Collection: Roberts, John G.: Files
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ministration to the Department of Defense, in the event of war, will be accomplished smoothly and rapidly and effective operation of the agencies and functions affected by the transfer will be achieved after the transfer.

[EO 11161 amended by EO 11382 of Nov. 28, 1967, 32 FR 16247, 3 CFR, 1966–1970 Comp., p. 691]

Executive Order 11920—Establishing executive branch procedures solely for the purpose of facilitating Presidential review of decisions submitted to the President by the Civil Aeronautics Board

SOURCE: The provisions of Executive Order 11920 of June 10, 1976, appear at 41 FR 23665, 3 CFR, 1976 Comp., p. 121, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 801 of the Federal Aviation act, as amended (49 U.S.C. 1461), and as President of the United States of America, solely to provide Presidential guidance to department and agency heads and in order to facilitate Presidential review of decisions submitted to the President for his approval by the Civil Aeronautics Board pursuant to section 801 of the Federal Aviation Act, as amended, it is hereby ordered as follows:

SECTION 1. (a) Except as provided in this section, decisions of the Civil Aeronautics Board, hereinafter referred to as the CAB, transmitted to the President pursuant to section 801 of the Federal Aviation Act, as amended, hereinafter referred to as section 801, may be made available by the CAB for public inspection and copying following submission to the President.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 11652, as amended, decisions of the CAB transmitted to the President under section 801 shall be withheld from public disclosure for five days after submission to the President.

(c) At the same time that decisions of the CAB are submitted to the President pursuant to section 801, the CAB shall transmit copies thereof to the Secretary of State, the Secretary of Defense, and the Assistant to the President for National Security Affairs.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the CAB transmitted pursuant to subsection (c) above, and shall promptly advise the Assistant to the President for National Security Affairs or his designee, whether, and if so, why, action pursuant to Executive Order No. 11652, as amended, is deemed appropriate. If, after considering the above recommendations, the Assistant to the President for National Security Affairs or his designee determines that classification under Executive Order No. 11652 is appropriate, he shall take such action and immediately so inform the CAB. Action pursuant to this subsection shall be completed within five days of receipt of the decision by the President.

(e) On and after the sixth day following receipt by the President of a CAB decision submitted pursuant to section 801, the CAB is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under Executive order or statute other than section 801.

SEC. 2. (a) Views of departments and agencies outside of the Executive Office of the President, other than those views involving considerations of defense or foreign policy (including international negotiations costs) which are to be the subject of recommendations to the President in connection with his review under section 801, shall be presented to the CAB in accordance with the procedures of the CAB. While some issues will inevitably involve both questions of regulatory policy and defense or foreign policy, departments and agencies outside of the Executive Office of the President should make a conscientious effort to present their views on regulatory matters in proceedings before the CAB, and raise only matters of defense or foreign policy that are of Presidential concern in the course of the review under section 801.

(b) Departments and agencies outside of the Executive Office of the President which intend to make recommendations to the President on matters of defense or foreign policy and have such intentions while the matter is pending before the CAB, shall, except as confidentiality is required for reasons of defense or foreign policy, make the existence of such intentions and the conclusions to be recommended known to the CAB in the course of its proceedings.

SEC. 3. (a) In advising the President with respect to his review of an order submitted to him pursuant to section 801, departments and agencies outside of the Executive Office of the President shall:

(1) identify any matter contained in their respective recommendations which was not previously submitted to the CAB pursuant to section 2(a) above;

(2) explain why such matter was not previously submitted to the CAB for its consideration; and

(3) identify with particularity the defense or foreign policy implications of the CAB decision which are deemed appropriate for the President's consideration.

(b) Orders involving foreign and overseas air transportation certificates of U.S. carriers that are subject to the approval of the President are not subject to judicial review when the President approves or disapproves an order for reasons of defense or foreign policy. All disapprovals necessarily are based on such a Presidential decision, but approval by the President does not necessarily imply the existence of any defense or foreign policy reason. For the purpose of assuring whatever opportunity is available under the law for judicial review of the CAB decisions, all departments and agencies which make recommendations to the President pursuant to section 801 should indicate separately whether, and why, if the order or any portion of the order is approved, the President cannot state in his approval that no defense or foreign policy reason underlies his action.

SEC. 4. Individuals within the Executive Office of the President shall follow a policy of (a) refusing to discuss matters relating to the disposition of a case subject to the approval of the President under section 801 with any interested private party, or an attorney or agent for any such party, prior to the President's decision, and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President. Exceptions to this policy may only be made when the head of an appropriate department or agency outside of the Executive Office of the President personally finds

that direct written or oral communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy.

SEC. 5. Departments and agencies outside of the Executive Office of the President which regularly make recommendations to the President in connection with the Presidential review pursuant to section 801 shall, consistent with applicable law, including the provisions of Chapter 5 of Title 5 of the United States Code:

(a) establish public dockets for all written communications (other than those requiring confidential treatment for defense or foreign policy reasons) between their officers and employees and private parties in connection with the preparation of such recommendations; and

(b) prescribe such other procedures governing oral and written communications as they deem appropriate.

SEC. 6. Although it is recognized that the provisions set forth in this Order will frequently apply to review of decisions made in adversary proceedings involving private parties, this Order is intended solely for the internal guidance of the departments and agencies in order to facilitate the Presidential review process. This Order does not confer rights on any private parties.

SEC. 7. The provisions of this Order shall be effective on the 30th day following publication in the FEDERAL REGISTER.

Executive Order 12079—Authorizing certain functions of heads of departments and agencies under the Airport and Airway Development Act of 1970 to be performed without the approval of the President

SOURCE: The provisions of Executive Order 12079 of Sept. 18, 1978, appear at 43 FR 42233, 3 CFR, 1978 Comp., p. 224, unless otherwise noted.

By the authority vested in me by section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The authority vested in the heads of departments and agencies by Section 23(b) of the Airport and Airway Development Act of 1970 (84 Stat. 232; 49 U.S.C. 1723(b)), with the approval of the President and the Attorney General of the United States, to perform any acts and to execute any instruments necessary to make any conveyance requested by the Secretary of Transportation under Section 23(a) of that Act may be exercised by such heads of departments and agencies without the approval of the President.

SEC. 2. Executive Order No. 10536 of June 9, 1954, as amended, is revoked.

5/24 RAH, Jeff Shane

- contacts
- delay in rulings
- 801 processing
- Pan Am / United

Aviation operations office in Policy Office at DOT.
Pamphlet on operations transfer.
CAB precedent applicable (but not hard stare decisis).

1. Pan Am: filed application. Request for comments. Various bills pending: one routes counts that can be sold? Appeals beating efforts.

2. Request: ALJ, grounding, bd, delay. Order on 6/10

3. E.O. Bill Hughes (OMB) working w/ DOT. DOT decision, will come out for not def / for policy
Ex parte comments docketed and not considered.
Talk Horn, expedite processing.
Delegate 801 Presidential review
Shane: part of contact, except on carrier selection cases.
For policy: Sierzega

Official File
John Roberts

MAY 31 1985

MEMORANDUM FOR: DAVID CHEW

FROM: CONSTANCE HORNER

SUBJECT: Potential Changes in the Review Process for International Aviation Decisions Submitted to the President

My staff has proposed changes in the interagency review process used to advise the President on international aviation decisions (air cases) submitted by the Department of Transportation. Before pursuing these proposed changes, I would like to know of any White House guidance or concerns about the process and these proposals.

Current OMB Procedures

Interagency views on air cases have been collected by OMB since at least 1953. No law or executive order stipulates that OMB will assume this role; rather, informal agreements on procedures govern the process. Executive Order 11920, signed by President Ford in 1976, does instruct agencies on which views are appropriate for Presidential consideration, but E.O. 11920 is silent on the process involved.

Historically, the rationale for OMB involvement is twofold: 1) as an institution, OMB has more permanence than internal White House organizations, and 2) with its budget, policy, and regulatory review powers, OMB holds enough authority over reviewing agencies to effectively manage the coordination process.

My staff believes that two events call into question the need for OMB to continue its role. First, the Airline Deregulation Act of 1978 limited Presidential review of air cases to national defense and foreign relations considerations. With this restriction, all but a handful of the 60-70 air cases each year are routine. Second, the sunset of the Civil Aeronautics Board (CAB) transferred authority to send air cases to the President from an independent regulatory commission (CAB) to an executive branch agency (DOT).

OMB Staff Proposed Changes

The proposed changes are in the form of a new executive order to replace E.O. 11920. The changes, found primarily in Section 3 of the attached draft executive order (also attached is a copy of E.O. 11920), would do the following:

- Shift the responsibility from OMB to DOT for coordination of interagency views on non-controversial air cases.

- For the non-controversial air cases, establish a deadline of four weeks for DOT to advise the President.

- Continue OMB's current role for controversial cases. A case becomes "controversial" should any agency indicate that it recommends disapproval or if the agency indicates that it has concerns and wishes OMB coordination.

- Establish similar procedures for air cases with a statutory 10-day review period.

From OMB's point of view, the primary benefit from these changes would be a more efficient processing of air cases. Currently, interagency views on non-controversial cases are oftentimes not transmitted to the President until four to six weeks, or later, into the statutory 60 day review period. Quite frankly, this is due to a combination of OMB and reviewing agency (Justice, State, Defense, and the NSC) bureaucratic inertia. Also, in non-controversial air cases, the insertion of OMB into the process creates an additional paperwork burden, without contributing to the goal of advising the President of any national defense or foreign relations considerations.

Possible West Wing Concerns

As the receiver of the air case transmittal memoranda, you might wish to consider the following implications of these changes:

- A new executive order, with specified timetables and designated agencies, would be more difficult to change than the current informal arrangements.

- In some instances (usually controversial cases), OMB can serve to catch obvious errors in orders, protect against agency pressures, or provide early warning of potential problems with cases.

- While still in effect, E.O. 11920 is by now dated, and a new executive order could correct for changes resulting from both the 1978 Airline Deregulation Act and the transfer of responsibilities to DOT. An update would also clarify that the existing *ex parte* rules would apply to orders submitted by DOT.

The proposed changes do provide safeguards on the process. Because deadlines are specified, the President is assured of adequate time in which to make his decision. Also, because reviewing agencies are routinely aware of the deliberations that go into proposed DOT decisions, they are unlikely to be hindered by the proposed timetables. If any decision is controversial or if any reviewing agency believes that DOT should not coordinate the air case, the air case is automatically coordinated by OMB.

I will await your comments before recommending any action with regard to these proposals.

Attachments

DRAFT

THE PRESIDENT

Executive Order xxx

Establishing Executive Branch Procedures Solely for the Purpose of Facilitating Presidential Review of Decisions Submitted to the President by the Department of Transportation

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), and as President of the United States of America, solely to provide Presidential guidance to department and agency heads and in order to facilitate Presidential review of decisions submitted to the President for his review by the Department of Transportation pursuant to section 801 of the Federal Aviation Act, as amended, it is hereby ordered as follows:

Section 1. (a) Except as provided in this section, decisions of the Department of Transportation, hereinafter referred to as the DOT, transmitted to the President pursuant to section 801 of the Federal Aviation Act, as amended, hereinafter referred to as section 801, may be made available by the DOT for public inspection and copying following submission to the President.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 12356, decisions of the DOT transmitted to the President under section 801 shall be withheld from public disclosure for five days after submission to the President.

(c) At the same time that decisions of the DOT are submitted to the President pursuant to section 801, the DOT shall transmit copies thereof to the Secretary of State, the Secretary of Defense, the Attorney General, the Assistant to the President for National Security Affairs and the Director of the Office of Management and Budget.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the DOT transmitted pursuant to subsection (c) above, and shall promptly advise the Assistant to the President for National Security Affairs or his designee, whether, and if so, why, action pursuant to Executive Order No. 12356, is deemed appropriate. If, after considering the above recommendations, the Assistant to the President for National Security Affairs or his designee determines that classification under Executive Order No. 12356 is appropriate, he shall take such action and immediately so inform the DOT. Action pursuant to this subsection shall be completed within five days of receipt of the decision by the President.

THE PRESIDENT

(e) On and after the sixth day following receipt by the President of a DOT decision submitted pursuant to section 801, the DOT is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under Executive Order or statute other than section 801.

Sec. 2. (a) Views of departments and agencies outside of the Executive Office of the President, other than those views involving considerations of national defense or foreign relations, which are to be the subject of recommendations to the President in connection with his review under section 801, shall be presented to the DOT in accordance with the procedures of the DOT. While some issues will inevitably involve both questions of regulatory policy and national defense or foreign relations, departments and agencies outside of the Executive Office of the President should make a conscientious effort to present their views on regulatory matters in proceedings before the DOT and raise only matters of national defense or foreign relations that are of Presidential concern in the course of the review under section 801.

(b) Departments and agencies outside of the Executive Office of the President which intend to make recommendations to the President on matters of national defense or foreign relations and have such intentions while the matter is pending before the DOT shall, except as confidentiality is required for reasons of defense or foreign policy, make the existence of such intentions and the conclusions to be recommended known to the DOT in the course of its proceedings.

Sec. 3. After transmitting an Order under section 801 to the President for his review, the DOT shall obtain the recommendations to the President of the agencies referred to in section 1(c) of this Order.

(a) Should any agency recommend, or contemplate recommending, that any Order submitted by the DOT to the President under section 801, be disapproved by the President, such agency shall so inform the DOT and the Director of the Office of Management and Budget (hereinafter referred to as the OMB). Immediately upon the DOT's receipt of such advice, the DOT shall discontinue obtaining agency recommendations and defer any further coordinating role to the OMB as outlined in section 3 (c) of this Order. Unless specifically exempted by the DOT, the agencies referred to in section 1 (c) of this Order shall inform the DOT of the need for an OMB coordinating role, within twenty-one days

remunerative

of the DOT's issuance of a proposed Order, for Orders subject to a 60 day statutory review period under section 801(a), and within three days of the DOT's issuance of a proposed Order, for Orders subject to a ten day statutory review period under section 801(b).

(b) In the absence of a referral of a coordinating role to the OMB, the DOT is expected to transmit to the President a memorandum indicating that the agencies referred to in section 1 (c) of this Order, do not advise disapproval of the proposed Order for any national defense or foreign relations reason. Should the DOT transmit such a memorandum to the President past the 28th day since issuance of the proposed Order, the DOT shall notify the Director of the OMB, or his designee, of such delay, on or before the 28th day.

(c) If required by the conditions outlined in section 3(a) of this Order, the OMB shall assume the responsibility of receiving the views of the agencies referred to in section 1(c) of this Order, and any other appropriate agency, and summarizing such views in a timely memorandum to the President.

Sec. 4. (a) In advising the President with respect to his review of an order submitted to him pursuant to section 801, departments and agencies outside of the Executive Office of the President shall identify with particularity the defense or foreign policy implications of the DOT decision which are deemed appropriate for the President's consideration.

(b) Orders involving foreign and overseas air transportation certificates of U.S. carriers that are subject to disapproval of the President are not subject to judicial review when the President disapproves an order for reasons of national defense or foreign relations. All disapprovals necessarily are based on such a Presidential decision, but failure by the President to disapprove a DOT order does not necessarily imply the existence of any national defense or foreign relations reason. For the purpose of assuring opportunity is available under the law for judicial review of the DOT decisions, all departments and agencies which made recommendations to the President pursuant to section 801 should indicate separately whether, and why, if the Order or any portion of the order is not disapproved, the President cannot state that no national defense or foreign relations reason underlies his action.

THE PRESIDENT

Sec. 5. Individuals within the Executive Office of the President shall follow a policy of (a) refusing to discuss matters relating to the disposition of a case subject to the review of the President under section 801 with any interested private party, or an attorney or agent for any such party, prior to the President's decision, and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President. Exceptions to this policy may only be made when the head of an appropriate department or agency outside of the Executive Office of the President personally finds that direct written or oral communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy.

Sec. 6. Departments and agencies outside of the Executive Office of the President which regularly make recommendations to the President in connection with the Presidential review pursuant to section 801 shall, consistent with applicable law, including the provisions of Chapter 5 of Title 5 of the United States Code:

(a) establish public dockets for all written communications (other than those requiring confidential treatment for defense or foreign policy reasons) between their officers and employees and private parties in connection with the preparation of such recommendations; and

(b) prescribe such other procedures governing oral and written communications as they deem appropriate.

Sec. 7. Although it is recognized that the provisions set forth in this Order will frequently apply to review of decisions made in adversary proceedings involving private parties, this Order is intended solely for the internal guidance of the departments and agencies in order to facilitate the Presidential review process. This Order does not confer rights on any private parties.

Sec. 8. (a) None of the time deadlines referred to in this Order shall be construed as a limitation on an expedited Presidential review of any Order proposed under section 801.

(b) Executive Order 11920 of June 10, 1976, is revoked as of the effective date of this Order.

(c) This Order shall become effective on the 30th day following publication in the Federal Register.

Executive Order 11920 • June 10, 1976

Establishing Executive Branch Procedures Solely for the Purpose of Facilitating Presidential Review of Decisions Submitted to the President by the Civil Aeronautics Board

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), and as President of the United States of America, solely to provide Presidential guidance to department and agency heads and in order to facilitate Presidential review of decisions submitted to the President for his approval by the Civil Aeronautics Board pursuant to section 801 of the Federal Aviation Act, as amended, it is hereby ordered as follows:

SECTION 1. (a) Except as provided in this section, decisions of the Civil Aeronautics Board, hereinafter referred to as the CAB, transmitted to the President pursuant to section 801 of the Federal Aviation Act, as amended, hereinafter referred to as section 801, may be made available by the CAB for public inspection and copying following submission to the President.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 11652, as amended, decisions of the CAB transmitted to the President under section 801 shall be withheld from public disclosure for five days after submission to the President.

(c) At the same time that decisions of the CAB are submitted to the President pursuant to section 801, the CAB shall transmit copies thereof to the Secretary of State, the Secretary of Defense, and the Assistant to the President for National Security Affairs.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the CAB transmitted pursuant to subsection (c) above, and shall promptly advise the Assistant to the President for National Security Affairs or his designee, whether, and if so, why, action pursuant to Executive Order No. 11652, as amended, is deemed appropriate. If, after considering the above recommendations, the Assistant to the President for National Security Affairs or his designee determines that classification under Executive Order No. 11652 is appropriate, he shall take such action and immediately so inform the CAB. Action pursuant to this subsection shall be completed within five days of receipt of the decision by the President.

(e) On and after the sixth day following receipt by the President of a CAB decision submitted pursuant to section 801, the CAB is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under Executive order or statute other than section 801.

SEC. 2. (a) Views of departments and agencies outside of the Executive Office of the President, other than those views involving considerations of defense or foreign policy (including international negotiations costs) which are to be the subject of recommendations to the President in connection with his review under section 801, shall be presented to the CAB in accordance with the procedures of the CAB. While some issues will inevitably involve both questions of regulatory policy and defense or foreign policy, departments and agencies outside of the Executive Office of the President should make a conscientious effort to present their views on regulatory matters in proceedings before the CAB, and raise only matters of defense or foreign policy that are of Presidential concern in the course of the review under section 801.

(b) Departments and agencies outside of the Executive Office of the President which intend to make recommendations to the President on matters of defense or foreign policy and have such intentions while the matter is pending before the CAB, shall, except as confidentiality is required for reasons of defense or foreign policy,

make the existence of such intentions and the conclusions to be recommended known to the CAB in the course of its proceedings.

SEC. 3. (a) In advising the President with respect to his review of an order submitted to him pursuant to section 801, departments and agencies outside of the Executive Office of the President shall:

(1) identify any matter contained in their respective recommendations which was not previously submitted to the CAB pursuant to section 2(a) above;

(2) explain why such matter was not previously submitted to the CAB for its consideration; and

(3) identify with particularity the defense or foreign policy implications of the CAB decision which are deemed appropriate for the President's consideration.

(b) Orders involving foreign and overseas air transportation certificates of U.S. carriers that are subject to the approval of the President are not subject to judicial review when the President approves or disapproves an order for reasons of defense or foreign policy. All disapprovals necessarily are based on such a Presidential decision, but approval by the President does not necessarily imply the existence of any defense or foreign policy reason. For the purpose of assuring whatever opportunity is available under the law for judicial review of the CAB decisions, all departments and agencies which make recommendations to the President pursuant to section 801 should indicate separately whether, and why, if the order or any portion of the order is approved, the President cannot state in his approval that no defense or foreign policy reason underlies his action.

SEC. 4. Individuals within the Executive Office of the President shall follow a policy of (a) refusing to discuss matters relating to the disposition of a case subject to the approval of the President under section 801 with any interested private party, or an attorney or agent for any such party, prior to the President's decision, and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President. Exceptions to this policy may only be made when the head of an appropriate department or agency outside of the Executive Office of the President personally finds that direct written or oral communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy.

SEC. 5. Departments and agencies outside of the Executive Office of the President which regularly make recommendations to the President in connection with the Presidential review pursuant to section 801 shall, consistent with applicable law, including the provisions of Chapter 5 of Title 5 of the United States Code:

(a) establish public dockets for all written communications (other than those requiring confidential treatment for defense or foreign policy reasons) between their officers and employees and private parties in connection with the preparation of such recommendations; and

(b) prescribe such other procedures governing oral and written communications as they deem appropriate.

SEC. 6. Although it is recognized that the provisions set forth in this Order will frequently apply to review of decisions made in adversary proceedings involving private parties, this Order is intended solely for the internal guidance of the departments and agencies in order to facilitate the Presidential review process. This Order does not confer rights on any private parties.

SEC. 7. The provisions of this Order shall be effective on the 30th day following publication in the FEDERAL REGISTER.

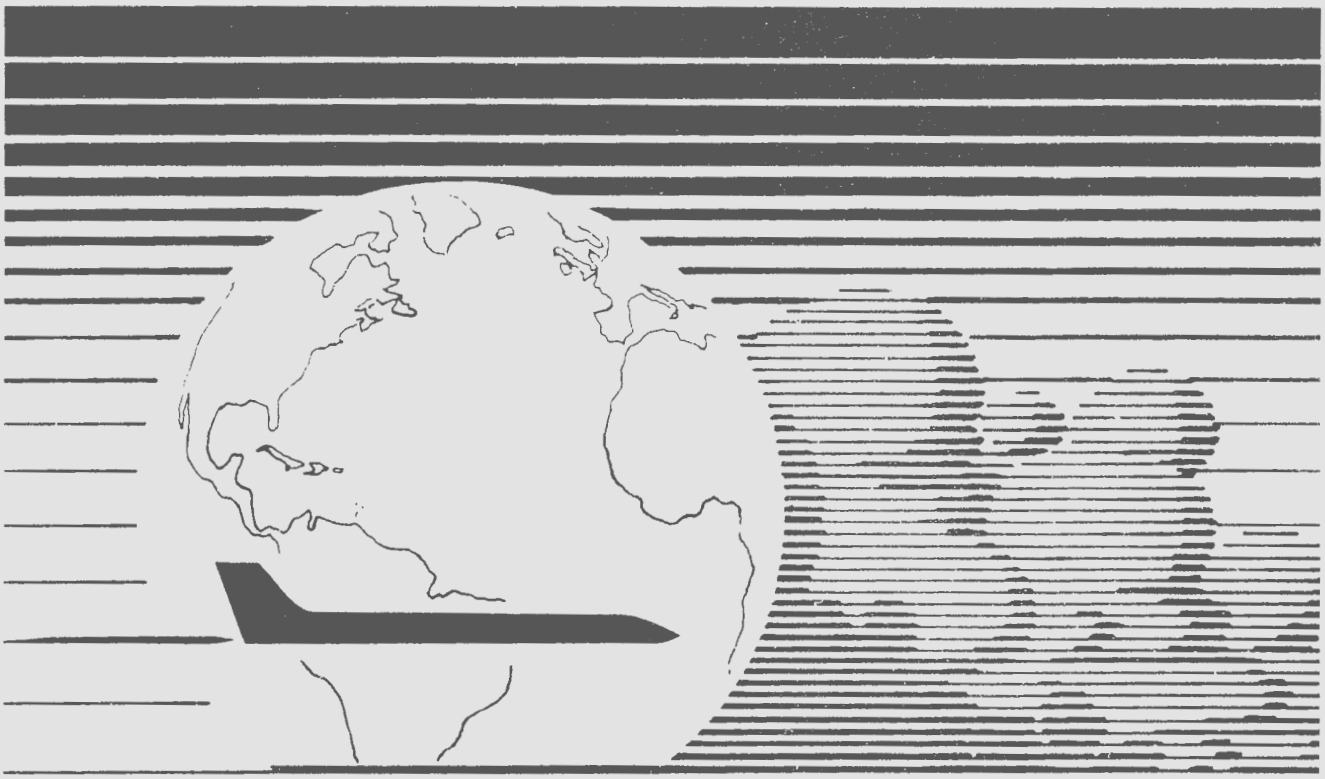
THE WHITE HOUSE,
June 10, 1976.

Gerald R. Ford

[FR Doc.76-17296 Filed 6-10-76;10:58 am]

U.S. Department of Transportation
Office of the Secretary of Transportation

DOT Guide to CAB Sunset



January 1, 1985

Guide to
Department of Transportation
Administration of
Airline Economic Regulatory Functions
Transferred from the
Civil Aeronautics Board

THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

The sunset of the Civil Aeronautics Board on December 31, 1984, was a milestone event, not only for the airline industry but also for the entire transportation sector. For the airline industry, CAB sunset marked the end of the agency that for almost 50 years regulated nearly every economic aspect of commercial air transportation. It was an affirmation of the conviction that the airline industry is a mature and competitive segment of the economy that no longer requires concentrated economic oversight by a single-purpose agency.

For the transportation sector, CAB sunset established an important precedent for deregulation of other transportation industries. The phasing out of government regulation of domestic airline operations has provided convincing evidence that not only can a regulated industry make the successful transition to independent economic decisionmaking, but also the transportation consumer can benefit through a wider choice of services and prices.

On January 1, 1985, most of the residual functions of the CAB transferred, together with the associated CAB staff, to the Department of Transportation. We chose not to consolidate these functions in a new and separate DOT operating administration because that would have simply recreated the CAB at DOT and perpetuated the notion that the airline industry requires a special, one-stop oversight agency. Instead, the CAB's residual functions have been integrated into the existing DOT organizational structure, as described in detail in this Guidebook.

Seven major elements of DOT have a role in carrying out the remaining airline economic regulatory functions:

* The Office of Governmental Affairs is responsible for airline consumer protection matters, including consumer assistance and consumer protection regulations.

* The Research and Special Programs Administration oversees airline data collection and dissemination.

* A newly established Office of Essential Air Service administers the Essential Air Service Program.

* The Office of Policy and International Affairs is responsible for airline economic licensing, international aviation matters, antitrust functions, and the employee protection program.

* The Office of the General Counsel provides legal support for the transferred airline functions, including enforcement, litigation, rulemaking, documentary services, and advice to decisionmakers.

* The Office of Administration includes a new Office of Hearings, which is staffed by administrative law judges who conduct oral evidentiary hearings.

* The Office of the Inspector General provides auditing services for the Essential Air Service Program and other airline economic program functions.

The Department is committed to carrying out its new aviation responsibilities efficiently, effectively, and in complete fairness to all participants.

Elizabeth H. Dole

Elizabeth Hanford Dole

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I. DESCRIPTION OF FUNCTIONS

Note: The following description of airline economic regulatory functions is a simplified guide to the administration of these functions at the Department of Transportation. It summarizes various statutory and regulatory requirements, but it is not legally authoritative. In all cases, the statutes and regulations contain the final and binding legal requirements.

A. LICENSING

Licensing functions are the responsibility of the Office of the Assistant Secretary for Policy and International Affairs. Ordinarily, the Assistant Secretary or his or her delegate will perform these functions for the Department, but the Secretary may exercise this authority in lieu of the Assistant Secretary. Staff actions are subject to review by the Assistant Secretary and ordinarily are effective ten days after the action is served.

For the licensing applications described below, the requirements for filing of documents, including number of copies to be filed, are specified in DOT procedural regulations, 14 CFR 302.3. Filing fees for these applications are specified in 14 CFR 389.

1. Section 401 Certificates

Each applicant for a section 401 certificate for scheduled or charter air transportation should file an application with the DOT Documentary Services Division (DSD) in the Office of the General Counsel. Separate applications for interstate/overseas and foreign authorities must be filed, with the required filing fees. There are basically three types of 401 certificate cases: (a) those requiring primarily a determination of fitness; (b) those requiring primarily a determination of public convenience and necessity (which includes international carrier selection cases); and (c) continuing fitness reviews under section 401(r).

(a) Fitness Determinations: To receive a section 401 certificate, a carrier must be found fit for the type of service it will provide. Applicants that have not been found fit previously or that are proposing substantial changes in operations (such as going from cargo to passenger service or charter to scheduled operations, or proposing the start up of service after a two-year dormant period) are required to establish their fitness to operate. After receiving a fitness application, the DSD will assign it a docket number, date it, and forward it to the Special Authorities Division of the Office of Aviation Operations (room 6420, telephone 755-3812) for review and action. Within 21 days, this Division will determine whether the application is complete. If it is not complete, the application will be rejected or the applicant will be notified and asked to provide further information to the DSD. After the application is complete, DOT will do one of the following:

(i) Issue a show cause order, through the DSD, tentatively finding the carrier fit and proposing to issue the requested certificate. The order will allow for objections to be filed. A final decision on the fitness application will be made within 180 days after the application is complete.

(ii) Institute formal proceedings before an administrative law judge in order to determine fitness. This course will be followed in cases where there is controversy concerning the applicant and where the case involves novel issues or where the facts are in dispute. In this event, a decision will be made according to the process applicable to formal proceedings (described in the section entitled "Formal Proceedings Requiring Oral Evidentiary Hearings").

(b) Public Convenience and Necessity (PC&N) Determinations: For carriers desiring to provide foreign air service, a determination of public convenience and necessity is required, in addition to the fitness finding described above. Applicants previously found fit and which hold certificates for operations comparable to those sought may file, with the DSD, applications for additional authority, amendments, alterations, modifications, and renewals of their 401 certificates. DSD will give each application a docket number, date it, and forward it to the Public Proceedings Division of the Office of Aviation Operations (room 6415, telephone 755-3186) for review and action. Within 21 days, this Division will determine if the application is complete. If the application is not complete, the applicant will be notified and asked to provide the required information to the DSD. Within 90 days after the application is complete, a decision will be made to process the application in one of the following ways: (i) dismiss the application; (ii) handle it under simplified procedures without an oral evidentiary hearing; or (iii) institute a formal hearing case where, for example, a choice must be made between competing applications for limited-designation international route authority (refer to the section on "Formal Proceedings Requiring Oral Evidentiary Hearings" for further information).

(c) Continuing Fitness Reviews under Section 401(r): U.S. certificated and commuter air carriers which do not institute service within two years of being found fit, or which cease operations for at least two years, must undergo a new fitness determination before commencing operations. Certificated carriers applying for a "two-year fitness review" should file an application with the DSD in the Office of the General Counsel. The application will be given a docket number, dated, and forwarded to the Special Authorities Division of the Office of Aviation Operations (room 6420, telephone 755-3812) for review. Commuters seeking a two-year review should file an original application directly with the Special Authorities Division. This Division will determine if the application is complete. If it is not complete, the applicant will be notified and asked to provide further information. After the application is complete, DOT will either (i) issue a show cause order, through the DSD, tentatively finding that the carrier continues to be fit and allowing 15 days for objections to be filed, or (ii) institute formal proceedings before an administrative law judge in order to determine fitness (refer to the section on "Formal Proceedings Requiring Oral Evidentiary Hearings" for further information).

2. U.S. Air Carrier All-Cargo Certificates under Section 418

An applicant for a domestic all-cargo certificate under section 418 of the Federal Aviation Act should file an application with the Documentary Services Division (DSD) in the Office of the General Counsel. The application will be given a docket number, dated, and forwarded to the Special Authorities Division of the Office of Aviation Operations (room 6420, telephone 755-3812) for review and action. Within 14 working days, this Division will determine if the application is complete. If not complete, the applicant will be notified and asked to provide further information to the DSD. Once complete, a notice of the application will be published in the Federal Register and 21 days will be allowed for objections to a favorable fitness finding and issuance of the certificate.

3. Foreign Air Carrier Permits under Section 402

Applicants for section 402 permits, including renewal, amendment and/or transfer of a permit, should file an application with the DOT Documentary Services Division (DSD) in the Office of the General Counsel. The application will be given a docket number, dated and forwarded to the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3800) for review and action. Within 21 days, the Licensing Division will determine if the application is complete. If it is not complete, the applicant will be notified and asked to provide further information to the DSD. If the additional information is not supplied within a specified, reasonable period, the application may be rejected. After the application is complete and as soon as possible after the date answers are due, DOT will do one of the following: (i) issue a final order through the DSD; (ii) issue a show cause order through the DSD, setting forth tentative findings and conclusions on the case and allowing a specified number of days for objections to be filed; or (iii) institute oral evidentiary proceedings before an administrative law judge. For (i) and (ii) above, except when there are unusual or controversial circumstances, a decision will be made within the Office of the Assistant Secretary for Policy and International Affairs. For (iii) above, a decision will be made according to the process applicable to all formal proceedings (described later in the section on "Formal Proceedings Requiring Oral Evidentiary Hearings").

4. Commuter Air Carrier Fitness Determinations under Section 419

Under section 419 of the Federal Aviation Act, commuter air carriers must be found fit to provide scheduled passenger service. Those wishing to establish a commuter air carrier service should file an application with the Documentary Services Division (DSD) of the Office of the General Counsel. DSD will refer the application to the Special Authorities Division of the Office of Aviation Operations (room 6420,

telephone 755-3812). This office review the application to determine whether it is complete, and, where necessary, contact the applicant for additional information. When all required information is received, DOT will issue a show cause order, through the DSD, stating tentative findings and allowing 15 days for objections to be filed.

Prior to commencing operations, commuter air carriers must also have on file a registration form and an insurance certificate. See the later section on "Registrations and Insurance Monitoring" for more information on this requirement.

Commuter air carriers are also subject to the continuing fitness requirement of section 401(r) of the Federal Aviation Act. See the preceding section on "Continuing Fitness Reviews under Section 401(r)" for further information which applies to commuters which do not institute service within two years of being found fit or which cease operations for at least two years.

5. Exemptions from Sections 401, 402, and 1108(b), Including Emergency Cabotage

Applicants for exemptions from sections 401, 402 (and 403 when accompanying either a 401 or 402 exemption application) or 1108(b), should file an application with the Documentary Services Division (DSD) in the Office of the General Counsel. The application will be given a docket number, dated, and forwarded to the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3800). The Licensing Division will recommend an appropriate action on the application. Except in unusual or controversial cases, a decision on the application will be made by the Director of the Office of Aviation Operations.

6. Name Change or Use of Trade Name

U.S. certificated and foreign air carriers proposing to change the name in which their certificate or permit is issued or proposing to use a trade name should file an application with the Documentary Services Division (DSD) in the Office of the General Counsel. The application will be given a docket number, dated, and forwarded to the Office of Aviation Operations (room 6402, telephone 472-5434). Answers to the application will be due within 30 days, unless the Department specifies a different period. After the answer period has run, DOT will issue an order, through DSD, granting permission for the change of name or use of the trade name if the use of such name would not be contrary to the public interest because of the potential for public confusion between the proposed name and one of an existing carrier. A decision on whether to allow the use of the name will normally be made by the Director of the Office of Aviation Operations.

7. Registrations and Insurance Monitoring

(a) U.S. Air Taxis and Commuters: Prior to commencing operations, air taxi operators and commuter air carriers must have on file a registration form (DOT Form OST F 4507, formerly CAB Form 298A) and an insurance certificate (for air taxis, DOT Form OST F 4521, formerly CAB Form 257; for commuters, DOT Form OST F 4520, formerly CAB Form 205A) covering their proposed operations. These forms, as well as subsequent amendments and insurance filings, are to be filed directly with the Licensing Division of the Office of Aviation Operations, (room 6412, telephone 755-3809). If the registration form is properly filled out and the insurance certificate provides coverage for the service proposed, the Licensing Division will return an approved copy of the registration to the applicant. In the case of new commuter applicants, the registration to provide scheduled passenger service will be approved when the carrier's fitness has been determined. (See the earlier section on "Commuter Air Carrier Fitness Determinations.)

(b) Canadian Charter Air Taxis: Canadian charter air taxi operators desiring to conduct small aircraft transborder services into the United States must file with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3809) the following information: (a) a registration form (DOT Form OST F 4505, formerly CAB Form 294A), (b) a certificate of insurance form (DOT Form OST F 4520, formerly CAB Form 205-A), and (c) a Waiver of the Warsaw Convention (DOT Form OST F 4523, formerly CAB Form 263). If the above forms are properly filled out and the insurance certificate demonstrates required coverage for the service proposed, DOT will publish notice of the registration by posting it in the public reference room of the Licensing Division and by including it in the Weekly Summary of Applications Filed, which is issued by the Documentary Services Division of the Office of the General Counsel. Interested parties are allowed 28 days to answer. If no objections are received, the Licensing Division will return an approved copy of the registration to the applicant as evidence of operating authority.

(c) Foreign Air Freight Forwarders: Foreign air freight forwarders desiring to conduct operations in interstate or overseas air transportation of property outbound from the United States must be registered before commencing operations. Applicants must file two copies of a completed registration form (DOT Form OST F 4506, formerly CAB Form 297A) with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3809) not later than 60 days before start-up. The application will be posted in the Licensing Division and noted in the DSD's Weekly Summary of Applications Filed. Upon expiration of the 28-day period for filing answers, the registration will be approved or rejected. Except in unusual or controversial cases, the decision will be made by the Director of the Office of Aviation Operations.

(d) Foreign Charter Operators: Foreign charter operators desiring to conduct public charters in interstate or overseas air transportation, and or in foreign air transportation carrying U.S.-originating traffic, must be registered before filing charter prospectuses and commencing operations. Applicants must file with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3809) two copies of completed DOT Form OST F 4530, formerly CAB Form 300. Applications are posted and noted in DSD's Weekly Summary of Applications Filed. Upon expiration of the 28-day answer period, the registration will be approved or rejected. Except in unusual or controversial cases, the decision will be made by the Director of the Office of Aviation Operations.

(e) U.S. and Foreign Air Carrier Liability Insurance: Insurance documents, including certificates evidencing current liability insurance coverage, amendments, and cancellation notices, for U.S. and foreign air carriers should be filed in the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3809). If the certificate does not provide the required coverage, or if it is subsequently canceled, the air carrier will be notified by the Licensing Division to provide the necessary coverage.

8. Charters

(a) Public Charter Prospectuses: Public charter prospectuses should be filed with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3809). These prospectuses must include certifications from the charter operator, air carrier, depository bank, and securer that required charter contracts, escrow accounts and security agreements have been established for the proposed program. The applicable filing forms are DOT Forms OST F 4532, 4533, and 4534, formerly CAB Forms 380B, C, and D. The Licensing Division will review these filings and advise the charter operator within 10 days whether the program may be advertised or whether additional information is required.

(b) Charter Waivers: Requests for waivers of the charter regulations should be filed with the Licensing Division of the Office of Aviation Operations. Waivers are to be filed at least 30 days in advance of the proposed flights. The Licensing Division will review the request and the applicant will be notified of its disposition.

(c) Overseas Military Personnel Charter Operating Authorizations: Persons proposing to operate charter flights for military and DOD civilian personnel stationed overseas are required to obtain an operating authorization as an Overseas Military Personnel Charter (OMPC) operator. Applicants should file an original and one copy of an application, directly with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3800). This Division

will review the application to determine whether it is complete, and, where necessary, contact the applicant for additional information. When the required information is received, DOT will issue an order, through the Documentary Services Division, finding the applicant capable of performing the proposed transportation and issuing it an operating authorization.

(d) Air Carrier Financial Security Agreements: U.S. and foreign air carriers operating U.S. originating passenger charter flights are required to obtain a surety bond or establish an escrow account for the protection of customer charter deposits. Copies of these security agreements should be filed with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3809). The Division will review the agreement and advise the carrier whether it is acceptable or requires modification.

(e) U.S. Charter Operations in Certain Foreign Markets: U.S. carriers desiring to conduct charter operations in a foreign market where a bilateral agreement or other intergovernmental arrangement requires the U.S. Government to formally advise the other government of the consistency of U.S. carrier charters with that undertaking, should follow procedures administered by the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3800). Such procedures usually involve providing the Licensing Division with advance notice of the carrier's proposed charter operations in those markets.

(f) Japan Charter Authorizations: U.S. carriers desiring to conduct charter operations to and from Japan should contact the Licensing Division, Office of Aviation Operations (room 6412, telephone 755-3800), for information concerning the availability of Japan charter slots, and the procedures to be followed to obtain and exercise these authorizations.

(g) Statements of Authorization for Foreign Air Carrier Charters: Foreign air carriers which are required to obtain statements of authorization for various charter operations should request this authority by filing three copies of completed DOT Form OST F 4540, formerly CAB Form 433, with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3800). Applications may also be made by letter. Applications are posted in the Licensing Division and noted in DSD's Weekly Summary of Applications Filed. The advance filing requirement varies with the type of authority sought: 5 business days for Fifth Freedom charters, 30 days for Third or Fourth Freedom charters subject to prior approval, 45 days for long-term wet leases (see separate "Wet Leases" section which follows), and 14 days for carriers requiring prior approval for national security reasons. Late applications will be accepted upon a showing of good cause. CAB orders requiring specific carriers to obtain these approvals continue in effect unless changed by DOT.

9. Miscellaneous Foreign Authorities

(a) Wet Leases: A U.S. carrier desiring to wet lease aircraft to a foreign carrier, or a foreign carrier desiring to wet lease aircraft either to a U.S. or to another foreign carrier, for long-term operations of more than 60 days' duration, should file an application for a statement of authorization, following the procedures outlined above under "Statements of Authorization for Foreign Air Carrier Charters." If the applicant lacks the underlying authority to conduct charter operations, it should request this authority by certificate, permit, or exemption.

(b) Operations by Foreign Civil Aircraft not In "Air Transportation": Operators of foreign civil aircraft desiring to conduct commercial operations, including agricultural, industrial, and commercial air operations requiring a foreign aircraft permit or special authorization, should file a request using DOT Form OST F 4509, formerly CAB Form 272, or file by letter or telex, with the Licensing Division, Office of Aviation Operations (room 6412, telephone 755-3800). The Licensing Division posts applications and they also appear in DSD's Weekly Summary of Applications Filed. The application must include a complete description of the proposed operation, a statement as to whether the applicant's homeland extends similar privileges to U.S. operators, and the reasons the applicant believes its request to be in the public interest. Applications should be filed at least 15 days before the proposed commencement of operations; however, late applications will be accepted upon a showing of good cause. A foreign aircraft permit or special authorization will be issued, if and as appropriate. Except in unusual or controversial cases, a decision on the application will be made by the Director of the Office of Aviation Operations.

(c) Blind Sector Authorizations: Applications by foreign carriers for authority to conduct blind sector operations (commingling on the same aircraft traffic moving in foreign air transportation with traffic not moving in foreign air transportation) should be filed in letter form with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3800), 60 days before commencement if the operations will extend for a period of three months or longer, or 20 days in advance if the operational period is less than three months. The application must include a complete description of the proposed operation, a statement as to whether the applicant's homeland extends similar privileges to U.S. carriers, and the reasons the applicant believes its request to be in the public interest. Except in unusual or controversial cases, a decision on the application will be made by the Director of the Office of Aviation Operations.

(d) Schedule Filing: Filings of U.S. carriers' schedules provided for by intergovernmental arrangements or agreements are to be submitted to the Director, Office of International Aviation Relations (room 6401, telephone 426-2403) 15 days before the schedules are required to be filed with the foreign government. Filing of foreign air carrier schedules pursuant to DOT regulations, intergovernmental arrangements or agreements should also be submitted to the Director, Office of International Aviation Relations.

(e) Intermodal Cargo Services: Foreign carriers desiring to conduct intermodal cargo services should file one of the following two types of applications. (i) If intermodal authority is provided for in a bilateral agreement, memorandum of consultations, or diplomatic note or letter, between the United States and the applicant's homeland, the applicant may request a statement of authorization for intermodal cargo services by filing two completed copies of DOT Form OST F 4500, formerly CAB Form 222 with the Licensing Division, Office of Aviation Operations (room 6412, telephone 755-3800). (ii) If there is no formal agreement between the United States and the applicant's homeland covering intermodal services, the applicant may request an exemption, following the procedures discussed under the section on "Exemptions from Sections 401, 402, and 1108(b)."

(f) Waiver or Modification of Filing Fees: A foreign carrier desiring to receive a waiver of all filing fees should file a letter requesting such waiver with the Licensing Division of the Office of Aviation Operations (room 6412, telephone 755-3800). The request should include evidence of whether the applicant's homeland charges U.S. carriers any fees analogous to those assessed by DOT.

B. TARIFFS, FARES, AND RATES

Tariff, fare, and rate matters will be the responsibility of the Office of the Assistant Secretary for Policy and International Affairs. Ordinarily, the Assistant Secretary or his or her delegate will perform these functions for the Department, but the Secretary may exercise this authority in lieu of the Assistant Secretary. Staff actions are subject to review by the Assistant Secretary and ordinarily are effective ten days after the action is served.

1. Tariff Administration

(a) Tariff Filing Procedures: Each air carrier or foreign air carrier is required to file its tariffs, including revisions thereof, in the Tariffs Division, Office of Aviation Operations (room 6408, telephone 472-5573). Tariffs must be accompanied by: (i) a letter of tariff transmittal in duplicate or in triplicate if the carrier or agent desires a receipt, provided that in the latter event a preaddressed postage-paid envelope is included; and (ii) the applicable filing fee prescribed by Part 389 of Chapter 14 of the Code of Federal Regulations (CFR).

(b) Special Tariff Permissions: Carriers may request permission to implement tariff changes on less than lawful notice (see 14 CFR Subpart P of Part 221). The requests should be made to the Tariffs Division, Office of Aviation Operations in duplicate (or in triplicate if the carrier desires a receipt, provided that in the latter event a preaddressed postage paid envelope shall be included). The request must be accompanied by the applicable filing fee, as prescribed by Part 389 of Chapter 14 of the CFR. Action will normally be taken on such requests within seven working days, except those requests which require further analysis as specified in 14 CFR 399.35.

(c) Tariff Exemption and Rules (Other Than Exemptions Under Section 416): Carriers may request waiver or modification of any of the requirements of the tariff regulations or for modification of section 403 with respect to the filing and posting of tariffs. Requests should be made to the Tariffs Division, Office of Aviation Operations in duplicate (or in triplicate if the carrier desires a receipt, provided that in the latter event a preaddressed postage-paid envelope shall be included). The request must be accompanied by the applicable filing fee, as prescribed by 14 CFR 389. Action will normally be taken within seven working days.

(d) Tariff Certifications: Individuals who desire certificated copies of tariff pages may submit requests by letter or telephone to the Tariffs Division, Office of Aviation Operations (room 6408, telephone 472-3376). The requester must provide his/her name and

address, origin and destination of the transportation involved, name of carrier, and date to be certified (date of commencement of transportation). The Tariffs Division will photocopy the appropriate pages, prepare necessary documentation, obtain required signatures and forward the certified documents to the requestor.

(e) Automated Tariff System: The Tariffs Division of the Office of Aviation Operations is responsible for long range planning of operating standards and policies to permit carriers or their agents to file tariffs electronically. The Division is also responsible for the planning, development and maintenance of automated fare and rate monitoring systems to assure that there is compliance with DOT's fare policies. DOT will continue in effect arrangements for the exchange of fare data that existed between tariff agents and the CAB. Copies of reports produced by the automated systems will be placed in the public reference room adjacent to the Tariffs Division (room 6408).

2. Fares and Rates

(a) Exemptions from Sections 403(a) and (b): Carriers seeking exemption from section 403(a) to carry traffic that otherwise could not fly under the terms of their effective tariffs should file a request with the DOT Documentary Services Division (DSD) in the Office of the General Counsel. DSD will date the request, assign it a docket number, and turn it over to the Fares and Rates Division of the Office of Aviation Operations (room 6408, telephone 472-3126) for action. The Division will review the request and prepare a response. Carriers seeking permission to carry free and reduced rate traffic not otherwise authorized by section 403(b) must file a request with the Fares and Rates Division, which will review and respond to the request.

(b) Complaints/Suspensions: Complainants seeking suspension of tariffs under section 1002(j) of the Federal Aviation Act should file a complaint with the Documentary Services Division (DSD) in the Office of the General Counsel. The complaint will be given a docket number, dated, and forwarded to the Fares and Rates Division of the Office of Aviation Operations for action. This Division will review and analyze the complaint and formulate a recommended order for DOT to issue. This order will either (i) dismiss the complaint, (ii) grant partial relief or (iii) suspend the tariffs for a period of 365 days and institute formal proceedings before an administrative law judge. The Assistant Secretary for Policy and International Affairs will ordinarily make the final decision, subject to Presidential review under section 801 of the Federal Aviation Act.

(c) Intercarrier Agreements Regarding International Fares and Rates: An applicant for section 412 approval and section 414 antitrust immunity of intercarrier agreements establishing international fares and rates should file its request with the Documentary Services

Division (DSD) of the Office of the General Counsel. DSD will date the application, give it a docket number, and refer it to the Fares and Rates Division of the Office of Aviation Operations (room 6408, telephone 472-3126). The Division will review and analyze the agreement, formulate a recommendation, and draft an order for DOT to issue. If the agreement involves major changes in foreign air transportation, the Assistant Secretary for Policy and International Affairs will ordinarily make the final decision. If it involves routine matters, the Director of the Office of Aviation Operations will issue a tentative decision which will become final ten days after the order is served, unless within such period a petition for review is filed or the Assistant Secretary gives notice that he will review the order on his own motion.

(d) Standard Foreign Fare and Rate Indices/Formulas: The Fares and Rates Division, Office of Aviation Operations, is responsible for establishment of benchmarks used to measure the non-suspend zones for international and transborder (U.S.-Canada) passenger fares and cargo rates. This Division will receive carrier cost data. An order updating the indices will be issued every two months.

(e) Airmail Rates (International and Alaska): Proceedings for the determination of rates of compensation for the transportation of mail by aircraft may be commenced by the filing of a petition by an air carrier whose rate is to be fixed or the United States Postal Service, or upon the issuance of an order by DOT. A petition must set forth the rate or rates to be established and a detailed economic justification sufficient to establish rate reasonableness. The petition should be filed with the DOT Documentary Services Division (DSD) and also served upon the Postal Service. The petition will be given a docket number, dated, and forwarded to the Fares and Rates Division of the Office of Aviation Operations. The Fares and Rates Division will either recommend that a formal hearing process be instituted or will prepare a show-cause order with provisional findings. In the first instance, a decision will be made according to the process described in the section on "Formal Proceedings Requiring Oral Evidentiary Hearings." In the second instance, persons having objections should file their objections within 10 days after the order's service date. Written answers and any supporting documents must be filed within 30 days after the service of the show cause order. If an answer raises a material issue of fact, the Assistant Secretary for Policy and International Affairs will issue a final order dealing with the issue and fixing the fair and reasonable rate or rates. If no notice of objection is filed, the Director, Office of Aviation Operations will issue a final order fixing the fair and reasonable rate or rates as specified in the show cause order.

Once mail rates are established, they are automatically updated by the Fares and Rates Division (usually semiannually) to reflect changes in unit operating costs reported by carriers.

(f) Airmail Contracts: Any certificated air carrier which is a party to certain contractual arrangements with the Postal Service for the transportation of mail in foreign air service or within the state of Alaska, entered into under section 5402(a) of the Postal Service Reorganization Act, must file each contract with the DOT Documentary Services Division (DSD) not later than 90 days before the effective date of the contract. DSD will refer the filing to the Fares and Rates Division of the Office of Aviation Operations for further action. Unless DOT disapproves the contract not later than 10 days prior to its effective date, the contract automatically becomes effective.

C. INTERNATIONAL AVIATION RELATIONS

International aviation relations are the responsibility of the Office of the Assistant Secretary for Policy and International Affairs. The Assistant Secretary or his or her delegate, under the supervision of the Secretary, will perform the functions associated with the conduct of international aviation relations in cooperation with the Department of State.

1. Negotiations with Foreign Governments — Formal and Informal

Comments and recommendations on formal and informal negotiations with foreign governments and on bilateral aviation issues are to be submitted in duplicate to the Director of the Office of International Aviation Relations (room 6401, telephone 426-2903) in the Office of the Assistant Secretary for Policy and International Affairs. This Office will forward a copy of the submission to the Office of the Assistant General Counsel for International Law (room 10105, telephone 426-2972).

2. Designations of U.S. Carriers under Bilateral Agreements

Designations of U.S. carriers to serve international routes under bilateral air transport agreements will be made only in response to requests by the U.S. carrier concerned. Requests for designations are to be submitted to the Director, Office of International Aviation Relations (room 6401, telephone 426-2903). Only if the carrier possesses the requisite operating authority will the Office recommend the carrier's designation to the Department of State.

3. U.S.-Canada Nonscheduled Air Services Agreement

U.S. carriers (certificated carriers and Part 298 operators) which desire to be designated under the U.S.-Canada Nonscheduled Air Services Agreement should contact the Office of International Aviation Relations (room 6401, telephone 426-2903) and indicate whether the carrier desires a large or small aircraft designation. As appropriate, the Office will send the carrier pertinent forms and information regarding its designation request. Once the carrier holds the requisite U.S. operating authority and the appropriate forms have been properly filed, the Office will recommend the carrier's designation to the Department of State for transmission through diplomatic channels to the appropriate Canadian authorities.

4. <u>IATCA Complaints</u>

A U.S. carrier desiring to file a formal complaint under the International Air Transportation Competition Act, alleging restrictions or discriminatory or unfair competitive practices by a foreign government or carrier, should file its complaint with the Documentary Services Division (DSD) in the Office the General Counsel. The complaint will be given a docket number and forwarded to the Director, Office of Aviation Operations and the Assistant General Counsel for International Law (room 10105, telephone 426-2972) for review and recommendations. Action on the complaint will normally be taken by the Assistant Secretary for Policy and International Affairs. However, in the event that a formal hearing is instituted, a decision will be made according to the process described later in the section on "Formal Proceedings Requiring Oral Evidentiary Hearings."

D. ESSENTIAL AIR SERVICE PROGRAM

The Essential Air Service Program is administered by the Office of Essential Air Service (room 5100, telephone 426-5903) in the Office of the Secretary of Transportation. Decisions and recommendations of the Director of the Office of Essential Air Service are subject to review and action by the Assistant Secretary for Policy and International Affairs. The Secretary may exercise this authority in lieu of the Assistant Secretary.

1. EAS Determinations, Reviews, and Hearings on Appeal

All points named on the certificate of at least one air carrier on October 24, 1978, or later designated under section 419(b) of the Federal Aviation Act are eligible for essential air service, with Federal subsidy support if necessary. A determination of the level of service necessary to meet a community's essential air service needs is required for those points that have been served by one or fewer carriers. Such determinations will be issued by the Office of Essential Air Service, subject to review by the Assistant Secretary for Policy and International Affairs. Prior to the issuance of such an order, the Office will seek the views of the community and any relevant state agencies on the level of service required by sending a questionnaire for them to complete. Once the determination is issued, the affected community or state agency may appeal the determination within 60 days of the issuance of the order. Appeals should be filed with the Documentary Services Division (DSD) and should state how the determination departs from the guidelines for essential air service and what level of service should be required. To process the appeal, the Assistant Secretary for Policy and International Affairs will appoint an appeal panel consisting of three senior DOT employees (to be drawn from the Office of EAS, the Office of the General Counsel, and the Office of the Assistant Secretary for Governmental Affairs). The panel may or may not hold an informal conference, and after considering all relevant information, will make a recommendation to the Assistant Secretary, who will issue a final order resolving the appeal. Ad hoc petitions for modification or review of determinations may be filed with DSD whenever circumstances warrant. Absent such petitions, determinations will be reviewed by the Office of Essential Air Service at least once every three years or periodically as circumstances warrant. In such cases, the procedures described above for initial determinations will be followed.

2. Carrier Selection and Rate Determination

Carrier proposals to provide essential air service, with subsidy if necessary, are generally requested by an order which is served on all carriers that have expressed an interest in providing essential air

service in the region. A service list is maintained by the Office of Essential Air Service (room 5100, telephone 426-5903). These orders identify the docket number of the case, specify the essential air service to be provided and generally contain complete instructions on selection procedures and data to be submitted with a proposal. A carrier's proposal should be filed with one of the two Service Analysis Divisions of the Office of Essential Air Service as specified in the order (Service Analysis Division I, room 5100, telephone 426-9813; Service Analysis Division II, room 5100, telephone 426-9820). Proposals are normally due within 30 days of the service date of the requesting order. When the deadline for filing proposals has passed, all those from whom proposals are received will be contacted by the Service Analysis Division handling the case to serve copies of their proposals on all parties to the selection case. After a brief (10-14 days) comment period (all comments are to be filed with the appropriate Service Analysis Division), a rate conference is held with each applicant. Rate conferences are scheduled and conducted by the Subsidy Division, Office of Essential Air Service (room 5100, telephone 426-5950). After conferences are completed a summary of the results for all applicants is sent by the Service Analysis Division to all parties for final comments, which are generally due in 21 days. If a carrier applicant has not provided essential air service previously, staff from one of the Divisions of the Office of Essential Air Service and/or the Office of Community and Consumer Affairs may visit the carrier's headquarters to review its operating procedures. These operational reviews generally take place after the rate conference stage is completed and are arranged by the appropriate Service Analysis Division. Occasionally, an on-site financial audit may be performed by the Office of Inspector General to assess the applicant's financial stability. Based on the public record, a recommended selection will be forwarded from the Office of Essential Air Service to the Assistant Secretary for Policy and International Affairs for a decision.

3. Rate Renewals

At the end of a normal one or two-year carrier selection/subsidy rate period, subsidy rates and selections of incumbent carriers will be renewed in a significant number of cases. Those generally are cases where the incumbent has performed satisfactorily. In these cases the Office of Essential Air Service will initiate contact with incumbent carriers several months before rates are due to expire in order to determine if there is interest in submitting proposals to continue service. Such proposals will be analyzed and rates will be negotiated with the carriers by the subsidy and essential air service staffs. When analyses and rate negotiations are complete, renewal decisions will be reflected in a show cause order to afford other carriers an opportunity to submit competing bids.

4. Responses to Suspensions and Reductions of Service (Hold-in Proceedings, Compensation, and Finding Replacements)

Carriers are required to file notices if they intend to terminate or suspend service in a manner that will result in less than the defined essential air service level for an eligible point or that will result in certain types of service losses (more than 33 percent of all service, the last certificated service or service by the next-to-last certificated carrier). Notices should be filed with the Documentary Services Division (DSD) either 90, 60 or 30 days in advance of the proposed suspension or reduction, depending upon the type of service reduction and the type of carrier (certificated or commuter). (Notice requirements are outlined in 14 CFR 323.) Affected parties may file responses to these notices with DSD. The Office of Essential Air Service will review the notices and an order acting on the proposed service reduction or suspension will be issued. In cases where essential air service will not be maintained, an order will be issued prohibiting the carrier from terminating service required to meet the essential air service requirements and seek proposals from carriers interested in providing replacement service. Procedural deadlines for processing such proposals will be established by the Office of Essential Air Service. While attempting to secure replacement service, the Service Analysis Division of the Office of Essential Air Service will issue orders requiring the incumbent to maintain essential air service for consecutive 30-day periods. Applications for compensation for losses for service provided on a hold-in basis should be filed with DSD. The Office of Essential Air Service will establish by final order or show-cause order interim rates of compensation for the incumbent carrier's hold-in service. A carrier's final hold-in subsidy normally will be established only after an audit of its claim by the DOT Office of the Inspector General.

5. Independent Representation of State and Community Views in EAS Decisions

In order to provide independent representation of state and community views in EAS decisions, the DOT Office of Community and Consumer Affairs in the Office of the Assistant Secretary for Governmental Affairs administers a community assistance program. The focus of this program is to keep communities apprised of their rights to air service under the EAS program and to help them develop and meet their own air service needs. The Office monitors EAS cases step-by-step to ensure state and local views are considered. Beginning January 14, 1985, communities wishing to obtain assistance should call the Office at (202) 472-5296 or write:

Community Relations Division, Room 10405
Office of Community and Consumer Affairs
Office of Governmental Affairs
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

E. ANTITRUST MATTERS AND UNFAIR METHODS OF COMPETITION

Antitrust matters and unfair methods of competition are the responsibility of the Office of the Assistant Secretary for Policy and International Affairs, acting in cooperation with the Office of the General Counsel. Ordinarily, the Assistant Secretary or his or her delegate will perform this function for the Department, but the Secretary may exercise this authority in lieu of the Assistant Secretary. Staff actions are subject to review by the Assistant Secretary and ordinarily are effective ten days after the action is served.

1. Mergers and Interlocks under Sections 408 and 409

Applicants for DOT approval of airline mergers, reorganizations and interlocks should file an application with the Documentary Services Division (DSD) in the Office of the General Counsel. A true copy of the application should also be sent to the Assistant Attorney General of the Antitrust Division of the Justice Department. DSD will give the application a docket number, date it and send it to the Office of the Assistant General Counsel for Litigation (room 4102, telephone 426-4731) and to the Industry Economics and Finance Division of the Office of Economics (room 10223, telephone 426-4382) for review. These offices will determine within 10 days whether the application is complete. If it is not complete, the applicant will be asked to provide the missing information. If the application is complete, DOT will within 30 days either (a) issue a show cause order through the DSD, tentatively approving or disapproving the application, or (b) issue an order instituting a formal hearing proceeding before an administrative law judge. In the first case, the decision will be made by the Assistant Secretary for Policy and International Affairs. In the second case, a decision will be made according to the procedures applicable to all formal proceedings (described later in this handbook under the section on "Formal Proceedings Requiring Oral Evidentiary Hearings").

In emergency situations, DOT can exempt parties to a contemplated merger or acquisition from the procedural requirements of section 408 of the Federal Aviation Act, provided that the applicant clearly shows that the public interest and competition will suffer no harm from immediate approval. The Office of the Assistant General Counsel for Litigation or the Industry Economics and Finance Division may be contacted for further information.

2. Intercarrier Agreements under Section 412

If a carrier wishes to have DOT approve or grant antitrust immunity for an agreement (other than one related to International Air Transport Association conferences), or a meeting to discuss possible

cooperative working arrangements, or any modification or cancellation of such agreements, it should file the agreement or request with the DOT Documentary Services Division (DSD). DSD will assign a docket number, date it, and forward it for review to the Industry Economics and Finance Division of the Office of Economics (room 10223, telephone 426-4382) and to Office of the Assistant General Counsel for Litigation (room 4102, telephone 426-4731) or, in the case of agreements relating to foreign air transportation, to the Industry Economics and Finance Division and the Office of the Assistant General Counsel for International Law (room 10105, telephone 426-2972). These offices will determine within 10 days whether the application is complete. If it is not complete, the applicant will be asked to provide the missing information. If the application is complete, DOT will within 30 days either (a) issue a show cause order through the DSD, tentatively approving or disapproving the application, or (b) issue an order instituting a formal hearing proceeding before an administrative law judge. In the second case, a decision will be made according to the procedures applicable to all formal proceedings (described later in this handbook under the section on "Formal Proceedings Requiring Oral Evidentiary Hearings").

In emergency situations, DOT can provide relief from procedural requirements. Contact the Office of the Assistant General Counsel for Litigation or the Industry Economics and Finance Division for further information.

(Requests regarding International Air Transport Association conferences will be referred to the Office of Aviation Operations. Refer to the section on "Fares and Rates" for further information.)

3. Grants of Antitrust Immunity

If a carrier wishes DOT to grant antitrust immunity for an airline merger or intercarrier agreement, the request for immunity should be included with the carrier's request for approval of the merger or agreement. The immunity request will be processed together with the merger or agreement approval request. Section 414 of the Federal Aviation Act will govern decisions on whether to grant immunity.

4. Unfair Methods of Competition

Any person who wants DOT to investigate charges that a particular carrier is engaged in an unfair method of competition in violation of Section 411 of the Federal Aviation Act or DOT regulations should file a complaint with the Documentary Services Division (DSD) in the Office of the General Counsel. DSD will give the complaint a docket number, date it and forward it to the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (room 4116, telephone 426-7631), which will handle it in the same manner as other third-party complaints.

Broad industry practices that are potentially unfair methods of competition, that may require other action under section 411 of the Federal Aviation Act, will be reviewed (in the case of domestic air transportation) by the Industry Economics and Finance Division of the Office of Economics (room 10223, telephone 426-4382) and the Office of the Assistant General Counsel for Litigation or (in the case of foreign air transportation) the Industry Economics and Finance Division and the Office of the Assistant General Counsel for International Law. These offices will recommend appropriate DOT action.

F. CONSUMER PROTECTION

Consumer protection matters are primarily the responsibility of the Office of the Assistant Secretary for Governmental Affairs. Ordinarily the Assistant Secretary for Governmental Affairs or his or her delegate will perform this function for the Department, but the Secretary may exercise this authority in lieu of the Assistant Secretary for Governmental Affairs.

1. Consumer Assistance regarding Airline Services

Beginning January 1, 1985, the DOT Office of Community and Consumer Affairs (OCCA) will handle both written and telephone complaints from consumers regarding such problems as lost baggage, passenger bumping, smoking, unfair or deceptive practices, and refunds. The Office will also work with state and local consumer offices and organizations across the country.

Beginning January 14, 1985, consumers or consumer organizations wishing to obtain assistance should call the Office at (202) 755-2220 or write:

Consumer Affairs Division, Room 10405
Office of Community and Consumer Affairs
Office of Governmental Affairs
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Written inquiries or requests should include a return address and daytime telephone number.

Consumers should remember that they should first contact the air carrier with their complaints. The vast majority of complaints can be quickly resolved by the air carrier. However, if a consumer is unable to obtain assistance or believes the assistance offered by the carrier is less than required by law, OCCA should be contacted. A DOT consumer representative will then assist the consumer with his or her complaint. This person will contact the air carrier if the carrier has not provided a satisfactory response. The representative will also advise individuals of the current consumer regulations relating to air travel.

OCCA will continue to issue monthly reports listing the number of consumer complaints received by the Office that involve air carriers, as well as the number of passengers denied confirmed seats (bumped).

2. Consumer Assistance regarding Aviation Safety

Airline passengers who have complaints or inquiries regarding aviation safety should contact the Federal Aviation Administration's Community and Consumer Liaison Division by calling (202) 426-1960 or writing:

Community and Consumer Liaison Division, APA-400
Office of Public Affairs
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

3. Investigations of Alleged Rule Violations Affecting Consumers

Possible violations of consumer regulations by an air carrier can lead to an investigation. Beginning January 1, 1985, these investigations will be conducted by the Investigations Division of the DOT Office of Community and Consumer Affairs. Beginning January 14, 1985, the Investigations Division can be reached by calling (202) 472-5330 or writing:

Investigations Division, Room 9402
Office of Community and Consumer Affairs
Office of Governmental Affairs
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

4. Informal and Formal Enforcement of Consumer Regulations

DOT may take either informal or formal enforcement action against an airline that violates consumer regulations. In the case of informal enforcement, the Office of Community and Consumer Affairs will be responsible for recommending civil penalties against a carrier. The Deputy General Counsel will be responsible for actually assessing civil penalties.

Persons wishing formal enforcement action to be taken against a carrier should refer to a later section on "Enforcement" under the heading "Rulemaking, Litigation, and Enforcement" for further information.

5. Consumer Protection Rulemaking and Exemptions

Consumer protection regulations and exemptions related to baggage liability, denied boarding compensation, ticketing notices, and smoking restrictions will be the primary responsibility of the Assistant Secretary for Governmental Affairs. For certain other regulations which are both consumer matters and licensing matters, such as those related to liability insurance and airline charter operations, the Office of the Assistant Secretary for Governmental Affairs and the Office of the Assistant Secretary for Policy and International Affairs will share responsibility.

Certified copies of air carrier reports will be provided by OAIM upon written application. Access to confidential and/or restricted air carrier data may be discussed with the OAIM's Data Requirements and Public Reports Division staff, but written requests must be sent to the Director of OAIM.

4. ADP Services for Aviation Information

The Data Processing Division, OAIM, RSPA, is responsible for providing systems analysis, programming and technical support covering all existing automated systems that were formally in use at CAB. This includes maintenance of the ADP systems which process the various air carrier submissions for editing and validation purposes. This Division is located in room 4125 of DOT Headquarters.

H. EMPLOYEE PROTECTION PROGRAM

Section 43 of the Airline Deregulation Act of 1978 contains two employee protection provisions, a federal assistance payment provision and a first-right-of-hire provision, both of which are described below. (Note, however, that on May 18, 1984, the U.S. District Court for the District of Columbia declared all of section 43 unconstitutional because it contained a legislative veto. The Department of Justice has appealed that decision to the D.C. Circuit Court of Appeals.)

1. Federal Assistance Payment Provision

Airline employees who lose their jobs or suffer loss in pay as a result of the change in regulatory structure provided by the Airline Deregulation Act of 1978 (ADA) can become eligible for federal assistance payments under section 43(b) of the ADA if both DOT (as successor to the CAB) and the Department of Labor make certain determinations. DOT must first determine whether a carrier has experienced a major contraction in employment, which is defined as a 7.5 percent reduction in its total number of full-time employees within a 12-month period. Ten airlines were found to have suffered major contractions: Airlift International, Air New England, American, Braniff, Continental, Mackey International, Pan American, TWA, United and Western. Such a determination is pending in a potential eleventh case, Republic. DOT must then commence a proceeding to determine whether any of the major contractions amounted to a qualifying dislocation, that is, a bankruptcy or major contraction, the major cause of which was deregulation. Prior to CAB sunset, the CAB set the ten cases listed above for hearing, and scheduled five of them (Air New England, Mackey International, Braniff, Pan American, and United) for the initial round of hearings before administrative law judges. Following the court decision on the constitutionality of section 43, the CAB stayed all further actions in the dislocation proceedings. For those cases pending before administrative law judges and any other cases set for formal hearings, the DOT procedures applicable to all formal hearings would apply.

If DOT finds that any carrier has suffered a qualifying dislocation, it will be up to the Department of Labor to determine which protected employees are eligible for benefits and the amounts of assistance to which they are entitled, subject to availability of appropriations. An employee of such carrier would be protected if, as of October 24, 1978 (the date of enactment of the ADA), he or she had been employed by that carrier for four years. Information concerning payment of benefits and funding for the program may be obtained by writing to:

Director, Office of Program Management
Employment and Training Administration
U.S. Department of Labor
Patrick Henry Building
601 D Street, N.W.
Washington, DC 20213.

If an employee of a carrier not among the eleven listed above wants to apply for a determination of qualifying dislocation, he or she should contact the Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law (telephone 426-4710) for information. In order for the employee to be protected under the statute, the carrier must have received a section 401 certificate from the Civil Aeronautics Board no later than October 24, 1978.

Employees of the eleven carriers listed above need not resubmit their applications to DOT for assistance, since their cases transferred automatically from the CAB. An employee may be kept apprised of developments in a case by requesting to have his or her name placed on the service list for that case. To do so, an employee should contact the DOT Documentary Services Division (DSD) in the Office of the General Counsel.

2. First-Right-of-Hire Provision

Section 43(d) of the Airline Deregulation Act provides first-right-of-hire rights within the airline industry for protected employees who have been terminated or furloughed. Unlike the assistance payment provision, no DOT determination is required for an employee to be eligible for this program; it is administered solely by the Department of Labor. Further information may be obtained by contacting the Labor-Management Services Administration Information Officer at (202) 523-7408.

I. RULEMAKING, LITIGATION, ENFORCEMENT, AND LEGAL COUNSEL

All legal functions of the Civil Aeronautics Board transfer to DOT's Office of the General Counsel. This includes the preparation and coordination of rulemakings to be conducted by the Department, presentation of the views of the Department on legislation, conduct of litigation, representation of the Department's position as enforcement or public counsel in all hearing cases, and advice and counsel on all final actions of the Department under authority transferring from the Civil Aeronautics Board. To ensure a separation of functions, a new Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will be established to perform the enforcement and public counsel roles in hearing cases. That Office will report only to the Deputy General Counsel. The Deputy General Counsel and the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will be segregated from staff participating in the decisionmaking process in all hearing cases.

1. Rulemaking

Any interested person may petition DOT for the issuance, amendment, or repeal of any rule. A petition for rulemaking should be filed in the Documentary Services Division (DSD) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. In addition, petitioners are encouraged to file 10 additional copies of the petition to help expedite the government's review.

Each petition will be given a docket number and placed in a separate file. The petition and related public documents will be placed in that docket and become a matter of public record. The docket may be examined and copies made in the DSD (room 4107).

Any interested person may file in the DSD an answer to a petition. Filing an answer is purely permissive and failure to do so does not prejudice any interested person in any rulemaking proceeding that may be instituted. Petitions are either denied by order, or a rulemaking proceeding is initiated.

A rulemaking proceeding may also be begun directly by the Department. This may be done by issuance of an advance notice of proposed rulemaking (ANPRM) or a notice of proposed rulemaking (NPRM). Most DOT-initiated rulemakings for which an ANPRM or NPRM has been issued are listed in the Unified Agenda of Federal Regulations. Anyone who would like to be placed on a mailing list for the Department's Regulatory Agenda (and specific rulemaking documents of the Office of the Secretary of Transportation) may do so by making a request to DSD. If the Department decides to clarify an ambiguity in a rule, it may issue an interpretative amendment or an editorial correction without first issuing an NPRM. Likewise, it may issue final rules without a prior NPRM because of an emergency.

For most NPRM's, DOT provides 45 or 60 days to file comments. In some cases, the public will be invited to file reply comments. As a matter of practice, the Department considers all comments filed. Late-filed comments are considered so far as possible without incurring additional expense or delay. All comments should be sent to the specified docket number at the following address:

Documentary Services Division (C-55)
Office of the General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590.

All comments are available for public inspection and duplication in room 4107 of DOT Headquarters. Final rules are generally effective not less than 30 days after publication in the Federal Register.

2. Litigation

Any person who wishes to obtain judicial review of a final DOT decision taken under the Federal Aviation Act or Section 43 of the Airline Deregulation Act must file a petition for review in an appropriate court of appeals. Copies of the petition should also be sent to the General Counsel of DOT and, for most matters affecting the airline industry, to the Appellate Section of the Antitrust Division of the Department of Justice. The DOT Assistant General Counsel for Litigation (room 4102, telephone 426-4731) will represent DOT in all such cases.

3. Enforcement

(a) Informal Complaints: Informal complaints should be made in writing to the DOT Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (room 4114, telephone 426-7631), or to the Investigation Division of the Office of the Assistant Secretary for Governmental Affairs (room 9402, telephone 472-5330). In coordination with the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, the Investigation Division will conduct any necessary investigation to determine if violations of the regulations have occurred and to obtain any other information necessary to enable resolution of the complaint on an informal basis. Should the investigation indicate a need for formal enforcement action, an enforcement proceeding may be instituted by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings or the Deputy General Counsel. The filing of an informal complaint does not bar the complainant from subsequently filing a formal enforcement complaint.

(b) Formal Complaints: A person filing a formal enforcement complaint should file the complaint with the Documentary Services Division (DSD) in the Office of the General Counsel. The complaint will be given a docket number, dated, and forwarded to the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (room 4114, telephone 426-7631). A 15-day period is allowed for answers to the complaint. Where necessary, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will request an investigation from the Investigation Division of the Office of the Assistant Secretary for Governmental Affairs (room 9402, telephone 472-5330) to determine if violations of the regulations have occurred and to obtain documentary evidence in support of the charges made in the formal complaint. Based on the results of such investigation, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings or the Deputy General Counsel will either institute a formal enforcement proceeding as to all or part of the complaint or dismiss it. If the Office does not act on the complaint within 60 days from the date it is filed (subject to approved extensions of time), the complainant or respondent may ask the Deputy General Counsel (room 10428, telephone 426-4713) that the complaint be docketed or dismissed. A notice dismissing the complaint shall become effective as a final order of DOT 30 days after its service. Whenever a formal enforcement proceeding is initiated, a decision will be made according to the process applicable to all formal proceedings (described in the section, "Formal Proceedings Requiring Oral Evidentiary Hearings").

4. Legal Counsel

Legal advice and counsel on decisions of the Assistant Secretary for Policy and International Affairs and the Assistant Secretary for Governmental Affairs, and their delegates, will be the responsibility of the Office of the General Counsel. The Assistant General Counsel for Environmental, Civil Rights and General Law (room 10104, telephone 426-4710) will be responsible for legal advice and counsel on Essential Air Service matters, employee protection cases, consumer protection decisions, and air carrier fitness determinations. The Assistant General Counsel for Litigation (room 4102, telephone 426-4731) will be responsible for legal advice and counsel on mergers, interlocking relationships, intercarrier agreements, and unfair methods of competition in domestic air transportation. The Assistant General Counsel for International Law (room 10105, telephone 426-2972) will be responsible for legal advice and counsel on decisions relating to foreign air transportation, including intercarrier agreements and unfair methods of competition.

J. FORMAL PROCEEDINGS REQUIRING ORAL EVIDENTIARY HEARINGS

1. General

This section describes how DOT will process cases and make decisions on matters warranting oral evidentiary hearings before administrative law judges. Cases which may be set down by the Department for an oral evidentiary hearing include international carrier selection cases, fitness investigations, antitrust matters, employee protection determinations, and formal enforcement actions. Preceding sections of this handbook describe the handling of these matters prior to the institution of a formal hearing case.

2. The Office of Hearings

The DOT Office of Hearings (room 9400, telephone 426-5560) is responsible for conducting all formal proceedings requiring an oral evidentiary hearing involving the regulatory powers transferred to the DOT under Titles IV and X of the Federal Aviation Act and Section 43 of the Airline Deregulation Act. Upon institution of a hearing case and its assignment by the Chief Administrative Law Judge, the presiding administrative law judge will proceed to the scheduling and holding of prehearing conferences, hearings, and arguments as may be required, to issue the necessary notices and procedural orders, to receive evidence and briefs, and to issue initial or recommended decisions. DOT Rules of Practice and Rules of Conduct apply to all hearings, which will be conducted in the Hearing Room (room 5332 of DOT Headquarters or other room as specified).

2. The Public Counsel

The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will act as public counsel in all formal hearings. Exhibits, analyses, and written and oral testimony will normally be prepared by the DOT staff office that has substantive functional responsibility for the subject of the hearing. (For example, the Special Authorities Division of the Office of Aviation Operations will prepare analyses, exhibits, and testimony for fitness cases; the Public Proceedings Division of the Office of Aviation Operations will perform the same function for international carrier selection cases.)

To ensure separation of functions, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will report only to the Deputy General Counsel, who will be independent for the purposes of the public counsel role. DOT staff who prepare analyses, exhibits, and testimony for formal hearings will also be subject to the separation of functions requirement of the Administrative Procedure Act.

4. Final Decisions

At the completion of the hearing process, the presiding administrative law judge will issue a recommended decision on the case.

For international carrier selection cases and other cases as deemed appropriate by the Secretary, a recommended decision will be referred to the senior career official in the Office of the Assistant Secretary for Policy and International Affairs for a final decision. This decision is reviewable at the discretion of the Assistant Secretary for Policy and International Affairs or the Secretary of Transportation. However, these officials may only affirm the decision or remand it to the senior career official for reconsideration, with a full explanation of the basis for the remand.

For cases other than those described in the preceding paragraph, the recommended decision of the administrative law judge will be referred to the Assistant Secretary for Policy and International Affairs for a decision. The Secretary may exercise this authority in lieu of the Assistant Secretary.

K. DOCUMENTARY SERVICES

1. Receipt and Distribution of Formal Pleadings and Petitions, including Maintenance of a Service List and Public Reference Room

Documents required to be filed with the Department of Transportation (other than those related to certain undocketed applications to the Office of Aviation Operations) shall be filed with:

Docket Section, Room 4107
Documentary Services Division (C-55)
Office of the General Counsel
Department of Transportation
Washington, D.C. 20590

Such documents shall be deemed filed on the date on which they are actually received by the Docket Section. The hours of the DSD for the filing of documents are from 9:00 a.m. to 5:00 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday through Friday, inclusive, except for legal holidays for the Department. The Docket Section receives all formal pleadings (applications, complaints, motions, petitions, answers, comments, replies) filed in connection with docketed matters. All applications must be accompanied by the appropriate number of copies and an appropriate filing fee, as specified in applicable DOT regulations. All applications must include a service list with the names and addresses of the parties served as well as a certificate of service verifying service on parties. All applications must include proper identification on the cover of the pleading as to docket number (if previously assigned), the type of pleading (i.e., answer, motion, etc.) and the name, address, and telephone number of the carrier and/or counsel who prepared the pleading. If the document is proper in every respect, it is then date-stamped, assigned a docket number (if one is not previously assigned) and distributed to the appropriate offices for further processing. A copy of each pleading filed is posted on a bulletin board in the Docket Section for public inspection. Inquiries may be made in room 4107 (telephone 426-7634).

2. Maintenance of Official Records of all Formal Actions and Certification of Official Documents for Courts

The Documentary Services Division obtains and keeps records of all formal actions and certifies official documents for courts. Requests for certification of Certificates of Public Convenience and Necessity, Foreign Air Carrier Permits currently in effect, orders, and regulations should be made directly to the Coordination Section of the DSD (room 4106, telephone 426-8850); requests for documents in a specific docket should be made directly to the Docket Section of DSD (room 4107, telephone 426-7634). Requests for certification of other official documents should be made to the appropriate offices that are responsible for the documents requested.

3. Distribution of Notices of Actions and Decisions

The Documentary Services Division makes official service on all parties to proceedings of orders, notices, and decisions issued by the Department of Transportation. All official documents are served by regular mail and contain a certificate of service to substantiate validity of service. Inquiries may be made in room 4107, telephone 426-7634.

4. Weekly Calendar of Formal Hearings and Summary of Actions

A weekly calendar of formal hearings entitled "Calendar of Prehearing Conferences, Hearings, and Oral Arguments" as well as a weekly summary of applications, orders, opinions and regulations are prepared by the Docket Section. Copies are sold on a subscription basis and may be obtained from the Superintendent of Documents of the U.S. Government Printing Office.

5. Requests for Oral Argument

If any party desires to argue a case orally, that party, in its exceptions or brief, may request leave to make oral argument. If DOT rules that oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for argument; each party wishing to participate in the oral argument must notify the Chief of the Documentary Services Division, room 4107, in writing on or before the date established, together with the name of the person who will represent it at the argument. Each participant will be notified by the Documentary Services Division of the amount of time allowed for argument. Requests for oral argument on petitions for discretionary review will not be entertained.

Pamphlets, charts, maps, and other written data may be presented at the oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued. All such material shall be served on all parties to the proceeding and transmitted to the Docket Section of the Documentary Services Division at least five calendar days in advance of the argument.

6. Extensions of Time

Whenever a party has the right or is required to take action within a period prescribed by the Rules of Practice, by a notice given thereunder, or by an order or regulation, request for extension of the time set may be made by letter — before expiration of the prescribed

period — to the Chief of the Documentary Services Division, room 4107 (telephone 426-7634). After the expiration of the specified time, where the failure to act is clearly shown to have been the result of excusable neglect, request for extension of the prescribed period may be made by motion filed with the Docket Section, Documentary Services Division, room 4107.

Where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time shall be directed to the Chief Administrative Law Judge, room 9400, telephone 426-5560.

II. INDEX OF FUNCTIONS, DOT CONTACTS, AND TELEPHONE NUMBERS

INDEX OF FUNCTIONS, DOT CONTACTS, AND TELEPHONE NUMBERS

Note: For routing codes indicated below under "DOT Contact Office," refer to DOT Organization Charts. All room numbers are in DOT Headquarters, 400 7th Street, S.W., Washington, D.C. 20590, unless otherwise specified.

Function	DOT Contact Office	Room	Telephone
LICENSING			
Section 401 Certificates			
Fitness Determinations	P-47	6420	(202) 755-3812
PC&N and Carrier Selection Determinations	P-46	6415	(202) 755-3186
Continuing Fitness Reviews	P-47	6420	(202) 755-3812
U.S. Carrier All-Cargo Certificates	P-47	6420	(202) 755-3812
Foreign Air Carrier Permits	P-45	6412	(202) 755-3800
Commuter Air Carrier Fitness	P-47	6420	(202) 755-3812
Exemptions from Sec. 401, 402, & 1108(b), Incl. Emergency Cabotage	P-45	6412	(202) 755-3800
Name Change or Use of Trade Name	P-40	6402	(202) 472-5434
Registrations and Insurance Monitoring			
U.S. Air Taxis and Commuters	P-45	6412	(202) 755-3809
Canadian Charter Air Taxis	P-45	6412	(202) 755-3809
Foreign Air Freight Forwarders	P-45	6412	(202) 755-3809
Foreign Charter Operators	P-45	6412	(202) 755-3809
Air Carriers Liability Insurance	P-45	6412	(202) 755-3809
Charters			
Public Charter Prospectuses	P-45	6412	(202) 755-3809
Charter Waivers	P-45	6412	(202) 755-3800
Overseas Military Personnel Charters	P-45	6412	(202) 755-3800
Financial Security Agreements	P-45	6412	(202) 755-3809
U.S. Charter Operations in Certain Foreign Markets	P-45	6412	(202) 755-3800
Japan Charter Authorizations	P-45	6412	(202) 755-3800
Foreign Air Carrier Charter Authns.	P-45	6412	(202) 755-3800

Function	DOT Contact Office	Room	Telephone
LICENSING (continued)			
Miscellaneous Foreign Authorities			
Wet Leases	P-45	6412	(202) 755-3800
Operations by Foreign Civil Aircraft not in "Air Transportation"	P-45	6412	(202) 755-3800
Blind Sector Authorizations	P-45	6412	(202) 755-3800
Schedule Filing	P-50	6401	(202) 426-2403
Intermodal Cargo Services	P-45	6412	(202) 755-3800
Waivers or Modifications of Filing Fees	P-45	6412	(202) 755-3800
TARIFFS, FARES, AND RATES			
Tariff Administration			
Tariff Filing Procedures	P-44	6408	(202) 472-5573
Special Tariff Permissions	P-44	6408	(202) 472-5573
Tariff Exemptions and Rules	P-44	6408	(202) 472-3376
Tariff Certifications	P-44	6408	(202) 472-5573
Automated Tariff Systems	P-44	6408	(202) 472-5573
Fares and Rates			
Exemptions from Section 403	P-43	6408	(202) 472-3126
Complaints/Suspensions	P-43	6408	(202) 472-3126
International Intercarrier Fare and Rate Agreements	P-43	6408	(202) 472-3126
Standard Foreign Fare and Rate Indices/Formulas	P-43	6408	(202) 472-3126
Air Mail Rates and Contracts	P-43	6408	(202) 472-3126
INTERNATIONAL AVIATION RELATIONS			
Negotiations with Foreign Governments	P-50	6401	(202) 426-2903
Designations of U.S. Carriers under Bilateral Agreements	P-50	6401	(202) 426-2903
U.S.-Canada Nonscheduled Air Services Agreement	P-50	6401	(202) 426-2903
IATCA Complaints	P-40	6402	(202) 472-5434

Function	DOT Contact Office	Room	Telephone
ESSENTIAL AIR SERVICE PROGRAM			
EAS Determinations, Reviews, and Appeals	S-60	5100	(202) 426-5903
Carrier Selection and Rates	S-60	5100	(202) 426-5903
Service Suspensions and Reductions	S-60	5100	(202) 426-5903
Representation of Community Views	I-43	10405	(202) 472-5296
ANTITRUST AND COMPETITIVE MATTERS			
Mergers and Interlocks	P-37	10223	(202) 426-4382
	C-30	4102	(202) 426-4731
Approval of Agreements	P-37	10223	(202) 426-4382
	C-30	4102	(202) 426-4731
	C-20	10105	(202) 426-2972
Grants of Antitrust Immunity	P-37	10223	(202) 426-4382
	C-30	4102	(202) 426-4731
	C-20	10105	(202) 426-2972
Unfair Methods of Competition	C-70	4116	(202) 426-7631
	P-37	10223	(202) 426-4382
CONSUMER PROTECTION			
Consumer Assistance re Airline Services	I-44	10405	(202) 755-2220
Consumer Assistance re Airline Safety	FAA (APA-400)	906A*	(202) 426-1960
Investigations of Alleged Rule Violations	I-42	9402	(202) 472-5330
Informal and Formal Enforcement of Consumer Regulations	C-70	4116	(202) 426-7631
Rulemaking and Exemptions	I-42	9402	(202) 472-5330
	C-50	10424	(202) 426-4223

* FAA Building, 800 Independence Ave., S.W., Washington, D.C. 20590.

Function	DOT Contact Office	Room	Telephone
DATA COLLECTION AND DISSEMINATION			
Air Carrier Accounting and Guidance	DA1-10	4125	(202) 426-7372
Financial and Statistical Reporting	DAI-20	4123	(202) 426-8703
Public Access to Air Carrier Reports	DA1-10	4125	(202) 426-8969
ADP Services for Aviation Information	DA1-30	4125	(202) 426-7276
EMPLOYEE PROTECTION PROGRAM			
Federal Assistance Payments	P-16	9217	(202) 426-4420
	C-10	10102	(202) 426-4710
First-Right-of-Hire Provision	U.S. Department of Labor		(202) 523-7408
RULEMAKING, LITIGATION, ENFORCEMENT, AND LEGAL COUNSEL			
Rulemaking	C-50	10424	(202) 426-4723
Litigation	C-30	4102	(202) 426-4731
Enforcement	C-70	4116	(202) 426-7631
Legal Counsel	C-10	10102	(202) 426-4710
	C-20	10105	(202) 426-2972
	C-30	4102	(202) 426-4731
FORMAL PROCEEDINGS REQUIRING ORAL EVIDENTIARY HEARINGS			
Office of Hearings (ALJ's)	M-50	9400	(202) 426-5560
Public Counsel	C-70	4116	(202) 426-7631

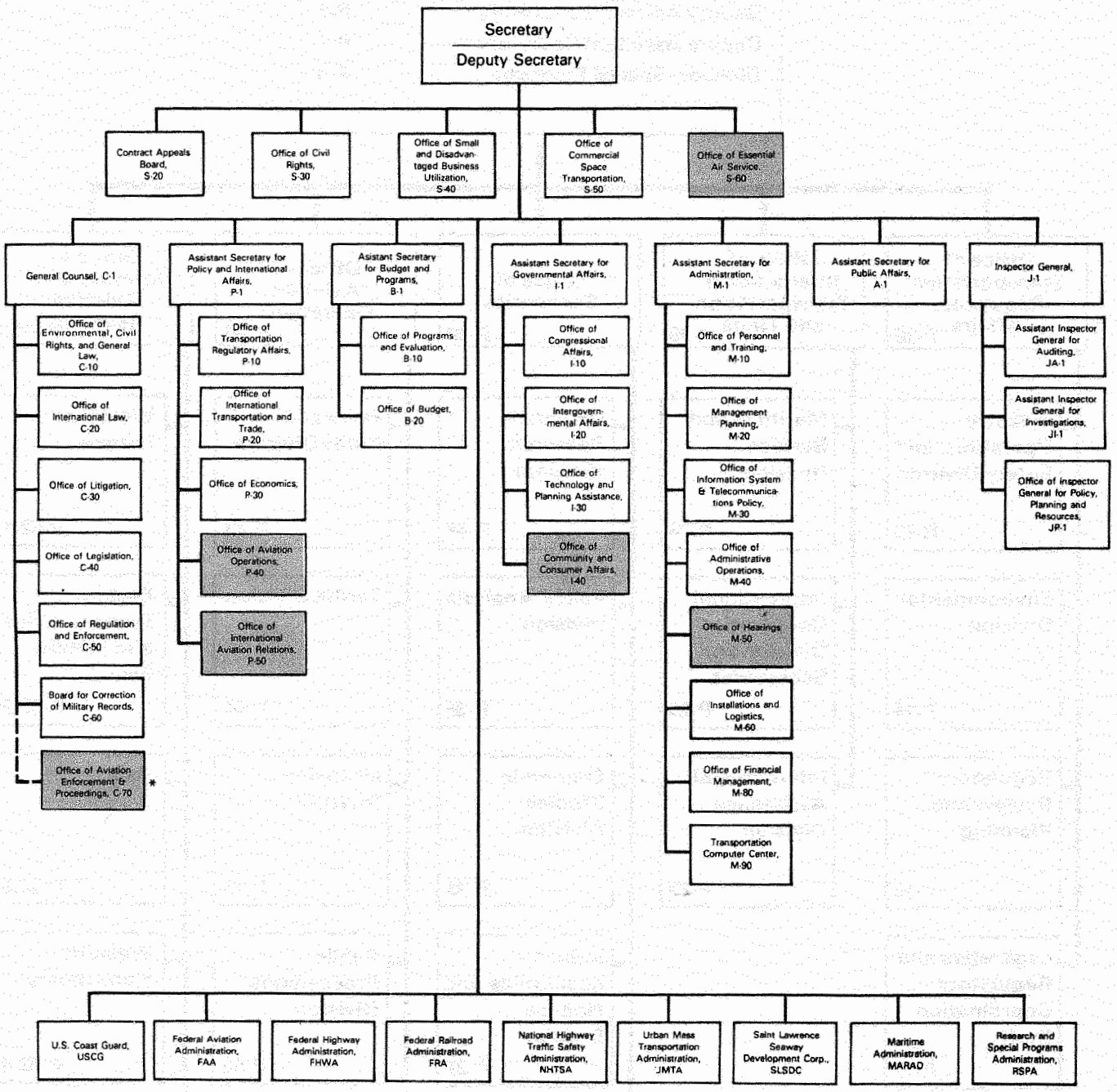
Function	DOT Contact Office	Room	Telephone
DOCUMENTARY SERVICES			
Receipt and Distribution of Formal Pleadings and Petitions	C-55	4107	(202) 426-7634
Maintenance of a Service List	C-55	4107	(202) 426-7634
Public Reference Room	C-55	4107	(202) 426-7634
Official Records of All Formal Actions	C-55	4107	(202) 426-8850
Distribution of Notices of Actions and Decisions	C-55	4107	(202) 426-7634
Weekly Calendar of Formal Hearings and Summary of Actions	C-55	4107	(202) 426-7634
Requests for Oral Argument	C-55	4107	(202) 426-7634
Extensions of Time	C-55 M-50	4107 9400	(202) 426-7634 (202) 426-5560
PUBLIC AFFAIRS AND MEDIA			
Information for Publication	A-30	10413	(202) 426-4321

III. DOT ORGANIZATION CHARTS

for

Department of Transportation
Office of the Assistant Secretary for Policy
and International Affairs
Office of the General Counsel
Office of the Assistant Secretary for Governmental
Affairs
Office of Essential Air Service
Office of the Assistant Secretary for
Administration
Research and Special Programs Administration

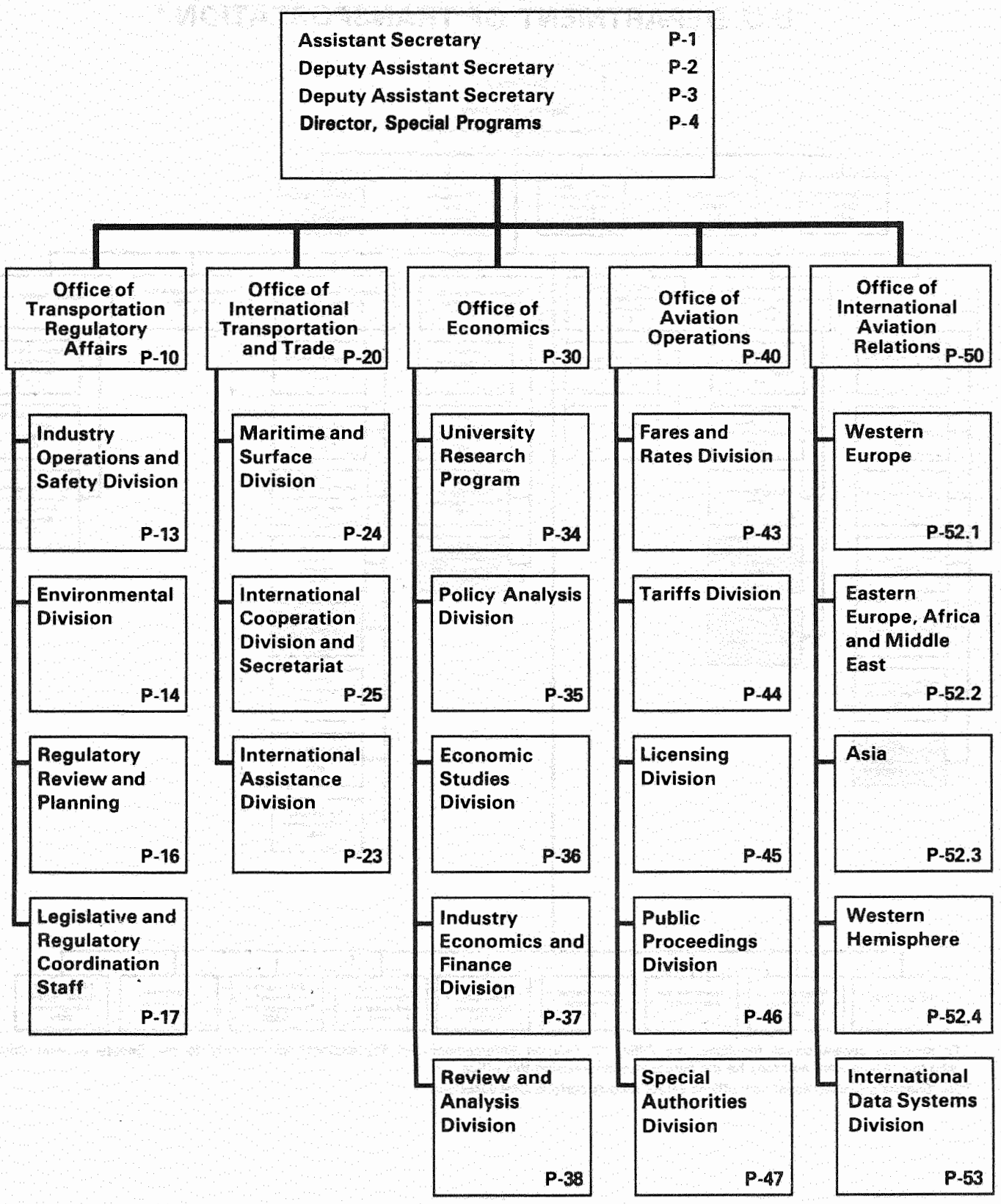
U.S. DEPARTMENT OF TRANSPORTATION



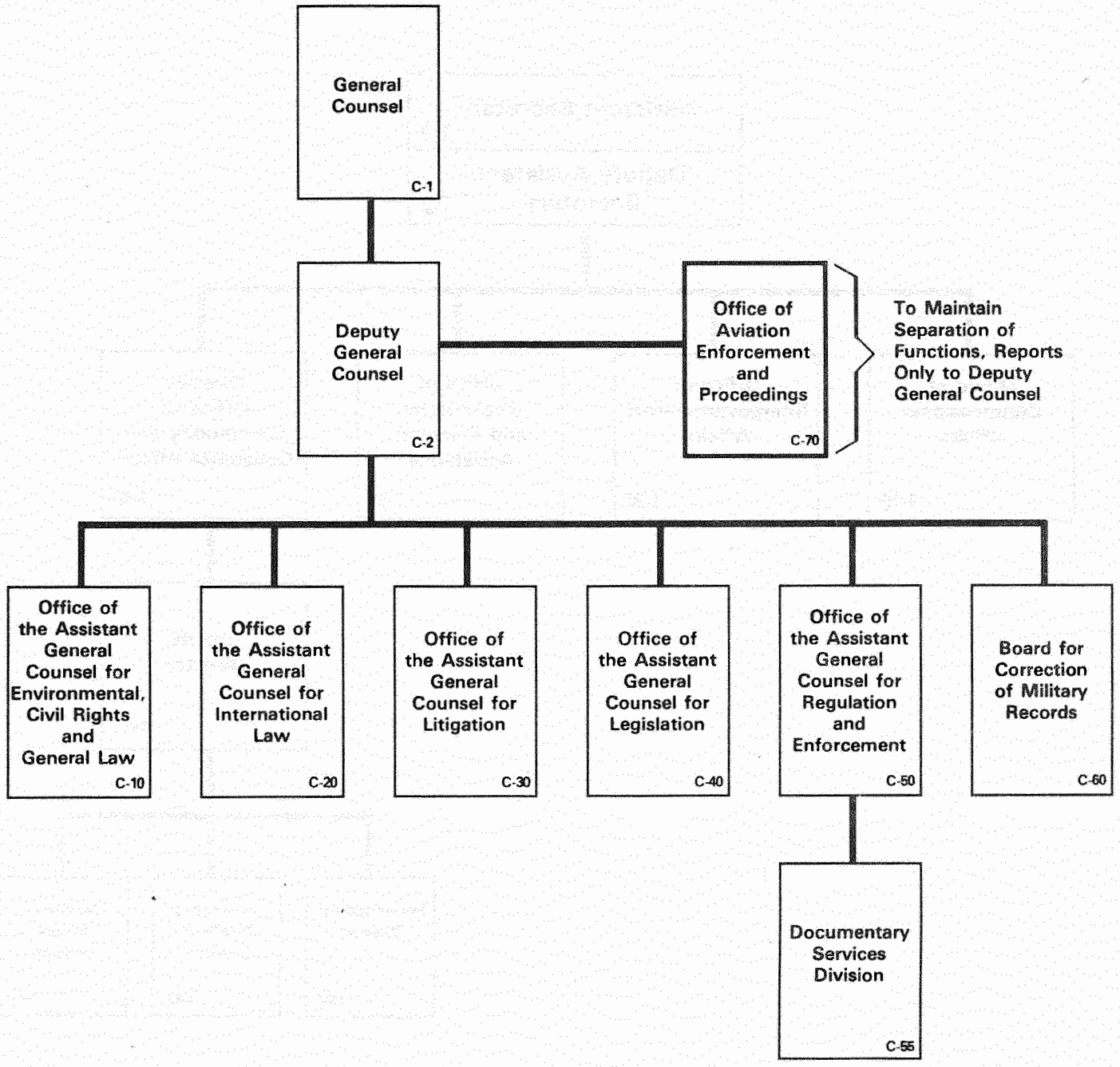
* To maintain separation of functions, the Office of Aviation Enforcement and Proceedings reports only to the Deputy General Counsel who has independent authority for the purposes of supervising this office.

Note: Shaded areas represent new offices established to perform CAB functions.

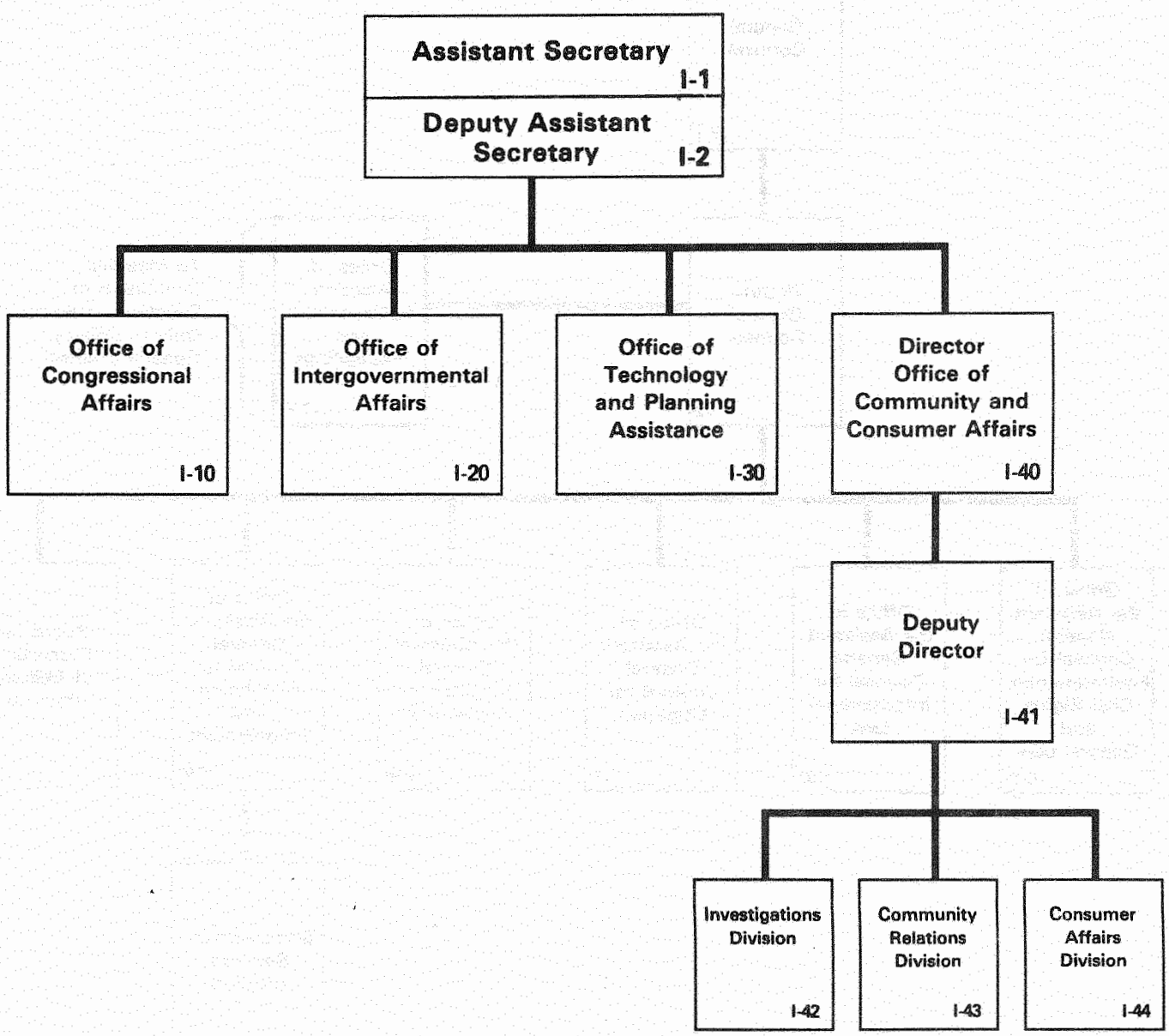
OFFICE OF THE ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS



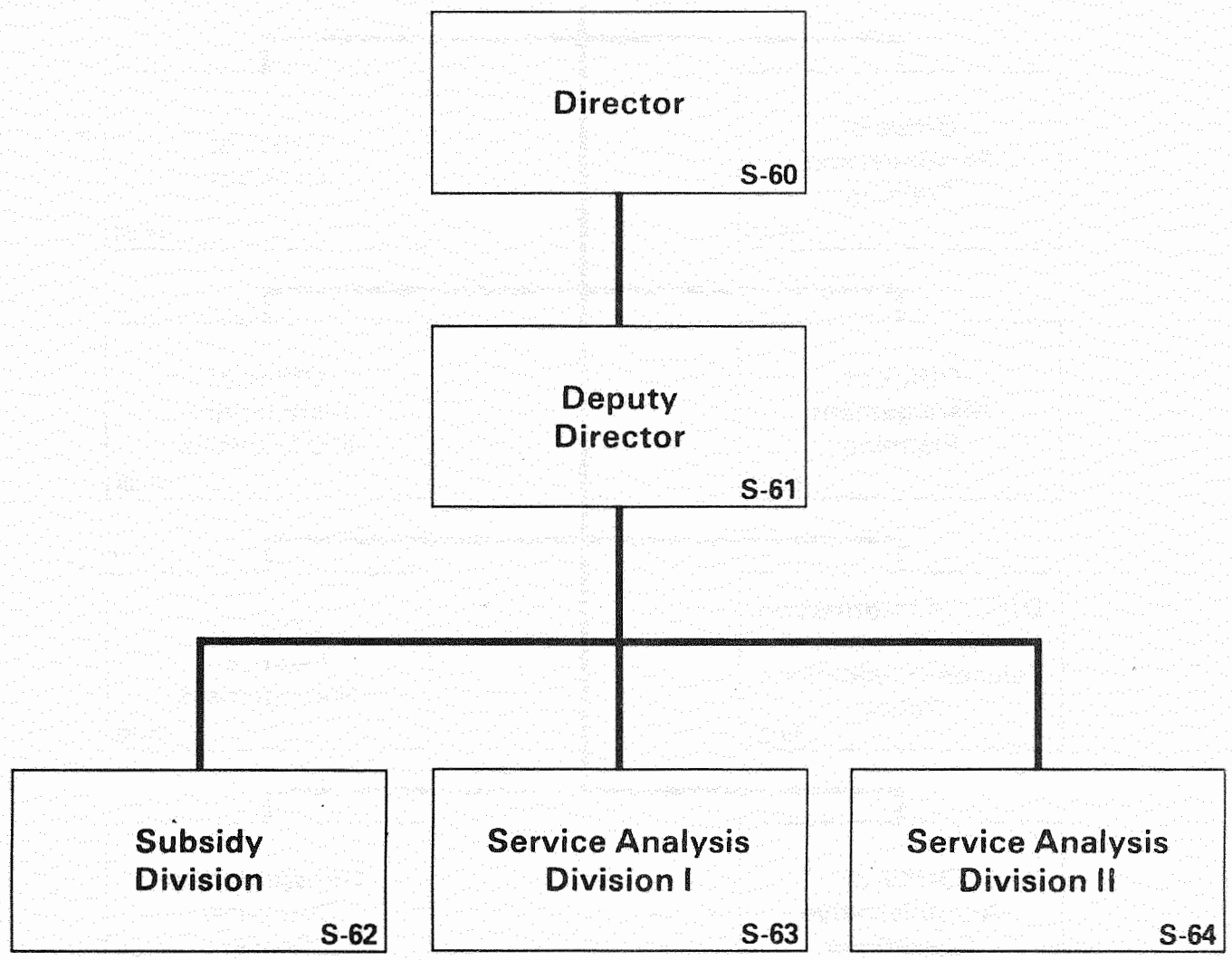
OFFICE OF THE GENERAL COUNSEL



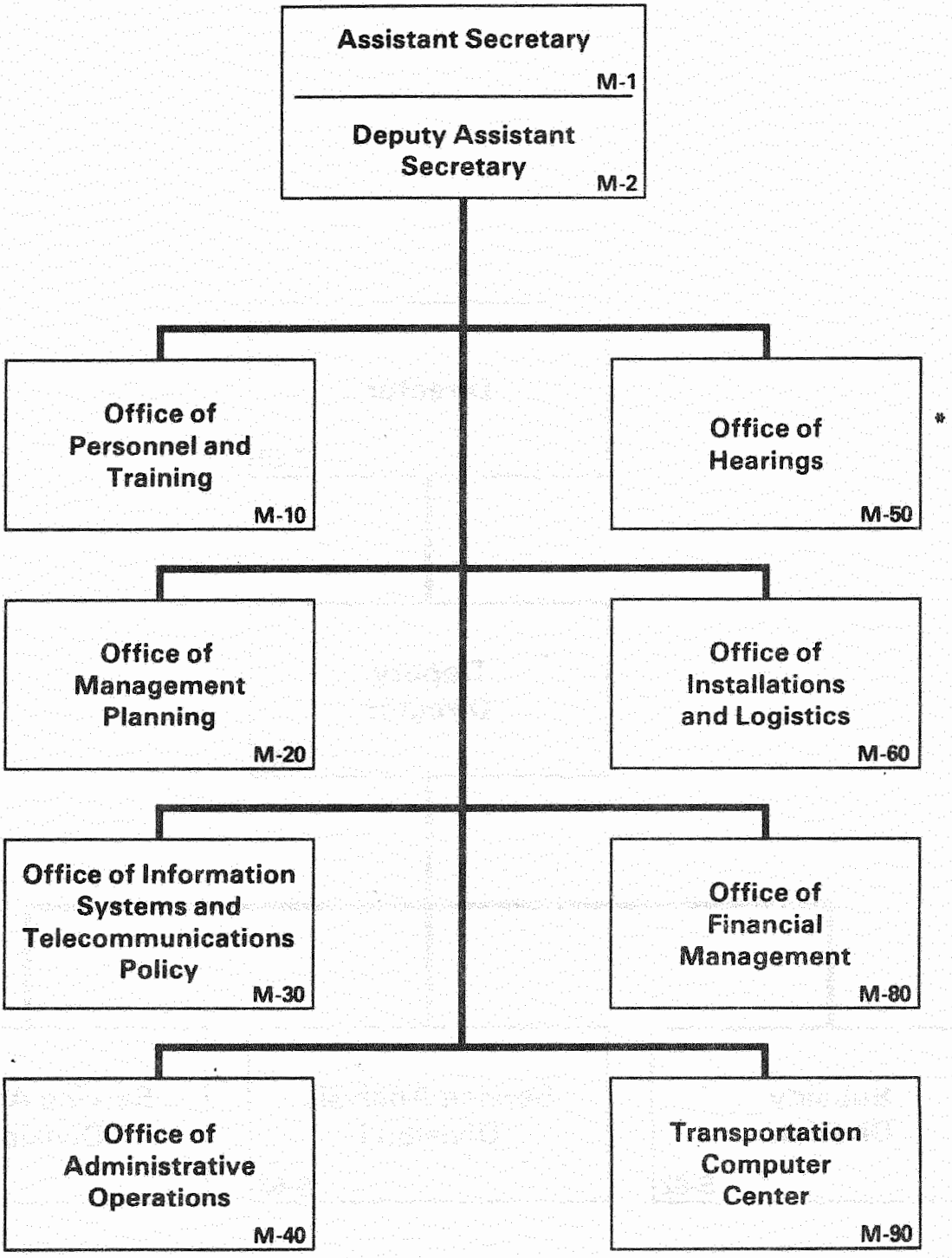
OFFICE OF THE ASSISTANT SECRETARY FOR GOVERNMENTAL AFFAIRS



OFFICE OF ESSENTIAL AIR SERVICE

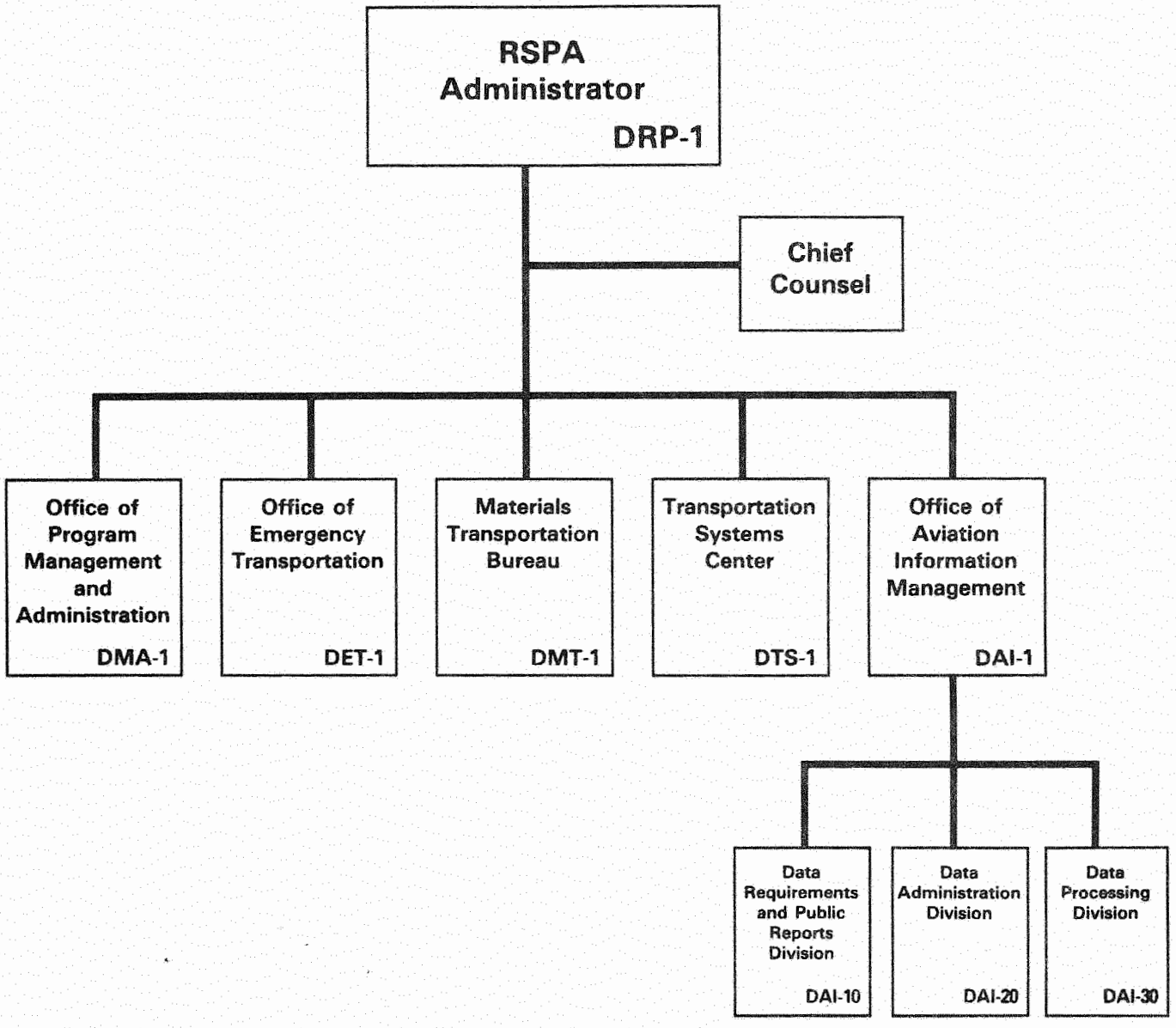


OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION



* The Office of Hearings is located in the Office of Administration for organizational purposes only. The decisions of the administrative law judges in this Office are not subject to review by the Assistant Secretary or the Deputy Assistant Secretary.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION



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U.S. Department of Transportation

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THE WHITE HOUSE

WASHINGTON

May 31, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Department of Transportation 10-Day International Aviation Decision: Swiss Air Transport

David Chew's office asked for comments by close of business today on the above-referenced Department of Transportation international aviation decision, which was submitted for Presidential review as required by § 801(b) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(b). Under this provision, any order of the Board pursuant to 49 U.S.C. § 1482(j), "suspending, rejecting or canceling a rate, fare, or charge for foreign air transportation, and any order rescinding the effectiveness of any such order," must be submitted to the President. The President may disapprove a submitted order, but only for foreign policy or national defense reasons. If the President wishes to disapprove an order, he must do so within ten days of submission of the order to him (in this case by June 3).

The order suspends higher fares proposed by Swiss Air for one year, pending an investigation by the Department. The Department concluded that Swiss Air has not justified the higher fares. In addition, the order is in response to a Swiss order denying lower fares requested by U.S. carriers. The Department believes the order will assist the U.S. position in pending U.S.-Swiss negotiations over renewal of a bilateral aviation agreement.

The order here has been reviewed by the appropriate departments and agencies. OMB recommends that the President allow the order to go into effect, and reports that the NSC and the Departments of State, Defense, and Justice have no objection to the order. In ten-day review cases, unlike sixty-day review cases under 49 U.S.C. § 1461(a), it is standard simply to take no action on orders not being disapproved, rather than sending a "no disapproval" letter to the Department. I see no reason for disagreeing with the recommendation that the President not disapprove this order.

Attachment

THE WHITE HOUSE

WASHINGTON

May 31, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

Orig. signed by FFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Department of Transportation 10-Day International Aviation Decision: Swiss Air Transport

We have reviewed the above-referenced Department of Transportation international aviation decision, and have no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(b).

We also have no legal objection to OMB's recommendation that the President not disapprove this order.

FFF:JGR:aea 5/31/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 31, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Department of Transportation 10-Day International Aviation Decision: Swiss Air Transport

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We also have no legal objection to OMB's recommendation that the President not disapprove this order.

FFF:JGR:aea 5/31/85
cc: FFFielding
JGRoberts
Subj
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: David Chew

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: DOT 10-Day International Aviation Decision: Swiss Air Transport

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOL	ORIGINATOR	85/05/31			/ /
	Referral Note:				
CUAT18	D	85/05/31		S	85/05/31 COB
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/31/85 **ACTION/CONCURRENCE/COMMENT DUE BY:** c.o.b. TODAY

SUBJECT: DOT 10-Day International Aviation Decision: Swiss Air Transport

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	LACY	☐	☐
REGAN	☐	☐	McFARLANE	☐	☐
STOCKMAN	☐	☐	OGLESBY	☐	☐
BUCHANAN	☐	☐	ROLLINS	☐	☐
CHAVEZ	☐	☐	RYAN	☐	☐
CHEW	☐P	☐SS	SPEAKES	☐	☐
DANIELS	☐	☐	SPRINKEL	☐	☐
FIELDING	☑	☐	SVAHN	☑	☐
FRIEDERSDORF	☐	☐	TUTTLE	☐	☐
HENKEL	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
HICKS	☐	☐	_____	☐	☐
KINGON	☐	☐	_____	☐	☐

REMARKS:

Please provide your recommendations to my office by close of business today. Thanks.

RESPONSE:

1985 MAY 31 AM 10: 43

David L. Chew
Staff Secretary
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT MAY 30 1985

SUBJECT: Department of Transportation 10-Day International Aviation Decision:

Swiss Air Transport Co., Ltd.
Docket 43152
Date due: June 3, 1985

This proposed Department of Transportation (DOT) order prevents higher fares, requested by Swiss Air Transport Co., Ltd., (Swissair) from going into effect for one year.

DOT's proposed order is based on several considerations: (1) Swissair's requested fares are above previously agreed to zones of acceptable fare levels; (2) this order is a reciprocal response to Swiss aviation authorities who have denied lower fares proposed by two U.S. carriers; and (3) DOT believes this order will aid the U.S. position in current U.S.-Swiss negotiations over renewal of a bilateral aviation agreement.

The Departments of State, Defense, and Justice and the National Security Council have not identified any foreign policy or national defense reason for disapproving the order in whole or in part.

The Office of Management and Budget recommends that you take no action and allow DOT's order to go into effect. The order becomes final unless you disapprove it on or before June 3, 1985.

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

DOT Letter of Transmittal
DOT Order

Options and Implementation Actions:

( ) (1) Approve DOT's order by taking no action. (DOS, DOD, DOJ, NSC, OMB).

( ) (2) Disapprove DOT's order. Implementation materials to be prepared.

( ) (3) See me.

U.S. Department of Transportation
Office of the Secretary of Transportation

Office of Assistant Secretary

400 Seventh St., S.W.
Washington, D.C. 20590

MAY 24 1985

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

I enclose for your review copies of a Department order suspending U.S.-Switzerland normal economy fares proposed by Swissair. Our recommendation of suspension is based on the fact that Swissair's proposed levels exceed the pertinent fare flexibility zones established by the Memorandum of Understanding between the United States and member nations of the European Civil Aviation Conference. While the Department is willing to allow carriers to exceed the zones upon a showing of sufficient justification, Swissair has failed to do so in this case.

The order institutes an investigation into the lawfulness of Swissair's fares under section 1002(j) of the Federal Aviation Act of 1958, and suspends them for a period of three hundred sixty-five days pending a hearing and final decision by the Department. Under the Federal Aviation Act of 1958, the Department's order is final unless the President disapproves it not later than ten days following its submission by the Department. No action is necessary if you do not wish to disapprove this order.

If you should decide earlier that you will not disapprove the order, please advise us to that effect; this will allow us to issue the order earlier.

We are submitting the proposed decision to you before publication under the provisions of section 801(b) of the Federal Aviation Act of 1958. In accordance with Executive Order 11920, however, we plan to release all unclassified portions of the decision on or after the sixth day following this transmittal unless notified by your Assistant for National Security Affairs.

Respectfully yours,

Matthew V. Scocozza
Assistant Secretary for Policy
and International Affairs

Enclosures

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 24th day of May, 1985

U.S.-Switzerland normal economy fares proposed by SWISS AIR TRANSPORT CO., LTD.	Docket 43152

ORDER OF SUSPENSION AND INVESTIGATION

By tariff revisions filed May 6, 1985, for effectiveness June 5, 1985, Swiss Air Transport Co., Ltd. (Swissair), proposes to extend the validity of increased U.S.-Switzerland normal economy fares from their current expiry date of July 31, 1985, through October 14, 1985. In support of its proposal, Swissair cites the Memorandum of Understanding (MOU) between the United States and certain member nations of the European Civil Aviation Conference (ECAC), and states that "these fare levels are within the [MOU] during the high season."

We have decided to suspend and investigate Swissair's proposal insofar as it applies to eastbound travel from the United States.

Swissair's reliance on the U.S.-ECAC MOU is misplaced. The MOU established zones of fare flexibility within which the parties have agreed not to disapprove fares, subject to certain conditions and definitions. One of these definitions (Article 1(d)(vi)) establishes a peak-season fare (as distinguished from a basic-season fare) as "a fare applicable during the period from 15 May to 14 September (Eastbound) and from 15 June to 14 October (Westbound)." Swissair, however, proposes charging its increased eastbound fares through October 14, a full month beyond the eastbound peak season as defined by the U.S.-ECAC MOU, and as Appendix A shows, Swissair's normal economy fares are considerably above the obligatory approval zone contemplated by the MOU for the basic season. We are concerned over the impact of these higher fares on the traveling public in this market. Under these circumstances, we will investigate the lawfulness of Swissair's proposal, and will suspend it pending completion of the investigation. We will submit this order to the President pursuant to section 801(b) of the Federal Aviation Act of 1958, as amended. 1/

1/ Section 1002(j) of the Act authorizes the Department to take this action in the circumstances presented. Section 801(b) of the Act states that the Department shall submit to the President any order suspending a fare or proposed fare in foreign air transportation under section 1002(j).

ACCORDINGLY, pursuant to sections 102, 204(a), 403, 801 and 1002(j) of the Federal Aviation Act of 1958, as amended:

1. We shall institute an investigation to determine whether the fares and provisions set forth in the attached Appendix B, and rules and regulations or practices affecting such fares and provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful or contrary to the public interest; and if we find them to be unlawful or contrary to the public interest, to act appropriately to prevent the use of such fares, provisions or rules, regulations, or practices;

2. Pending completion of the investigation and decision by the Department, we suspend and defer the use of the tariff provisions in the attached Appendix B from June 5, 1985, to and including June 4, 1986, unless otherwise ordered by the Department, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Department;

3. We shall submit this order to the President 2/ and, unless disapproved by the President within ten days, it shall become effective June 5, 1985; and

4. We shall file copies of this order in the aforesaid tariff and serve them on Swiss Air Transport Co., Ltd., and the Ambassador of Switzerland in Washington, D.C.

By:

MATTHEW V. SCOCOZZA
Assistant Secretary
for Policy and International Affairs

(SEAL)

2/ We submitted this order to the President on May 24, 1985.

APPENDIX A

U.S.-SWITZERLAND
NORMAL ECONOMY FARES
(OW)

TO GENEVA/ZURICH FROM:	SWISSAIR LEVEL	U.S.-ECAC ZONE B CEILING PEAK	BASIC
Boston	$775	$836	$663
Chicago	873	947	775
New York	775	842	669

APPENDIX B

TRANSATLANTIC PASSENGER FARES TARIFF NO. A-2, C.A.B. NO. 102, ISSUED BY OFFICIAL AIRLINE GUIDES, INC., AGENT

The explanation of the "J" and "W" reference marks on the 39th Revised Page 1510 marked to become effective June 5, 1985, and July 5, 1985, respectively, insofar as they apply to eastbound travel on economy class normal fares from points in the United States to points in Switzerland.