of Hawaii) in addition to any pair of points authorized by any existing certificate or license held by such air carrier or intrastate air carrier, except that no air carrier may apply to engage in nonstop service between such pair of points if any air carrier has filed written notice to the Board pursuant to subparagraph (C) of this paragraph with respect to such pair of points. Not later than the sixtieth day after the date on which the Board receives an application under this subparagraph, the Board shall issue a certificate to the applicant for such nonstop service, unless within such sixty-day period the Board makes a determination with respect to the issuance of such certificate in accordance with the second sentence of subparagraph (A) of this paragraph. If the Board issues a certificate to an applicant under this subparagraph, it shall revoke any authority in any certificate which it granted to such applicant in the same calendar year under subparagraph (A) of this paragraph.

Written notice.
Ante, p. 1712.

“(C) (i) Subject to clause (ii) of this subparagraph, any air carrier which is authorized pursuant to paragraph (1) or (2) of this subsection to engage in nonstop service between any pair of points in interstate or overseas air transportation on the first business day of calendar year 1979, 1980, or 1981 and which wants to preclude any other air carrier from obtaining authority under subparagraph (A) or (B) of this paragraph to engage in nonstop service between such pair of points during such calendar year may, on such day, file written notice to the Board which sets forth such pair of points. Upon receipt of any written notice under the preceding sentence, the Board shall make such notice available to the public.

Public
availability.

“(ii) No air carrier may file a written notice under clause (i) of this subparagraph during any calendar year with respect to more than one pair of points in interstate or overseas air transportation.

Program
modification.

“(D) (i) The Board shall, on an emergency basis, by rule, modify the program established by this paragraph, if the Board finds that—

“(I) the operation of such program is causing substantial public harm to the national air transportation system, or a substantial reduction in air service to small and medium sized communities in any region of the country;

“(II) the modification proposed by the Board is required by the public convenience and necessity in order to alleviate such harm or reduction; and

“(III) such harm or reduction identified by the Board cannot be rectified by any reasonably available means other than the modification proposed by the Board.

Any emergency modification proposed by the Board under this subparagraph shall modify such program only to the minimum extent necessary to rectify the harm or reduction identified by the Board. Any emergency modification of such program may be limited to any pair of points.

“(ii) The findings of fact by the Board in any proceeding held pursuant to this subparagraph, if supported by substantial evidence, shall be conclusive. No objection to a modification of the program proposed by the Board under this subparagraph shall be considered by a court unless such objection shall have been submitted to the Board, of if it was not so submitted, unless there were reasonable grounds for failure to do so.

Study of
procedure.

“(E) The Board shall conduct a study of the procedure for certification of air carriers and intrastate air carriers set forth in subparagraphs (A) and (B) of this paragraph to evaluate—

49 USC 1302.

“(i) whether such procedure is consistent with the criteria set forth in section 102 of this Act; and

“(ii) the relative effectiveness of such procedure as compared with other procedures for certification set forth in this Act, including but not limited to, the procedures set forth in paragraphs (5) and (6) of this subsection and in subsection (p) of this section.

Not later than December 31, 1980, the Board shall complete such study and report the results of such study to the Congress.”

EXPERIMENTAL CERTIFICATES

SEC. 13. Section 401(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is further amended by adding at the end thereof the following new paragraph:

Ante, p. 1712.

“(8) The Board may grant an application under subsection (d) (1), (2), or (3) of this section (whether the application be for permanent

or temporary authority) for only a temporary period of time whenever the Board determines that a test period is desirable in order to determine if projected services, efficiencies, methods, rates, fares, charges, or other projected results will in fact materialize and remain for a sustained period of time, or to assess the impact of the new services on the national air route structure, or otherwise to evaluate the proposed new services. In any case where the Board has issued a certificate under any one of such subsections on the basis that the air carrier holding such certificate will provide innovative or low-priced air transportation under such certificate, the Board, upon petition, or its own motion, may review the performance of such air carrier, and may alter, amend, modify, suspend, or revoke such certificate or authority in accordance with the procedures prescribed in section 401(g) of this title, on the grounds that such air carrier has not provided, or is not providing, such air transportation.” 49 USC 1371.

DETERMINATIONS FOR ISSUANCE OF CERTIFICATES

SEC. 14. Section 401(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is further amended by adding at the end thereof the following new paragraph:

“(9) (A) In any determination as to whether or not any applicant is fit, willing, and able to perform properly the air transportation specified in the application for a certificate described in paragraph (1) (A), (2) (A), or (3) (A) of this subsection and to conform to the provisions of this Act, the applicant shall have the burden of showing that it is so fit, willing, and able. *Ante*, p. 1712.

“(B) In any determination as to whether the air transportation specified in any application for a certificate described in paragraph (1) (A), (2) (A), or (3) (A) of this subsection is or is not consistent with the public convenience and necessity, an opponent of the application shall have the burden of showing that such air transportation is not consistent with the public convenience and necessity.

“(C) Transportation covered by any application for a certificate described in paragraph (1) (A), (2) (A), or (3) (A) of this subsection shall, for the purposes of such paragraphs, be deemed to be consistent with the public convenience and necessity, unless the Board finds based upon a preponderance of the evidence that such transportation is not consistent with the public convenience and necessity.”.

TERMS AND CONDITIONS OF CERTIFICATES

SEC. 15. (a) Paragraph (3) of section 401(e) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(e)(3)) is amended by striking out “supplemental air transportation” and inserting in lieu thereof “foreign charter air transportation”.

(b) Paragraph (4) of section 401(e) of such Act is amended by striking out the semicolon and all that follows down through the period and inserting in lieu thereof a period.

(c) Paragraph (6) of section 401(e) of such Act is amended by striking out “supplemental air carrier” and inserting in lieu thereof “charter air carrier”.

REMOVAL OF RESTRICTIONS

SEC. 16. Section 401(e) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(e)) is further amended by adding at the end thereof the following new paragraph:

“(7) (A) On and after the date of enactment of this paragraph, the Board shall not attach a closed-door restriction to any certificate issued under this section. Any closed-door restriction attached to any certificate issued before such date shall, on and after such date, have no force or effect. This subparagraph shall not apply to (i) a closed-door restriction applicable to air transportation between two points both of which are in the State of Hawaii, or (ii) a closed-door restriction in effect on such date which resulted from a sale, exchange, or transfer by any air carrier of its authority to provide air transportation to another air carrier.

“(B) Upon application of any air carrier seeking removal or modification of a term, condition, or limitation attached to a certificate issued under this section to engage in interstate, overseas, or foreign air transportation, the Board shall, within sixty days after the filing of such application, set such application for oral evidentiary hearings on the record or begin to consider such application under the simplified procedures established by the Board in regulations pursuant to subsection (p) of this section for purposes of eliminating or modifying any such term, condition, or limitation which it finds is inconsistent with the criteria set forth in section 102 of this Act. Applications under this paragraph shall not be subject to dismissal pursuant to section 401(c) (1) of this Act.

“(C) For purposes of this paragraph, the term ‘closed-door restriction’ means any condition attached to a certificate to provide interstate or overseas air transportation issued to any air carrier under this section which prohibits such air carrier from providing local passenger service between any pair of points between which it is authorized to operate pursuant to such certificate.”

49 USC 1302.

Ante, p. 1711.
“Closed-door
restriction.”

EFFECTIVE DATE AND DURATION OF CERTIFICATE

SEC. 17. Section 401(f) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(f)) is amended by striking out “ceased:” and all that follows down through the period and inserting in lieu thereof “ceased.”

AUTHORITY TO MODIFY, SUSPEND, OR REVOKE

SEC. 18. The first sentence of section 401(g) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(g)) is amended by inserting “or pursuant to the simplified procedures under subsection (p) of this section” after “notice and hearings”.

TERMINATIONS, REDUCTIONS, AND SUSPENSIONS OF SERVICE

SEC. 19. (a) Section 401(j) of the Federal Aviation Act of 1958 is amended to read as follows:

“TERMINATIONS, REDUCTIONS, AND SUSPENSIONS OF SERVICE

“(j) (1) No air carrier holding a certificate issued under this section shall—

“(A) terminate or suspend all air transportation which it is providing to a point under such certificate; or

“(B) reduce any such air transportation below that which the Board has determined to be essential air transportation for such point;

unless such air carrier has first given the Board, any community affected, and the State agency of the State in which such community is located, at least 90 days notice of its intent to so terminate, suspend, or reduce such air transportation. The Board may, by regulation or otherwise, authorize such temporary suspension of service as may be in the public interest. Notice.

“(2) If an air carrier holding a certificate issued pursuant to section 401 of this Act proposes to terminate or suspend nonstop or single-plane air transportation between two points being provided by such air carrier under such certificate, and such air carrier is the only air carrier certificated pursuant to such section 401 providing nonstop or single-plane air transportation between such points, at least sixty days before such proposed termination or suspension, such air carrier shall file with the Board and serve upon each community to be directly affected notice of such termination or suspension.” 49 USC 1371.

(b) That portion of the table of contents contained in the first section of such Act which appears under the side heading

“Sec. 401. Certificate of public convenience and necessity.”

is amended by striking out

“(j) Application for abandonment.”

and inserting in lieu thereof

“(j) Terminations, reductions, and suspensions of service.”

ADDITIONAL POWERS AND DUTIES OF BOARD WITH RESPECT TO CHARTER AIR CARRIERS

SEC. 20. (a) The center heading for section 401(n) of the Federal Aviation Act of 1958 is amended by striking out “SUPPLEMENTAL” and inserting in lieu thereof “CHARTER”. 49 USC 1371.

(b) Paragraphs (1) through (4) of section 401(n) of such Act are amended to read as follows:

“(n) (1) No air carrier providing air transportation under a certificate issued under this section shall commingle, on the same flight, passengers being transported in interstate or overseas charter air transportation with passengers being transported in scheduled interstate or overseas air transportation, except that this subsection shall not apply to the carriage of passengers in air transportation under group fare tariffs.

“(2) No rule, regulation, or order issued by the Board shall restrict the marketability, flexibility, accessibility, or variety of charter trips provided under a certificate issued under this section except to the extent required by the public interest, and shall in no event be more restrictive than those regulations regarding charter air transportation in effect on October 1, 1978.

“(3) Notwithstanding any other provision of this title, no certificate issued under this section shall authorize the holder thereof to provide charter air transportation between two points within the State of Alaska unless, and then only to the extent to which, the Board, in issuing or amending such certificate, may authorize after determining that such charter air transportation is required by the public convenience and necessity. This subsection shall not apply to a certificate issued under this section to a person who, before July 1, 1977, maintained its principal place of business within the State of Alaska and conducted air transport operations between points within the State of Alaska with aircraft having a certificated gross takeoff weight of more than 40,000 pounds.

“(4) No certificate issued under this section shall permit a charter air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.”

49 USC 1371.

(c) Paragraph (5) of section 401(n) of such Act is amended—

(1) in the first sentence, by striking out “a supplemental air carrier to comply with the provisions of paragraph (1), (3), or (4) of this subsection” and inserting in lieu thereof “a charter air carrier to comply with the provisions of subsection (q) or (r) of this section”; and

(2) in the last sentence, by striking out “paragraphs (1), (3), and (4) of this subsection” and inserting in lieu thereof “subsections (q) and (r) of this section”.

(d) (1) Section 401 of such Act is amended by adding at the end thereof the following new subsections:

“INSURANCE AND LIABILITY

“(q) (1) No certificate shall be issued or remain in effect unless the applicant for such certificate or the air carrier, as the case may be, complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance or plans for self-insurance in the amount prescribed by the Board which are conditioned to pay, within the amount of such insurance, amounts for which such applicant or such air carrier may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the operation or maintenance of aircraft under such certificate.

“(2) In order to protect travelers and shippers by aircraft operated by certificated air carriers, the Board may require any such air carrier to file a performance bond or equivalent security arrangement, in such amount and upon such terms as the Board shall prescribe, to be conditioned upon such air carrier’s making appropriate compensation to such travelers and shippers, as prescribed by the Board, for failure on the part of such carrier to perform air transportation services in accordance with agreements therefor.

“CONTINUING REQUIREMENT

“(r) The requirement that each applicant for a certificate or any other authority under this title must be found to be fit, willing, and able to perform properly the transportation covered by its application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board under this Act, shall be a continuing requirement applicable to each such air carrier with respect to the transportation authorized by the Board. The Board shall by order, entered after notice and hearing, modify, suspend, or revoke such certificate or other authority, in whole or in part, for failure of such air carrier to comply with the continuing requirement that the air carrier be so fit, willing, and able, or for failure to file such reports as the Board may deem necessary to determine whether such air carrier is so fit, willing, and able.”

Notice and
hearing.

(2) That portion of the table of contents contained in the first section of such Act which appears under the side heading

“Sec. 401. Certificates of public convenience and necessity.”

is amended—

(A) by striking out

“(n) Additional powers and duties of Board with respect to supplemental air carriers.”

and inserting in lieu thereof

“(n) Additional powers and duties of Board with respect to charter air carriers.”;

and

(B) by adding at the end thereof

“(q) Insurance and liability.

“(r) Continuing requirement.”.

PROCEDURES FOR PROCESSING APPLICATIONS

SEC. 21. (a) (1) Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) is amended by adding at the end thereof the following new subsection:

“PROCEDURES FOR PROCESSING APPLICATIONS FOR CERTIFICATES

“(p) (1) The Board shall promulgate rules establishing simplified Rules. procedures for—

“(A) the disposition of applications for a certificate to engage in air transportation pursuant to subsection (d) (1), (2), or (3) of this section; and

Ante, p. 1712.

“(B) the alteration, amendment, modification, suspension, or transfer of all or any part of any certificate pursuant to subsection (f), (g), or (h) of this section.

49 USC 1371.

Such rules shall provide for adequate notice and an opportunity for any interested person to file appropriate written evidence and argument, but need not provide for oral evidentiary hearings. Such rules may provide that such written evidence and argument shall be filed by such person as part of a protest or memorandum filed with respect to such application under subsection (c) of this section.

“(2) The Board may use such simplified procedures in any case if the Board determines that the use of such simplified procedures is in the public interest. The rules adopted by the Board pursuant to this subsection shall, to the extent the Board finds it practicable, set forth the standards it intends to apply in determining whether to employ such simplified procedures, and in deciding cases in which such procedures are employed.”.

(2) That portion of the table of contents contained in the first section of such Act which appears under the side heading

“Sec. 401. Certificate of public convenience and necessity.”

is amended by inserting at the end thereof

“(p) Procedures for processing applications for certificates.”.

(b) (1) Section 402 of the Federal Aviation Act of 1958 (49 U.S.C. 1372) is amended by adding at the end thereof the following new subsection:

“PROCEDURES FOR PROCESSING APPLICATIONS FOR PERMITS

Rules.

“(h) The Board shall promulgate rules establishing simplified procedures for—

“(1) the disposition of applications for a permit to engage in foreign air transportation pursuant to this section; and

“(2) the alteration, amendment, modification, suspension, or transfer of all or any part of any permit pursuant to subsection (f) of this section.

Notice.

Such rules shall provide for adequate notice and an opportunity for all interested persons to file appropriate written evidence and argument, but need not provide for oral evidentiary hearings.”

(2) That portion of the table of contents contained in the first section of such Act which appears under the side heading

“Sec. 402. Permits to foreign air carriers.”

is amended by inserting at the end thereof

“(h) Procedures for processing applications for permits.”.

NOTICE OF TARIFF CHANGES

SEC. 22. Section 403(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1373(c)) is amended to read as follows:

“NOTICE OF TARIFF CHANGES

“(c) (1) Except as provided in paragraph (2) of this subsection, no change shall be made in any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, specified in any effective tariff of any air carrier until thirty days after notice of the proposed change has been filed, posted, and published in accordance with subsection (a) of this section, except the Board may establish an alternative notice requirement, of not less than twenty-five days, to allow an air carrier to match the fares or charges specified in another air carrier’s proposed tariff. Any notice specified under this subsection shall plainly state the change proposed to be made and the time such change will take effect.

“(2) If the effect of any proposed tariff change would be to institute a fare that is outside of the applicable range of fares specified in subparagraphs (A) and (B) of section 1002(d)(4) of this Act, or specified by the Board under section 1002(d)(7) of this Act, or would be to institute a fare to which such range of fares does not apply, then such proposed change shall not be implemented except after sixty days’ notice filed in accordance with regulations prescribed by the Board.

49 USC 1482.

“(3) In exercising its power to suspend tariffs under sections 1002(g) and 1002(j) of this Act, the Board shall file and deliver a statement in writing of its reasons for such suspension, as required under section 1002(g), at least thirty days before the date on which the affected tariff would otherwise go into effect.”.

RATES OF CARRIAGE FOR PERSONS AND PROPERTY

SEC. 23. Section 404(a)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1374(a)(1)) is amended by inserting “authorized to engage in scheduled air transportation by certificate or by exemption under section 416(b)(3) of this title” immediately before the first semicolon.

49 USC 1386.

MAIL AND COMPENSATION

SEC. 24. (a) (1) Clause (3) of the second sentence of section 406(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1376(b)) is amended to read as follows: “(3) the need of each such air carrier (other than a charter air carrier) for compensation for the transportation of mail sufficient to insure the performance of such service, and—

“(A) during the period beginning on the date of enactment of this clause and ending on January 1, 1983, both dates inclusive, together with all other revenue of the air carrier from the service for which the compensation is being paid; and

“(B) after January 1, 1983, together with all other revenue of the air carrier;

to enable such air carrier under honest, economical, and efficient management, to provide (except for modifications with respect to an individual point determined after January 1, 1983, to be required by the public interest, after giving interested parties an opportunity for an evidentiary hearing with respect to air transportation for such individual point) air transportation of at least the same extent, character, and quality as that provided during the year ending December 31, 1977, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.”

(2) Section 406(b) of the Federal Aviation Act of 1958 is amended by inserting after the second sentence the following new sentences: “Notwithstanding any other provision of this section, rates of compensation paid to any carrier under this section for service performed between the date of enactment of this sentence and January 1, 1983, shall be based on the subsidy need of such carrier with respect to service performed to points for which such carrier was entitled to receive compensation for serving during calendar year 1977. In the case of any local service carrier, such subsidy need shall be based on the adjusted eligible need of such carrier determined in a matter consistent with the provisions of Local Service Class Subsidy Rate VIII, with technical adjustments, and in the case of any other carrier receiving compensation during the twelve months ended June 30, 1978, such subsidy need shall be determined pursuant to the method in effect during the twelve months ended June 30, 1978. Any air carrier receiving compensation from the Board pursuant to this section which, before January 1, 1986, terminates service to a point for which such compensation is paid shall not, if such service is resumed by such air carrier, be eligible for compensation from the Board under this section for such service. Nothing in this subsection shall be construed as prohibiting any air carrier specified in the preceding sentence from applying for and receiving compensation for such service under section 419 of this title.”

(b) Subsection (c) of such section 406 (49 U.S.C. 1376(c)) is amended by adding at the end thereof the following new sentence: “The Board shall make no payments under this section for any services performed after January 1, 1986.”

LOCAL SERVICE AIR CARRIER COMPENSATION

SEC. 25. (a) The last sentence of section 406(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1376(b)) is amended as follows:

(1) By striking out “the year 1966” and inserting in lieu thereof “the years 1964, 1965, and 1966”.

(2) By striking out "Rate III-A" and inserting in lieu thereof "Rates III and III-A".

(3) By striking out "order E-23850 (44 CAB 637 et seq.)" and inserting in lieu thereof "orders E-21311 and E-23850 (41 CAB 138 et seq. and 44 CAB 637 et seq.)".

49 USC 1376
note.

(b) Section 12(b) of Public Law 95-163, Ninety-fifth Congress, approved November 9, 1977, is amended by striking out "the year 1966" and inserting in lieu thereof "the year 1964, 1965, or 1966".

MERGERS AND CONTROL

SEC. 26. (a) Section 408 of the Federal Aviation Act of 1958 (49 U.S.C. 1378) is amended as follows:

(1) Subsection (a) of such section 408 (49 U.S.C. 1378(a)) is amended to read as follows:

"ACTS PROHIBITED

"SEC. 408. (a) Except as provided in subsection (b) of this section, it shall be unlawful—

"(1) for two or more air carriers, or for any air carrier and any other common carrier or any person substantially engaged in the business of aeronautics, to consolidate or merge their properties, or a substantial portion thereof, into one person for the ownership, management, or operation of the properties previously in separate ownerships;

"(2) for any air carrier, any person controlling an air carrier, any other common carrier, or any person substantially engaged in the business of aeronautics, to purchase, lease, or contract to operate all or a substantial portion of the properties of any air carrier;

"(3) for any air carrier or person controlling an air carrier to purchase, lease, or contract to operate all or a substantial portion of the properties of any person substantially engaged in the business of aeronautics otherwise than as an air carrier;

"(4) for any foreign air carrier or person controlling a foreign air carrier to acquire control in any manner whatsoever of any citizen of the United States substantially engaged in the business of aeronautics;

"(5) for any air carrier or person controlling an air carrier, any other common carrier, or any person substantially engaged in the business of aeronautics to acquire control of any air carrier in any manner whatsoever;

"(6) for any air carrier or person controlling a certificated air carrier to acquire control, in any manner whatsoever, of any person substantially engaged in the business of aeronautics other than as an air carrier; or

"(7) for any person to continue to maintain any relationship established in violation of any of the foregoing paragraphs of this subsection."

(2) Subsection (b) of such section 408 (49 U.S.C. 1378(b)) is amended to read as follows:

"POWER OF BOARD

"(b) (1) In any case in which one or more of the parties to a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section is an air carrier

holding a valid certificate issued by the Board under section 401(d) of this section to engage in interstate or overseas air transportation, a foreign air carrier, or a person controlling, controlled by, or under common control with, such an air carrier or a foreign air carrier, the person seeking approval of such transaction shall present an application to the Board, and, at the same time, a copy to the Attorney General and the Secretary of Transportation, and thereupon the Board shall notify the persons involved in the transaction and other persons known to have a substantial interest in the proceeding, of the manner in which the Board will proceed in disposing of such application. Unless, after a hearing, the Board finds that the transaction will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall, by order, approve such transaction, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe, except the Board shall not approve such transaction—

Ante, p. 1712.

“(A) if it would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of air transportation in any region of the United States; or

Monopolization.

“(B) the effect of which in any region of the United States may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are outweighed in the public interest by the probable effect of the transaction in meeting significant transportation conveniences and needs of the public, and unless it finds that such significant transportation conveniences and needs may not be satisfied by a reasonably available alternative having materially less anticompetitive effects.

Competition.

The party challenging the transaction shall bear the burden of proving the anticompetitive effects of such transaction, and the proponents of the transaction shall bear the burden of proving that it meets the significant transportation conveniences and needs of the public and that such conveniences and needs may not be satisfied by a less anticompetitive alternative.

“(2) In any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, and determines that neither the Attorney General, nor the Secretary, nor any other person disclosing a substantial interest in the transaction then currently is requesting a hearing, the Board, no sooner than 30 days after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General and the Secretary not later than the day following the date of such publication), may determine that the public interest does not require a hearing and, in accordance with the standards set forth in subparagraphs (A) and (B) of paragraph (1) of this subsection, by order, approve or disapprove such transaction.

Notice.
Publication
in Federal
Register.

“(3) (A) In any case in which none of the parties to a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, is an air carrier holding a valid certificate issued by the Board under section 401(d) of this title to engage in interstate or overseas air transportation, a foreign air carrier, or a person controlling, controlled by, or under common control with, such an air carrier or a foreign air carrier, any person seeking

Application
filing.

approval of such transaction shall file with the Board not later than the forty-fifth day before the effective date of such transaction, a statement of its intent to enter into any of the prohibited acts set forth in subsection (a) of this section. The Board may, within forty-five days after the date of such filing, require such person to file an application for approval pursuant to the requirements of paragraph (1) of this subsection if it finds either that the proposed transaction may monopolize, tend to monopolize, or otherwise restrain competition in air transportation in any section of the country or that the person may not be fit, willing, and able to properly perform the transportation authorized by any license which is a part of such transaction and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board issued pursuant to this Act. Subject to subparagraph (B) of this paragraph, if the Board fails to require such person to file an application pursuant to such paragraph (1) within such forty-five days, the proposed transaction shall not be subject to subsection (a) of this section.

“(B) If the Board determines that any transaction is not subject to subsection (a) of this section as a result of the last sentence of subparagraph (A) of this paragraph and such transaction received such statutory exemption due to any fraud, misrepresentation, or omission of relevant and material facts, the Board may, pursuant to rules which it is authorized to prescribe, make such transaction subject to subsection (a) of this section.”

49 USC 1378.

(b) Section 408(c) of such Act is amended by inserting “any person controlling such air carrier,” after “air carrier,” the first place it appears in such subsection.

INTERLOCKS

SEC. 27. (a) Section 409 of the Federal Aviation Act of 1958 (49 U.S.C. 1379) is amended by striking out the center heading of such section and the center heading for subsection (a) of such section and inserting in lieu thereof the following section center heading:

“INTERLOCKING RELATIONSHIPS”.

(b) Section 409 of the Federal Aviation Act of 1958 is also amended by striking out “SEC. 409. (a)” and inserting in lieu thereof “SEC. 409.”

(c) Section 409 (as amended by subsections (a) and (b) of this section) is amended as follows:

(1) Paragraphs (1), (2), and (3) are each amended by striking out “is engaged in any phase of” and inserting in lieu thereof “is substantially engaged in the business of”.

(2) Paragraphs (4), (5), and (6) are each amended by striking out “engaged in any phase of” and inserting in lieu thereof “substantially engaged in the business of”.

Repeal.

(d) Section 409(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1379(b)) is hereby repealed.

(e) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the center heading

“TITLE IV—AIR CARRIER ECONOMIC REGULATION”

is amended by striking out

“Sec. 409. Prohibited interests.

“(a) Interlocking relationships.

“(b) Profit from transfer of securities.”

and inserting in lieu thereof

“Sec. 409. Interlocking relationships.”

AGREEMENTS

SEC. 28. (a) Section 412(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1382(a)) is amended—

(1) by inserting in the subsection center heading “AFFECTING FOREIGN AIR TRANSPORTATION” immediately after “AGREEMENTS”; and

(2) by inserting “foreign” immediately after “affecting”.

(b) Section 412(b) of such Act is amended by inserting “affecting foreign air transportation” immediately after “agreement” each place it appears in such section.

(c) Section 412 of such Act is further amended by adding at the end thereof the following new subsections:

“FILING AND APPROVAL OF AGREEMENTS AFFECTING INTERSTATE OR OVERSEAS AIR TRANSPORTATION

“(c) (1) Any air carrier may file with the Board a true copy, or, if oral, a true and complete memorandum, of any contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise), or a request for authority to discuss possible cooperative working arrangements, affecting interstate or overseas air transportation and in force on the effective date of this subsection, or thereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier.

“(2) (A) The Board shall by order disapprove any contract, agreement, or request filed pursuant to paragraph (1) of this subsection, whether or not previously approved by it, that it finds to be adverse to the public interest or in violation of this Act, and shall by order approve any contract, agreement, or request, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act, except that—

“(i) the Board may not approve or, after periodic review, continue its approval of any such contract, agreement, or request, or any modification or cancellation thereof, which substantially reduces or eliminates competition, unless it finds that the contract, agreement, or request is necessary to meet a serious transportation need or to secure important public benefits and it does not find that such need can be met or such benefits can be secured by reasonably available alternative means having materially less anticompetitive effects;

“(ii) the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it; and

“(iii) the Board may not approve any such contract or agreement, or any modification or cancellation thereof, that limits the level of capacity among air carriers in markets in which they compete, that fixes rates, fares, or charges between or among air carriers (except for joint rates, fares, or charges).

“(B) In any proceeding before the Board involving the application of the standards set forth in subparagraph (A) (i) of this paragraph, the party opposing the proposed contract, agreement, or request shall have the burden of proving the reduction or elimination of competition, and the availability of alternative means having less anticompeti-

tive effects, and the party defending the proposed contract, agreement, or request shall have the burden of proving transportation need or public benefits.

“(C) The findings required by subparagraph (A) (i) of this paragraph, shall be included in any order of the Board approving or disapproving any contract or agreement, or any memorandum of any contract or agreement, or any modification or cancellation thereof, or any request.

“PROCEEDINGS UPON FILING

Written
notice.

“(d) Upon the filing of any contract or agreement, or any modification or cancellation thereof, or any request for authority to discuss possible cooperative working arrangements, pursuant to subsection (a) or (c) of this section, the Board, in accordance with regulations which it prescribes, shall provide to the Attorney General and the Secretary of Transportation written notice of, and an opportunity to submit written comments on, the filed document. The Board may, upon its own initiative or if requested by the Attorney General or such Secretary, hold a hearing, in accordance with regulations prescribed by the Board, to determine if a contract or agreement, or request for discussion authority, whether or not previously approved, is consistent with the provisions of this Act.”

Hearings.

(d) That portion of the table of contents which appears under the side heading

“Sec. 412. Pooling and other agreements.”

is amended by striking out

“(a) Filing of agreements required.

“(b) Approval by Board.”

and inserting in lieu thereof

“(a) Filing of agreements affecting foreign air transportation required.

“(b) Approval by Board.

“(c) Filing and approval of agreements affecting interstate or overseas air transportation.

“(d) Proceedings upon filing.”.

MUTUAL AID AGREEMENTS

SEC. 29. (a) Section 412 of the Federal Aviation Act of 1958 (49 U.S.C. 1382) is amended by adding at the end thereof the following new subsection:

“MUTUAL AID AGREEMENTS

“(e) (1) Notwithstanding any other provision of law, any mutual aid agreement between air carriers which was approved by the Board before the date of enactment of this subsection and which is in effect on such date of enactment shall be deemed disapproved and not in effect on and after such date of enactment.

“(2) No air carrier shall enter into any mutual aid agreement with any other air carrier, unless such air carrier files a true copy of such agreement with the Board and the Board approves such agreement pursuant to the provisions of this section. Notwithstanding subsection (c) of this section, the Board shall not approve any such agreement unless such agreement provides (A) that any air carrier will not receive payments for any period which exceed 60 per centum of the direct operating expenses during such period, (B) that benefits under the agreement are not payable for more than eight weeks during any labor strike, and that such benefits may not be for losses incurred

during the first thirty days of any labor strike, and (C) that any party to such agreement will agree to submit the issues causing any labor strike to binding arbitration pursuant to the Railway Labor Act if the striking employees request such binding arbitration.

45 USC 151.

“(3) For purposes of this subsection, the term—

“(A) ‘mutual aid agreement’ means any contract or agreement between air carriers which provides that any such air carrier will receive payments from the other air carriers which are parties to such contract or agreement for any period during which such air carrier is not engaging in air transportation, or is providing reduced levels of service in air transportation, due to a labor strike; and

“Mutual aid agreement.”

“(B) ‘direct operating expenses’ includes interest expenses but does not include depreciation or amortization expenses.”

“Direct operating expenses.”

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

“Sec. 412. Pooling and other agreements.”

is amended by inserting at the end thereof

“(e) Mutual aid agreements.”.

ANTITRUST EXEMPTION

SEC. 30. (a) Section 414 of the Federal Aviation Act of 1958 (49 U.S.C. 1384) is amended to read as follows:

“ANTITRUST EXEMPTION

“SEC. 414. In any order made under section 408, 409, or 412 of this Act, the Board may, as part of such order, exempt any person affected by such order from the operations of the ‘antitrust laws’ set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board in such order and those transactions necessarily contemplated by such order, except that the Board may not exempt such person unless it determines that such exemption is required in the public interest.”

49 USC 1378,
1379, 1382.

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading

“TITLE IV—AIR CARRIER ECONOMIC REGULATION”

is amended by striking out

“Sec. 414. Legal restraints.”

and inserting in lieu thereof

“Sec. 414. Antitrust exemption.”.

EXEMPTION AUTHORITY

SEC. 31. (a) Section 416(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1386(b)(1)) is amended to read as follows:

“EXEMPTIONS

“(b)(1) Except as provided in paragraph (2) of this subsection, the Board, from time to time and to the extent necessary, may exempt from the requirements of this title or any provision thereof, or any rule,

regulation, term, condition, or limitation prescribed thereunder, any person or class of persons if it finds that the exemption is consistent with the public interest.

49 USC 1386.

(b) Section 416(b) of such Act is amended by adding at the end thereof the following new paragraph:

“(3) The Board may by order relieve foreign air carriers who are not directly engaged in the operation of aircraft in foreign air transportation from the provisions of this Act to the extent and for such periods as such relief may be in the public interest.”.

COMMUTER EXEMPTION

SEC. 32. Section 416(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1386(b)) is further amended by adding at the end thereof the following new paragraphs:

49 USC 1371.

“(4) Subject to paragraph (5) of this subsection, any air carrier in air transportation which provides (A) passenger service solely with aircraft having a maximum passenger capacity of less than fifty-six passengers, or (B) cargo service in air transportation solely with aircraft having a maximum payload capacity of less than eighteen thousand pounds, shall be exempt from the requirements of subsection (a) of section 401 of this title, and of such other sections of this Act as may be prescribed in regulations promulgated by the Board, if such air carrier conforms to such liability insurance requirements and such other reasonable regulations as the Board shall from time to time adopt in the public interest. The Board may by regulation increase the passenger or property capacities specified in this paragraph when the public interest so requires.

“(5) The exemption from section 401 of this title or any other requirement of this Act shall not apply to any air transportation by any air carrier between points both of which are in the State of Alaska, or one of which is in the State of Alaska and the other in Canada, unless such air carrier also holds authority to provide such air transportation from the State of Alaska.

“(6) Any air carrier operating within the State of Alaska pursuant to the exemption from section 401 of this title shall not be subject to any limitation, promulgated by the Board, on the number or location of points to be served by such air carrier, or any limitation on the frequency of service by such air carrier to points within such State, unless the Board, after a hearing, finds that the operation of such air carrier substantially impairs the ability of a certificated air carrier to provide the service authorized by its certificate, including but not limited to, the minimum service requirement for such State specified in section 419(c)(2) of this title.”.

Infra.

SMALL COMMUNITY AIR SERVICE

SEC. 33. (a) Title IV of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section.

“SMALL COMMUNITY AIR SERVICE

“GUARANTEED ESSENTIAL AIR TRANSPORTATION

“Eligible point.”
49 USC 1389.

“SEC. 419. (a) (1) For purposes of this subsection, the term ‘eligible point’ means any point in the United States to which, on the date of enactment of this section, any air carrier—

“(A) is providing service pursuant to a certificate issued to such carrier under section 401 of this title; or

“(B) is authorized pursuant to such certificate to provide such service, but such service is suspended on such date of enactment.

“(2) (A) With respect to each eligible point which on the date of enactment of this section is served by not more than one air carrier holding a certificate issued under section 401 of this title, not later than the last day of the one-year period beginning on such date of enactment, the Board, after considering the views of any interested community and the State agency of the State in which such community is located, shall determine what is essential air transportation for such point.

49 USC 1371.

“(B) With respect to any eligible point which on the date of enactment of this section is served by more than one air carrier holding a certificate issued under section 401 of this title and which thereafter receives service by not more than one such air carrier, not later than the last day of the six-month period beginning on the date on which the Board receives notice that service to such point will be provided by not more than one such air carrier, the Board, after considering the views of any interested community and the State agency of the State in which such community is located, shall determine what is essential air transportation to such point.

“(C) The Board shall periodically review the determination of what is essential air transportation to each eligible point, and may, based upon such review and consultations with any interested community and the State agency of the State in which such community is located, make appropriate adjustments as to what is essential air transportation to such point.

Review.

“(3) No air carrier shall terminate, suspend, or reduce air transportation to any eligible point below the level of essential air transportation established by the Board under paragraph (2) unless such air carrier—

“(A) if such air carrier—

“(i) holds a certificate issued under section 401 of this title, or

“(ii) does not hold such a certificate, but is receiving compensation pursuant to paragraph (5) of this subsection for service to such eligible point,

has given the Board, the appropriate State agency or agencies, and the communities affected at least ninety days notice prior to such termination, suspension, or reduction; and

“(B) if such air carrier does not hold such a certificate and is not receiving compensation pursuant to paragraph (5) of this subsection for service to such eligible point, has given the Board, the appropriate State agency or agencies, and the communities affected at least thirty days notice prior to such termination, suspension, or reduction.

“(4) Whenever the Board determines that essential air transportation will not be provided to any eligible point without compensation—

“(A) the Board shall provide notice that applications may be submitted by any air carrier which is willing to provide essential air transportation to such point for compensation under this subsection. In selecting an applicant to provide essential air transportation to such point for compensation the Board shall, among other factors, specifically consider—

“(i) the desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the communities involved;

“(ii) the experience of the applicant in providing scheduled air service in the vicinity of the communities for which essential air transportation is proposed to be provided; and

“(iii) notwithstanding the provisions of clause (ii), with respect to any eligible point in the State of Alaska, the experience of an applicant in providing scheduled air service, or significant patterns of nonscheduled air service pursuant to an exemption granted pursuant to section 416 of this title, in Alaska; and

49 USC 1386.

Compensation
rate,
establishment.

“(B) the Board shall establish, in accordance with the guidelines promulgated under subsection (d) of this section, a rate of compensation to be paid for providing such essential air transportation.

“(5) The Board shall make payments of compensation under this subsection at times and in a manner determined by the Board to be appropriate. The Board shall continue to pay compensation to any air carrier to provide essential air transportation to any eligible point only for so long as the Board determines it is necessary in order to maintain essential air transportation to such eligible point.

Service
extension.
Ante, p. 1720.

“(6) Notwithstanding section 401(j) of this title, if an air carrier has provided notice to the Board under paragraph (3) of such air carrier's intention to suspend, terminate, or reduce service to any eligible point below the level of essential air transportation to such point, and if at the conclusion of the applicable period of notice the Board has not been able to find another air carrier to provide essential air transportation to such point, the Board shall require the carrier which provided such notice to continue such service to such point for an additional 30-day period, or until another air carrier has begun to provide essential air transportation to such point, whichever first occurs. If at the end of such 30-day period the Board determines that no other air carrier can be secured to provide essential air transportation to such eligible point on a continuing basis, either with or without compensation, then the Board shall extend such requirement for such additional 30-day periods (making the same determination at the end of each such period) as may be necessary to continue air transportation to such eligible point until an air carrier can be secured to provide essential air transportation to such eligible point on a continuing basis.

49 USC 1376.

“(7) (A) If any air carrier (i) which is providing air transportation to any eligible point, and (ii) which is receiving compensation under this subsection or under section 406 of this title for providing such air transportation to such point, is required by the Board to continue service to such point beyond the date on which such air carrier would, but for paragraph (6) of this subsection, be able to suspend, terminate, or reduce service to such point below the level of essential air transportation to such point, then after such date such air carrier shall continue to receive such compensation until the Board finds another air carrier to provide essential air transportation to such point.

Losses,
compensation.
49 USC 1371.

“(B) If the Board requires an air carrier which holds a certificate issued under section 401 of this title and which is providing air transportation to any eligible point without compensation pursuant to paragraph (5) of this subsection or section 406 of this title to continue to provide essential air transportation to such point beyond the 90-day notice period after which, but for paragraph (6) of this subsection, such air carrier would be able to suspend, terminate, or reduce service to such point below essential air transportation for such point, then the Board shall compensate such air carrier for any losses that the air carrier incurs in complying with this subparagraph after the last day of such 90-day period, except that the Board shall not make any pay-

ments under this subparagraph, to any trunk air carrier for service to such point after the last day of the one-year period beginning on the date on which any payment is made to such air carrier under this subparagraph for service to such point.

“(C) If the Board requires an air carrier which does not hold a certificate issued under section 401 of this title, but which is providing air transportation to any eligible point without compensation pursuant to paragraph (5) of this subsection or section 406 of this title to continue to provide essential air transportation to such point beyond the 30-day notice period after which, but for paragraph (6) of this subsection, such air carrier would be able to suspend, terminate, or reduce service to such point below essential air transportation for such point, then the Board shall compensate such air carrier for any losses that such air carrier incurs in complying with this paragraph after the last day of such 30-day period.

49 USC 1371.

49 USC 1376.

“(9) During any period for which the Board requires any air carrier to continue providing air transportation to an eligible point which such air carrier has proposed to terminate, reduce, or suspend, the Board shall continue to make every effort to secure an air carrier to provide at least essential air transportation to such eligible point, on a continuing basis.

“(10) Unless the Board has determined what is essential air transportation for any eligible point pursuant to paragraph (2) of this subsection, the Board shall, upon petition of any appropriate representative of such point, prohibit any termination, suspension, or reduction of air transportation which reasonably appears to deprive such point of essential air transportation, until the Board has completed such determination.

Petition.

“(11) (A) After January 1, 1983, any air carrier may file an application with the Board seeking to have any compensation provided under section 406 of this title to the air carrier then serving an eligible point terminated in order to allow the applicant air carrier to provide air transportation to that eligible point for compensation under this section. The Board shall grant such application, after notice and a hearing if requested by the air carrier receiving subsidy under section 406, taking into consideration the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (5) of this subsection, if the applicant can show that termination of the compensation being paid under section 406, and that the provision of service by such applicant with compensation under this section, will result in a substantial—

Application.

“(i) improvement in the air service being provided such eligible point; and

“(ii) decrease in the amount of compensation that will be required to continue essential air transportation to such eligible point.

Notice and hearing.

“(B) After January 1, 1983, any air carrier may file an application with the Board seeking to have the compensation provided under this section to the air carrier then serving an eligible point, and which has been serving such eligible point for at least two years preceding the date on which such application is filed, terminated in order to allow the applicant air carrier to provide essential air transportation to such eligible point for compensation under this section. The Board shall grant such application, after notice and a hearing if requested by an air carrier receiving compensation under this section, taking into consideration the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (4) of this subsection, if the applicant air carrier can show that termination of the compensation being provided to the air carrier

Application.

Notice and hearing.

then serving such eligible point, and the provision of essential air transportation for compensation under this section by the applicant air carrier will result in a substantial—

“(i) improvement in the air transportation being provided such eligible point with no increase in the amount of compensation then being paid; or

“(ii) decrease in the amount of compensation that will be required to continue essential air transportation to that eligible point.

“(C) In disposing of each application filed under this subsection, the Board shall, in addition to considering the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (4), solicit and give great weight to the opinions of the communities affected by the proposed replacement of an air carrier under this subsection.

“OTHER AIR SERVICE

“Eligible point.” “(b) (1) For purposes of this subsection, the term ‘eligible point’ means—

49 USC 1371.

“(A) any point in the United States which has been deleted from a certificate issued under section 401 of this title between July 1, 1968, and the date of enactment of this section, both dates inclusive, and which the Board designates pursuant to paragraph 2 of this subsection; and

“(B) any other point in the State of Alaska or Hawaii designated by the Board under paragraph 2 of this subsection.

Eligible point designation, rules.

“(2) (A) Not later than January 1, 1980, after considering the views of State agencies and other interested parties, the Board shall, by rule, establish objective criteria for designating points as eligible points. In establishing or modifying such criteria, the Board shall consider, among other factors, the level of traffic generated by the point concerned, its future traffic generating potential, the cost to the Federal Government of providing essential air transportation to such point, the alternative means of transportation available to the residents of such point for access to the national transportation system and its principal communities of interest, and the degree of isolation of such point from the national air transportation system. The Board may, from time to time, by rule, modify the criteria established by it under this subparagraph.

Review.

“(B) Not later than January 1, 1980, the Board shall begin to review each point described in paragraph (1)(A) of this subsection to determine whether such point shall be designated as an eligible point under the criteria established under subparagraph (B) of this paragraph. The review and designation of each such point shall be completed before January 1, 1982.

“(C) On or after January 1, 1982, the Board, upon application by any interested party, may designate any point an eligible point under the criteria established under subparagraph (B) of this paragraph (i) if such point is in the State of Alaska or the State of Hawaii, and (ii) if such designation would not increase the total number of points receiving a subsidy under this section and section 406 of this title above the total number of points receiving a subsidy under such section 406 on July 1, 1968.

49 USC 1376.

Withdrawal.

“(3) The designation of any point by the Board under paragraph (2) of this subsection as an eligible point may be withdrawn if the point no longer meets the criteria for designation as an eligible point.

“(4) (A) With respect to any point which the Board designates as an eligible point pursuant to paragraph (2) of this subsection, not later than the last day of the six-month period beginning on the date on which the Board makes such designation, the Board, after considering the views of any interested community and the State agency of the State in which such community is located, shall determine what is essential air transportation to such point. Determination, consultation.

“(B) The Board shall periodically review the determination of what is essential air transportation to each eligible point, and may, based upon such review and consultations with any interested community and any State agency of the State in which such community is located, make appropriate adjustments as to what is essential air transportation to such point. Review.

“(5) Whenever the Board determines that essential air transportation will not be provided to any eligible point without compensation—

“(A) the Board shall provide notice that applications may be submitted by any air carrier which is willing to provide essential air transportation to such point for compensation under this subsection. In selecting an applicant to provide essential air transportation to such point for compensation, the Board shall, among other factors, specifically consider— Notice.

“(i) the desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the communities involved;

“(ii) the experience of the applicant in providing scheduled air service in the vicinity of the communities for which essential air transportation is proposed to be provided; and

“(iii) notwithstanding the provisions of clause (ii), with respect to any eligible point in the State of Alaska, the experience of an applicant in providing scheduled air service, or significant patterns of nonscheduled air service pursuant to an exemption granted pursuant to section 416 of this title, in Alaska; and Applicant selection.

“(B) the Board shall establish, in accordance with the guidelines promulgated under subsection (d) of this section, a rate of compensation to be paid for providing such essential air transportation. 49 USC 1386. Compensation rate, establishment.

“(6) The Board shall make payments of compensation under this subsection at times and in a manner determined by the Board to be appropriate. The Board shall continue to pay compensation to any air carrier to provide essential air transportation to any eligible point only for so long as the Board determines it is necessary in order to maintain essential air transportation to such eligible point. Payments.

“(7) Prior to terminating, suspending, or reducing essential air transportation to any eligible point, an air carrier— Notice.

“(A) if such air carrier—

“(i) holds a certificate issued under section 401 of this title, or 49 USC 1371.

“(ii) does not hold such a certificate, but is receiving compensation pursuant to paragraph (6) of this subsection for service to such eligible point, shall give the Board, the appropriate State agency or agencies, and the communities affected at least ninety days notice prior to such termination, suspension, or reduction; and

“(B) if such air carrier does not hold such a certificate and is not receiving compensation pursuant to paragraph (6) of this subsection for service to such eligible point, shall give the Board,

- the appropriate State agency or agencies, and the communities affected such notice (not to exceed 30 days), as the Board shall by regulation prescribe.
- Application. “(8) (A) After January 1, 1983, any air carrier may file an application with the Board seeking to have the compensation provided under this subsection to the air carrier then serving an eligible point, and which has been serving such eligible point for at least 2 years preceding the date on which such application is filed, terminated in order to allow the applicant air carrier to provide essential air transportation to such eligible point for compensation under this subsection. The Board shall grant such application, after notice and a hearing if requested by an air carrier receiving compensation under this section, taking into consideration the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (5) of this subsection, if the applicant can show that termination of the compensation being provided to the air carrier then serving such eligible point, and that the provision of essential air transportation for compensation under this subsection by the applicant, will result in a substantial—
- Notice and hearing. “(i) improvement in the air transportation being provided such eligible point with no increase in the amount of compensation then being paid; or
- “(ii) decrease in the amount of compensation that will be required to continue essential air transportation to that eligible point.
- “(B) In disposing of each application filed under this paragraph, the Board shall, in addition to considering the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (5), solicit and give great weight to the opinions of the communities affected by the proposed replacement of an air carrier under this subsection.

“LEVEL OF SAFETY

- “Commuter air carrier.”
- Ante, p. 1732.
- Compensation and service, conditions.
- “(c) (1) For purposes of this subsection the term ‘commuter air carrier’ means an air carrier exempt from any requirement of this Act under section 416(b) (3) of this title.
- “(2) Notwithstanding section 416(b) of this title, the Board shall not provide any compensation under this section to any commuter air carrier to provide service to any eligible point, and the Board shall prohibit any commuter air carrier from providing service to any eligible point, unless the Board determines that such commuter air carrier—
- “(A) is fit, willing, and able to perform such service; and
- “(B) that all aircraft which will be used to perform such service and all operations relating to such service will conform to the safety standards established by the Administrator under paragraph (3) of this subsection.
- Safety standard regulations. “(3) Not later than the one-hundred-eightieth day after the date of enactment of this paragraph, the Administrator, by regulation, shall establish safety standards (A) for aircraft being used by commuter air carriers to provide any service described in paragraph (2) of this subsection, and (B) for all operations relating to such service. Such safety standards shall become effective not later than the last day of the eighteenth month which begins after such date of enactment and shall impose requirements upon such commuter air carriers to assure that the level of safety provided to persons traveling on such commuter

air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling on air carriers which provide service pursuant to certificates issued under section 401 of this title. 49 USC 1371.

“GUIDELINES FOR COMPENSATION

“(d) The Board shall, by rule, establish guidelines to be used by the Board in computing the fair and reasonable amount of compensation required to insure the continuation of essential air transportation to any eligible point. Such guidelines shall include expense elements based upon representative costs of air carriers providing scheduled air transportation of persons, property, and mail, using aircraft of the type determined by the Board to be appropriate for providing essential air transportation to the eligible point. Rule.

“INSURANCE

“(e) No air carrier shall receive any compensation under this section unless such air carrier complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance or plans for self-insurance in the amount prescribed by the Board which are conditioned to pay, within the amount of such insurance, amounts for which such air carrier may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the operation or maintenance of aircraft.

“DEFINITION

“(f) For purposes of this section, the term ‘essential air transportation’ means scheduled air transportation of persons to a point provided under such criteria as the Board determines satisfies the needs of the community concerned for air transportation to one or more communities of interest and insures access to the Nation’s air transportation system, at rates, fares, and charges which are not unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, and— “Essential air transportation.”

“(1) with respect to air transportation to any point (other than in the State of Alaska), in no case shall essential air transportation be specified as fewer than two daily round trips, 5 days per week, or the level of service provided by air carriers to such point based on the schedules of such air carriers in effect for calendar year 1977, whichever is less; and

“(2) with respect to air transportation to any point in Alaska, essential air transportation shall not be specified at a level of service less than that which existed for such point during calendar year 1976, or two round trips per week, whichever is greater, unless otherwise specified under an agreement between the Board and the State agency of the State of Alaska, after consultation with the community affected.

“DURATION OF PROGRAM

“(g) This section shall cease to be in effect after the last day of the ten-year period which begins on the date of enactment of this section.”

(b) That portion of the table of contents which appears under the center heading

“TITLE IV—AIR CARRIER ECONOMIC REGULATION

is amended by adding at the end thereof

- “Sec. 419. Small community air service.
 - “(a) Guaranteed essential air transportation.
 - “(b) Other air service.
 - “(c) Level of safety.
 - “(d) Guidelines for compensation.
 - “(e) Insurance.
 - “(f) Definitions.
 - “(g) Duration of program.”.

PRESIDENTIAL REVIEW OF INTERNATIONAL ROUTE CASES

SEC. 34. Section 801(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1461(a)) is amended to read as follows:

“THE PRESIDENT OF THE UNITED STATES

“SEC. 801. (a) The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in foreign air transportation, or any permit issuable to any foreign air carrier under section 402 of this Act, shall be presented to the President for review. The President shall have the right to disapprove any such Board action concerning such certificates or permits solely upon the basis of foreign relations or national defense considerations which are within the President’s jurisdiction, but not upon the basis of economic or carrier selection considerations. Any such disapproval shall be issued in a public document, setting forth the reasons for the disapproval to the extent national security permits, within sixty days after submission of the Board’s action to the President. Any such Board action so disapproved shall be null and void. Any such Board action not disapproved within the foregoing time limits shall take effect as action of the Board, not the President, and as such shall be subject to judicial review as provided in section 1006 of this Act.”.

49 USC 1372.
Disapproval,
issuance.

49 USC 1486.

ASSESSMENT OF CIVIL PENALTIES

SEC. 35. (a) Paragraph (1) of subsection (a) of section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(1)) is amended by inserting after the fourth sentence thereof the following new sentences: “The amount of any such civil penalty for any violation of any provision of title IV of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i) of this Act, or any term, condition, or limitation of any permit or certificate issued under title IV shall be assessed by the Board only after notice and an opportunity for a hearing and after written notice upon a finding of violation by the Board. Judicial review of any order of the Board assessing such a penalty may be obtained only pursuant to section 1006 of this Act.”.

Notice and
hearing.

49 USC 1371.
49 USC 1482.

Compromise.

(b) Paragraph (2) of subsection (a) of section 901 is amended to read as follows:

“(2) Any civil penalty may be compromised by the Secretary of Transportation in the case of violations of title III, V, VI, or XII of this Act, or any rule, regulation, or order issued thereunder, or by the National Transportation Safety Board in the case of violations of title VII of this Act, or any rule, regulation, or order issued thereunder, or by the Postmaster General in the case of regulations issued by him.

49 USC 1341,
1401, 1421,
1441.

The amount of such penalty when finally determined or fixed by order of the Board, or the amount agreed upon in compromise, may be deducted from any sums which the United States owes to the person charged.”

PROCEDURES FOR CIVIL PENALTIES

SEC. 36. (a) The first sentence of subsection (b) (1) of section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473 (b) (1)) is amended by inserting “or assessed” immediately after “imposed”.

(b) The second sentence of subsection (b) (1) of such section 903 is amended by inserting “with respect to proceedings involving penalties other than those assessed by the Board,” immediately after “except that”.

RATES

SEC. 37. (a) Subsection (d) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482 (d)) is amended—

(1) in paragraph (1), by inserting “or (4)” immediately after “paragraph (2)”;

(2) by adding at the end thereof the following new paragraphs:

“(4) The Board shall not have authority to find any fare for interstate or overseas air transportation of persons to be unjust or unreasonable on the basis that such fare is too low or too high if—

Unjust or unreasonable fares, findings.

“(A) with respect to any proposed increase filed with the Board on or after July 1, 1979 (other than any proposed increase in any fare filed by any air carrier if such proposed fare is for air transportation between any pair of points and such air carrier provides air transportation to 70 per centum or more of the persons traveling in air transportation between such points on aircraft operated by air carriers with certificates issued under section 401 of this Act), such proposed fare would not be more than 5 per centum higher than the standard industry fare level for the same or essentially similar class of service, except that, while no increase of any fare within the limits specified in this subparagraph may be suspended, an increase in such fare, above the standard industry fare level shall be found unlawful if that increase results in a fare which is unduly preferential, unduly prejudicial, or unjustly discriminatory; or

49 USC 1371.

“(B) with respect to any proposed decrease filed after the date of enactment of this paragraph, the proposed fare would not be more than 50 per centum lower than the standard industry fare level for the same or essentially similar class of service, except that this provision shall not apply to any proposed decrease in any fare if the Board determines that such proposed fare would be predatory.

In determining whether any fare for air transportation of persons is unjust or unreasonable on the basis that it is too high, the Board shall take into consideration reasonably estimated or foreseeable future costs and revenues for a reasonably limited future period during which the fare at issue would be in effect.

“(5) In any Board proceeding under paragraph (1) of this subsection with respect to interstate or overseas air transportation of persons, the party opposing any fare or charge on the basis that it is too low shall have the burden of proving that the fare or charge is too low.

“(6) (A) For purposes of paragraph (4) of this section, ‘standard industry fare level’ means the fare level (as adjusted only in accordance with subparagraph (B) of this paragraph) in effect on July 1, 1977, for each interstate or overseas pair of points, for each class of

“Standard industry fare level.”

service existing on that date, and in effect on the effective date of the establishment of each additional class of service established after July 1, 1977.

Adjustments.

“(B) The Board shall, not less than semiannually, adjust each standard industry fare level specified in subparagraph (A) by increasing or decreasing such fare level, as the case may be, by the percentage change from the last previous period in the actual operating cost per available seat-mile for interstate and overseas transportation combined. In determining the standard, the Board shall make no adjustment to costs actually incurred.

Service classes, rules.

“(C) Not later than July 1, 1979, the Board shall issue rules modifying the rules governing those classes of service in existence on July 1, 1977, which classes provide lower fare levels during off-peak periods, so as to expand the period of availability of such classes. The Board shall allow any air carrier to establish additional classes of service in accordance with the objectives of subsection (e) (5) of this section or as may be otherwise consistent with the public interest.

Rule.

“(7) The Board may by rule increase the percentage specified in paragraph (4) (B) of this subsection.

Complaint.

“(8) Whenever a complaint is filed with the Board by a civic party under this subsection alleging that any individual or joint fare or charge demanded, charged, collected, or received for interstate or overseas air transportation is or will be unjustly discriminatory, unduly preferential, unduly prejudicial, or predatory, the Board shall grant, deny, or dismiss such complaint within ninety days after such complaint is filed.”

49 USC 1482.

(b) Subsection (e) of such section 1002 is amended to read as follows:

“RULE OF RATEMAKING

“(e) In exercising and performing its power and duties with respect to determining rates, fares, and charges described in paragraph (1) of subsection (d) of this section, the Board shall take into consideration, among other factors—

49 USC 1302.

- “(1) the criteria set forth in section 102 of this Act;
- “(2) the need for adequate and efficient transportation of persons and property at the lowest cost consistent with the furnishing of such service;
- “(3) the effect of prices upon the movement of traffic;
- “(4) the desirability of a variety of price and service options such as peak and off-peak pricing or other pricing mechanisms to improve economic efficiency and provide low-cost air service; and
- “(5) the desirability of allowing an air carrier to determine prices in response to particular competitive market conditions on the basis of such air carrier's individual costs.”

Uniform method.

49 USC 1482a.

(c) (1) Whenever the Board pursuant to its authority under section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482) prescribes a uniform method generally applicable to the establishment of joint fares, and the divisions thereof, between air carriers holding certificates issued under section 401 of such Act, it shall make such uniform method applicable to the establishment of joint fares, and the divisions thereof, between such air carriers and commuter air carriers. Any commuter air carrier which has an agreement with any air carrier to provide service for persons and property which includes transporta-

49 USC 1371.

Notice.

tion over its routes and transportation by such air carrier in air transportation shall provide at least ninety days notice to such air carrier and to the Board prior to modifying, suspending, or terminating such service, and if such commuter air carrier fails to provide such notice, any uniform method made applicable to the establishment of joint fares, and the divisions thereof, between air carriers and commuter air carriers in accordance with the preceding sentence shall not apply to such commuter air carrier.

(2) For purposes of this subsection—

(A) the terms “air carrier” and “Board” have the meanings given such terms in the Federal Aviation Act of 1958; and

(B) the term “commuter air carrier” means any air carrier operating pursuant to section 416(b)(3) of the Federal Aviation Act of 1958 (49 U.S.C. 1386(b)(3)) who operates at least five round trips per week between one pair of points, pursuant to flight schedules.

(3) Paragraph (1) of this subsection shall apply to any uniform method described in such paragraph which the Board prescribes on or after December 27, 1974.

Definitions.

49 USC 1301
note.

TIME REQUIREMENTS

SEC. 38. (a) Title X of the Federal Aviation Act of 1958 (49 U.S.C. 1481 et seq.) is amended by adding at the end thereof the following new section:

“TIME REQUIREMENTS

“SEC. 1010. In the case of any application or other written document submitted to the Board under section 408, 409, 412, or 416 of this Act on or after the one-hundred-eightieth day after the date of enactment of this section, the Board shall—

Final order
or decision,
issuance.
49 USC 1490,
49 USC 1378,
1379, 1382.

“(1) if the Board orders an evidentiary hearing, issue a final order or decision with respect to such written document, not later than the last day of the twelfth month which begins after the submission of such document, except in the case of an application submitted under section 408 of this Act, the Board shall issue its final order or decision not later than the last day of the sixth month after submission; or

“(2) if the Board does not order an evidentiary hearing, issue a final order or decision with respect to such document, not later than the last day of the sixth month which begins after the date of the submission of such document.”.

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading

“TITLE X—PROCEDURE”

is amended by adding at the end thereof

“Sec. 1010. Time requirements.”.

WITHHOLDING OF INFORMATION

SEC. 39. Section 1104 of the Federal Aviation Act of 1958 (49 U.S.C. 1504) is amended to read as follows:

"WITHHOLDING OF INFORMATION

49 USC 1504.

"SEC. 1104. Any person may make written objection to the public disclosure of information contained in any application, report, or document filed pursuant to provisions of this Act or of any information obtained by the Board, the Secretary of State, or the Secretary of Transportation pursuant to the provisions of this Act stating the grounds for such objection. Any information contained in such application, report, or document, or any such other information obtained by the Board, the Secretary of State, or the Secretary of Transportation, shall be withheld from public disclosure by the Board, the Secretary of State, or the Secretary of Transportation, as the case may be, if disclosure of such information would prejudice the formulation and presentation of positions of the United States in international negotiations and adversely affect the competitive position of any air carrier in foreign air transportation. The Board, the Secretary of State, or the Secretary of Transportation, as the case may be, shall be responsible for classified information in accordance with appropriate law, except that nothing in this section shall authorize the withholding of information by the Board, the Secretary of State, or the Secretary of Transportation from the duly authorized committees of Congress."

SUNSET PROVISIONS

SEC. 40. (a) The Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.) is amended by adding at the end thereof the following new title:

"TITLE XVI—SUNSET PROVISIONS

"TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

"TERMINATION OF AUTHORITY

49 USC 1551.

"SEC. 1601. (a) (1) The following provisions of this Act (to the extent such provisions relate to interstate and overseas air transportation of persons) and the authority of the Board with respect to such provisions (to the same extent) shall cease to be in effect on December 31, 1981:

Ante, p. 1712.

"(A) Sections 401(d) (1), (2), and (3) of this Act (insofar as such sections require a determination of consistency with the public convenience and necessity and insofar as section 401(d) (3) prohibits persons holding certificates under section 401(d) (1) or (d) (2) from obtaining certificates to provide interstate or overseas charter air transportation of persons).

"(B) Section 401(d) (8) of this Act.

"(C) Section 401(e) (1) of this Act (insofar as such section permits the Board to specify terminal and intermediate points).

"(D) Section 401(j) of this Act (except with respect to essential air transportation).

"(E) Sections 401(n) (1) and (4) of this Act.

"(F) Section 404(a) of this Act (insofar as such section requires any air carrier to provide air transportation authorized by its certificate).

49 USC 1375.

"(G) Section 405(b) of this Act (insofar as such section requires the filing of any statement or schedule by any air carrier).

“(2) The following provisions of this Act (to the extent such provisions relate to interstate and overseas air transportation of persons) and the authority of the Board with respect to such provisions (to the same extent) shall cease to be in effect on January 1, 1983:

“(A) Section 403 of this Act.

49 USC 1373.

“(B) Section 404 of this Act (except insofar as such section requires air carriers to provide safe and adequate service).

49 USC 1374.

“(C) Section 407 (b) and (c) of this Act.

49 USC 1377.

“(D) Sections 1002 (d) (1) and (d) (2), (e), (g), (h), and (i) of this Act.

Ante, p. 1741.

“(3) The authority of the Board under sections 408 and 409 of this Act (relating to interstate and overseas air transportation) and the authority of the Board under section 414 of this Act (relating to such sections 408 and 409) is transferred to the Department of Justice on January 1, 1983.

49 USC 1378,
1379.

49 USC 1384.

“(4) Title II of this Act shall cease to be in effect on January 1, 1985.

49 USC 1321.

“TRANSFER OF CERTAIN AUTHORITY

“(b) (1) The following authority of the Board is transferred to the following Federal departments and instrumentalities:

“(A) The authority of the Board under sections 406 (b) (3) and (c) of this Act to provide compensation for air transportation to small communities and under section 419 of this Act is transferred to the Department of Transportation.

Ante, p. 1725.

Ante, p. 1732.

“(B) The authority of the Board under this Act with respect to foreign air transportation is transferred to the Department of Transportation which shall exercise such authority in consultation with the Department of State.

“(C) The authority of the Board under sections 408 and 409 of this Act (relating to foreign air transportation), the authority of the Board under section 412 of this Act, and the authority of the Board under section 414 of this Act (relating to such sections 408, 409, and 412) is transferred to the Department of Justice.

49 USC 1382.

“(D) The authority of the Board under this Act with respect to the determination of the rates for the carriage of mails in interstate and overseas air transportation is transferred to the Postal Service and such authority shall be exercised through negotiations or competitive bidding.

“(2) Any authority transferred under paragraph (1) of this subsection shall take effect on January 1, 1985.

“REPORT AND ASSESSMENT BY BOARD

“(c) Not later than January 1, 1984, the Board shall prepare and submit to the Congress a comprehensive review of the Board's implementation of the provisions of this Act during the preceding initial period of this Act's existence, and a comprehensive review of each of the Board's programs under this Act. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds for the Board and its programs for the fiscal year beginning October 1, 1983.

Review,
submittal
to Congress.

"ELEMENTS OF BOARD CONSIDERATION

Review provisions.

"(d) The comprehensive review of the Board's implementation of this Act, prepared for submission under subsection (c), shall include—

"(1) a detailed comparison of the degree of competition within the airline industry as of the year preceding enactment of this section and the final year covered by the review;

"(2) a comparison of the degree of pricing competition in the industry during those two one-year periods;

"(3) a comparison of the extent of unused authority held by the industry during those two one-year periods, with details as to the number of nonstop route segments which have been transferred from one carrier to another under section 401(d) (5) of his Act;

Ante, p. 1713.

"(4) an assessment of the degree to which agreements approved under section 412 of this Act have affirmatively or negatively affected the degree of competition within the industry;

49 USC 1382.

"(5) a comparison of the extent of air transportation service provided to small communities during the two one-year periods specified above, together with details as to the comparative subsidy costs during these two periods;

"(6) an assessment of the degree, if any, to which the administrative process has been expedited under this Act;

"(7) an assessment of the impact of the foregoing changes upon the national air transportation system in terms of benefits or detriments to the traveling and shipping public, the Postal Service, and the national defense, and the benefits and detriments to air carriers, certificated and uncertificated; and

"(8) the Board's opinion as to whether the foregoing changes in combination, have improved or harmed this Nation's domestic air transportation system and the United States-flag foreign air transportation system.

Continuation, opinion and recommendations.

This assessment shall be accompanied by a detailed opinion from the Board as to whether the public interest requires continuation of the Board and its functions beyond January 1, 1985, and, if it is the Board's conclusion that it should continue to exist, detailed recommendations as to how the provisions of this Act should be revised to insure continued improvement of the Nation's air transportation system beyond January 1, 1985. The Board's assessment under this subsection shall also be accompanied by a comparative analysis of procedures under section 801 of this Act before and after the date of enactment of the Airline Deregulation Act of 1978, together with the Board's opinion as to the benefits of each set of procedures.

49 USC 1461.

"ELEMENTS FOR EACH COMPREHENSIVE REVIEW

"(e) Each comprehensive review of the Board's programs under this Act, prepared for submission under subsection (c) of this section, shall include—

"(1) an identification of the objectives intended for the program, and the problem or need which the program was intended to address;

"(2) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

“(3) an assessment of alternative methods of achieving the purposes of the program;

“(4) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

“(5) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

“(6) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and in the year of submission, and of the budgetary costs incurred in the operation of the program;

“(7) a statement of the number and types of beneficiaries or persons or entities by the program;

“(8) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, energy consumption and conservation, and price inflation, including costs to consumers and to businesses;

“(9) an assessment of the impact of the program on the Nation's health and safety;

“(10) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in enacting this Act;

“(11) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

“(12) an analysis of the services which could be provided and performance which could be achieved if the program were contained at a level less than, equal to, or greater than the existing level; and

“(13) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executive or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.”.

(b) That portion of the table of contents contained in the first section of such Act is amended by inserting at the end thereof

“TITLE XVI—SUNSET PROVISIONS

“SEC. 1601. Termination of Civil Aeronautics Board and transfer of certain functions.

“(a) Termination of authority.

“(b) Transfer of certain authority.

“(c) Report and assessment by Board.

“(d) Elements for Board consideration.

“(e) Elements for each comprehensive review.”.

AMENDMENTS TO THE AIRPORT AND AIRWAY DEVELOPMENT ACT
OF 1970

Air carrier
airport
designation.
49 USC 1729.

SEC. 41. (a) Section 29 of the Airport and Airway Development Act of 1970 is amended—

(1) by striking out “Notwithstanding” and inserting in lieu thereof the following:

“(a) SERVICE BY INTRASTATE AIR CARRIER.—Notwithstanding”; and

(2) by inserting at the end thereof the following new subsection:

“(b) SUSPENDED OR DELETED SERVICE.—Notwithstanding any other provision of this title, any public airport which, on the date of enactment of the Airline Deregulation Act of 1978, is regularly served by an air carrier (other than a charter air carrier) certificated by the Civil Aeronautics Board under section 401 of the Federal Aviation Act of 1958 shall be deemed to be an air carrier airport (other than a commuter service airport) for the purposes of this title. This subsection shall cease to be in effect after September 30, 1980.”

49 USC 1371.

(b) Paragraph (1) of section 11 of the Airport and Airway Development Act of 1970 is amended by striking out “(other than a supplemental air carrier)” and inserting in lieu thereof “(other than a charter air carrier)”.

49 USC 1711.

GOVERNMENT GUARANTEE OF EQUIPMENT LOANS

SEC. 42. (a) (1) The first sentence of the first section of the Act entitled “An Act to provide for Government guarantee of private loans of certain air carriers for purchase of modern aircraft and equipment, to foster the development and use of modern transport aircraft by such carriers, and for other purposes”, approved September 7, 1957 (49 U.S.C. 1324 note) (hereinafter in this section referred to as the “Act”), is amended by inserting “and to promote the development of local, feeder, and short-haul charter air transportation of cargo” after “and short-haul air transportation”.

(2) The second sentence of the first section of the Act is amended by inserting “, charter air carriers, commuter air carriers, and intrastate air carriers” immediately after “air carriers”.

(b) Section 2 of the Act is amended to read as follows:

“Sec. 2. As used in this Act—

“(1) ‘aircraft purchase loan’ means any loan, or commitment in connection therewith, made for the purchase of commercial transport aircraft, including spare parts normally associated therewith;

“(2) ‘air carrier’ means any air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board under section 401(d)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)(1));

“(3) ‘charter air carrier’ has the meaning given such term in section 101(14) of the Federal Aviation Act of 1958;

“(4) ‘charter air transportation’ has the meaning given such term in section 101(15) of the Federal Aviation Act of 1958;

“(5) ‘commuter air carrier’ means any air carrier operating pursuant to section 416(b)(3) of the Federal Aviation Act of 1958 (49 U.S.C. 1386(b)(3)) who operates at least five round trip flights per week between one pair of points in accordance with published flight schedules;

Definitions.
49 USC 1324
note.

49 USC 1301.

“(6) ‘intrastate air carrier’ means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage primarily in intrastate air transportation (as such term is defined in section 101(26) of the Federal Aviation Act of 1958); and

“(7) ‘Secretary’ means the Secretary of Transportation.”

(c) Section 3 of the Act is amended to read as follows:

“SEC. 3. The Secretary is authorized to guarantee any lender against loss of principal or interest on any aircraft purchase loan made by such lender to—

“(1) any air carrier whose certificate (A) authorizes such air carrier to provide local or feeder air service, (B) authorizes scheduled passenger operations the major portion of which are conducted within the State of Hawaii, (C) authorizes operations (the major portion of which is conducted either within Alaska or between Alaska and the forty-eight contiguous States), within the State of Alaska (including service between Alaska and the forty-eight contiguous States, and between Alaska and adjacent Canadian territory), or (D) authorizes metropolitan helicopter service,

“(2) any charter air carrier for the purchase of any all-cargo nonconvertible aircraft,

“(3) any commuter air carrier, or

“(4) any intrastate air carrier.

Such guarantee shall be made in such form, on such terms and conditions, and pursuant to such regulations, as the Secretary deems necessary and which are not inconsistent with the provisions of this Act.”

(d) Section 4 of the Act is amended to read as follows:

“SEC. 4. (a) Subject to subsection (b) of this section, no guaranty shall be made—

“(1) extending to more than the unpaid interest and 90 percent of the unpaid principal of any loan;

“(2) on any loan or combination of loans for more than 90 percent of the purchase price of the aircraft, including spare parts, to be purchased therewith;

“(3) on any loan whose terms permit full repayment more than 15 years after the date thereof;

“(4) wherein the total face amount of such loan, and of any other loans to the same air carrier, charter air carrier, commuter air carrier, or intrastate air carrier or corporate predecessor of such air carrier, charter air carrier, commuter air carrier, or intrastate air carrier guaranteed and outstanding under the terms of this Act exceeds \$100,000,000;

“(5) unless the Secretary finds that, without such guaranty, in the amount thereof, the air carrier, charter air carrier, commuter air carrier, or intrastate air carrier would be unable to obtain necessary funds for the purchase of needed aircraft on reasonable terms;

“(6) unless the Secretary finds that the aircraft to be purchased with the guaranteed loan is needed to improve the service and efficiency of operation of the air carrier, charter air carrier, commuter air carrier, or intrastate air carrier;

“(7) unless the Secretary finds that the prospective earning power—

49 USC 1301.

Eligible
lenders.
49 USC 1324
note.

Restrictions.
49 USC 1324
note.

“(A) of the applicant air carrier or charter air carrier, together with the character and value of the security pledged, furnish (i) reasonable assurances of the applicant’s ability to repay the loan within the time fixed therefor, and (ii) reasonable protection to the United States; and

“(B) of the applicant commuter air carrier or intrastate air carrier, together with the character and value of the security pledged, furnish (i) reasonable assurances of the applicant’s ability and intention to repay the loan within the time fixed therefor, to continue its operations as a commuter air carrier or intrastate air carrier, and to the extent found necessary by the Secretary, to continue its operations as a commuter air carrier or intrastate air carrier between the same route or routes being operated by such applicant at the time of the loan guarantee, and (ii) reasonable protection to the United States; and

“(8) on any loan or combination of loans for the purchase of any new turbojet-powered aircraft which does not comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary acting through the Administrator of the Federal Aviation Administration (14 CFR part 36), as such regulations were in effect on January 1, 1977.

“(b) No guaranty shall be made by the Secretary under subsection (a) of this section on any loan for the purchase of any all-cargo nonconvertible aircraft by any charter air carrier in an amount which, together with any other loans guaranteed and outstanding under this Act to such charter air carrier, or corporate predecessor of such charter air carrier, would result in the ratio of the total face amount of such loans to \$100,000,000 exceeding the ratio of the amount of charter air transportation of such charter air carrier provided to medium, small, and non-hub airports during the twelve-month period preceding the date on which the application for such guaranty is made by such charter air carrier to the total amount of charter air transportation of such charter air carrier during such twelve-month period.”

(e) Section 8 of the Act is amended to read as follows:

“SEC. 8. The authority of the Secretary under section 3 of this Act shall terminate five years after the date of enactment of this section.”

EMPLOYEE PROTECTION PROGRAM

SEC. 43. (a). GENERAL RULE.—(1) The Secretary of Labor shall, subject to such amounts as are provided in appropriation Acts, make monthly assistance payments, or reimbursement payments, in amounts computed according to the provisions of this section, to each individual who the Secretary finds, upon application, to be an eligible protected employee. An eligible protected employee shall be a protected employee who on account of a qualifying dislocation (A) has been deprived of employment, or (B) has been adversely affected with respect to his compensation.

(2) No employee who is terminated for cause shall receive any assistance under this section.

(b) MONTHLY ASSISTANCE COMPUTATION.—(1) An eligible protected employee shall, subject to such amounts as are provided in appropriation Acts, receive a monthly assistance payment, for each month in which he is an eligible protected employee, in an amount computed by

Termination
date.

49 USC 1324
note.

Ante, p. 1749.

Payment by
Labor
Secretary.
49 USC 1552.

Eligibility.

the Secretary. The Secretary, after consultation with the Secretary of Transportation, shall, by rule, promulgate guidelines to be used by him in determining the amount of each monthly assistance payment to be made to a member of each craft and class of protected employees, and what percentage of salary such payment shall constitute for each applicable class or craft of employees. In computing such amounts for any individual protected employee, the Secretary shall deduct from such amounts the full amount of any unemployment compensation received by the protected employee.

Guideline
rules,
consultation.

(2) If an eligible protected employee is offered reasonably comparable employment and such employee does not accept such employment, then such employee's monthly assistance payment under this section shall be reduced to an amount which such employee would have been entitled to receive if such employee had accepted such employment. If the acceptance of such comparable employment would require relocation, such employee may elect not to relocate and, in lieu of all other benefits provided herein, to receive the monthly assistance payments to which he would be entitled if this paragraph were not in effect, except that the total number of such payments shall be the lesser of three or the number remaining pursuant to the maximum provided in subsection (e).

Relocation.

(c) ASSISTANCE FOR RELOCATION.—If an eligible protected employee relocates in order to obtain other employment, such employee shall, subject to such amounts as are provided in appropriation Acts, receive reasonable moving expenses (as determined by the Secretary) for himself and his immediate family. In addition, such employee shall, subject to such amounts as are provided in appropriation Acts, receive reimbursement payments for any loss resulting from selling his principal place of residence at a price below its fair market value (as determined by the Secretary) or any loss incurred in cancelling such employee's lease agreement or contract of purchase relating to his principal place of residence.

(d) DUTY TO HIRE PROTECTED EMPLOYEES.—(1) Each person who is a protected employee of an air carrier which is subject to regulation by the Civil Aeronautics Board who is furloughed or otherwise terminated by such an air carrier (other than for cause) prior to the last day of the 10-year period beginning on the date of enactment of this section shall have first right of hire, regardless of age, in his occupational specialty, by any other air carrier hiring additional employees which held a certificate issued under section 401 of the Federal Aviation Act of 1958 prior to such date of enactment. Each such air carrier hiring additional employees shall have a duty to hire such a person before they hire any other person, except that such air carrier may recall any of its own furloughed employees before hiring such a person. Any employee who is furloughed or otherwise terminated (other than for cause), and who is hired by another air carrier under the provisions of this subsection, shall retain his rights of seniority and right of recall with the air carrier that furloughed or terminated him.

49 USC 1371.

(2) The Secretary shall establish, maintain, and periodically publish a comprehensive list of jobs available with air carriers certificated under section 401 of the Federal Aviation Act of 1958. Such list shall include that information and detail, such as job descriptions and required skills, the Secretary deems relevant and necessary. In addition to publishing the list, the Secretary shall make every effort to

Job list,
establishment
and
publication.

- assist an eligible protected employee in finding other employment. Any individual receiving monthly assistance payments, moving expenses, or reimbursement payments under this section shall, as a condition to receiving such expenses or payments, cooperate fully with the Secretary in seeking other employment. In order to carry out his responsibilities under this subsection, the Secretary may require each such air carrier to file with the Secretary the reports, data, and other information necessary to fulfill his duties under this subsection.
- Reports and data, filing.**
- Negotiations.** (3) In addition to making monthly assistance or reimbursement payments under this section, the Secretary shall encourage negotiations between air carriers and representatives of eligible protected employees with respect to rehiring practices and seniority.
- (e) **PERIOD OF MONTHLY ASSISTANCE PAYMENTS.**—(1) Monthly assistance payments computed under subsection (b) for a protected employee who has been deprived of employment shall be made each month until the recipient obtains other employment, or until the end of the 72 months occurring immediately after the month such payments were first made to such recipient, whichever first occurs.
- (2) Monthly assistance payments computed under subsection (b) for a protected employee who has been adversely affected relating to his compensation shall be paid for no longer than 72 months, so long as the total number of monthly assistance payments made under this section for any reason do not exceed 72.
- (f) **RULES AND REGULATIONS.**—(1) The Secretary may issue, amend, and repeal such rules and regulations as may be necessary for the administration of this section.
- (2) The rule containing the guidelines which is required to be promulgated pursuant to subsection (b) of this section and any other rules or regulations which the Secretary deems necessary to carry out this section shall be promulgated within six months after the date of enactment of this section.
- (3) The Secretary shall not issue any rule or regulation as a final rule or regulation under this section until 30 legislative days after it has been submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives. Any rule or regulation issued by the Secretary under this section as a final rule or regulation shall be submitted to the Congress and shall become effective 60 legislative days after the date of such submission, unless during that 60-day period either House adopts a resolution stating that that House disapproves such rules or regulations, except that such rules or regulations may become effective on the date, during such 60-day period, that a resolution has been adopted by both Houses stating that the Congress approves of them.
- Submittal to Congress.**
- (4) For purposes of this subsection, the term "legislative day" means a calendar day on which both Houses of Congress are in session.
- "Legislative day."**
- (g) **AIRLINE EMPLOYEES PROTECTIVE ACCOUNT.**—All payments under this section shall be made by the Secretary from a separate account maintained in the Treasury of the United States to be known as the Airline Employees Protective Account. There are authorized to be appropriated to such account annually, beginning with the fiscal year ending September 30, 1979, such sums as are necessary to carry out the purposes of this section, including amounts necessary for the
- Appropriation authorization.**

administrative expenses of the Secretary related to carrying out the provisions of this section.

(h) DEFINITIONS.—For the purposes of this section—

(1) The term “protected employee” means a person who, on the date of enactment of this section, has been employed for at least 4 years by an air carrier holding a certificate issued under section 401 of the Federal Aviation Act of 1958. Such term shall not include any members of the board of directors or officers of a corporation.

(2) The term “qualifying dislocation” means a bankruptcy or major contraction of an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958, occurring during the first 10 complete calendar years occurring after the date of enactment of the Airline Deregulation Act of 1978, the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978, as determined by the Civil Aeronautics Board.

49 USC 1371.

(3) The term “Secretary” means the Secretary of Labor.

(4) The term “major contraction” means a reduction by at least 7½ percent of the total number of full-time employees of an air carrier within a 12-month period. Any particular reduction of less than 7½ percent may be found by the Board to be part of a major contraction of an air carrier if the Board determines that other reductions are likely to occur such that within a 12-month period in which such particular reduction occurs the total reduction will exceed 7½ percent. In computing a 7½-percent reduction under this paragraph, the Board shall not include employees who are deprived of employment because of a strike or who are terminated for cause.

(i) TRANSFER OF AUTHORITY OF THE BOARD.—The authority of the Board under this section is transferred to the Department of Transportation on January 1, 1985.

(j) TERMINATION.—The provisions of this section shall terminate on the last day the Secretary is required to make a payment under this section.

LABOR DISPUTE

SEC. 44. Within ten days after the date of enactment of this section the President, pursuant to section 10 of the Railway Labor Act, shall create a board to investigate and report on the dispute between Wier Air Alaska, Incorporated, and the Air Line Pilots Association. Such board shall report its findings to the President within thirty days from the date of its creation.

Emergency board.

45 USC 160.

COLLECTION OF FEES, CHARGES, AND PRICES

SEC. 45. Notwithstanding any other provisions of law, neither the Secretary of Transportation nor the Administrator of the Federal Aviation Administration shall collect any fee, charge, or price for any approval, test, authorization, certificate, permit, registration, conveyance, or rating relating to any aspect of aviation (1) which is in excess of the fee, charge, or price for such approval, test, authorization, certificate, permit, registration, conveyance, or rating which was in effect on January 1, 1973, or (2) which did not exist on January 1,

Review and approval by Congress.

49 USC 1341 note.

1973, until all such fees, charges, and prices are reviewed and approved by Congress.

CONTINUITY FOR CERTAIN CERTIFICATES

49 USC 1301
note.

SEC. 46. Any reference in any law, rule, regulation, or document of the United States to a supplemental air carrier or supplemental air transportation shall be deemed to be a reference to a charter air carrier or charter air transportation, respectively.

EXISTING DETERMINATIONS

49 USC 1301
note.

SEC. 47. All orders, determinations, rules, regulations, permits, contracts, certificates, rates, and privileges which have been issued, made, or granted, or allowed to become effective, by the President, the Civil Aeronautics Board, or the Postmaster General, or any court of competent jurisdiction, under any provision of law repealed or amended by this Act, or in the exercise of duties, powers, or functions, which are vested in the Board, and which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Board, or by any court of competent jurisdiction, or by operation of law.

Approved October 24, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1211 and No. 95-1211 pt. 2, accompanying H.R. 12611 (Comm. on Public Works and Transportation) and No. 95-1779 (Comm. of Conference).

SENATE REPORT No. 95-631 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 124 (1978):

Apr. 19, considered and passed Senate.

Sept. 14, 21, H.R. 12611 considered and passed House; passage vacated and S. 2493, amended, passed in lieu.

Oct. 14, Senate agreed to conference report.

Oct. 15, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 43:

Oct. 24, Presidential statement.