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THE WHITE HOUSE

WASHINGTON

June 6, 1985

MEMORANDUM FOR FRED F. FIELDING

THRU: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

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

Connie Horner has asked David Chew for White House reactions to a proposed revision of the Executive Order governing processing of international aviation decisions. Chew has asked for your views as soon as possible. Horner proposes transferring responsibility for coordinating the interagency review process from OMB to Transportation in all non-controversial cases. If any affected agency should recommend or contemplate recommending disapproval of a proposed order, OMB would reassume responsibility for processing the case. Horner's proposal would also establish a 28-day deadline for agencies to communicate their views to Transportation in non-controversial cases. The provisions on ex parte contacts would be unchanged, generally prohibiting individuals within the Executive Office of the President from discussing section 801 cases with private parties.

A new Executive Order should be issued, but I do not agree with Horner's proposed changes. Providing distinct review processes depending on the merits of a case discloses significant information about the Presidential deliberative process. Thus, whenever a case were channeled to OMB, interested parties and observers would know that at least one of the affected agencies objected to the proposed decision, even if the President ultimately decided not to disapprove it. In addition, agencies may become reluctant to voice minor qualms about an order, if doing so requires activating a special review process. The President, however, should be made aware of all agency concerns, and not have some filtered out because of the administrative costs of raising them.

These are, admittedly, not overly serious problems, but I see no benefits to the two-track approach that outweigh them. Indeed, the two-track approach is inefficient, in that it requires two sets of bureaucrats trained in handling

section 801 cases -- one in DOT and one in OMB -- rather than one.

For the foregoing reasons, I recommend objecting to the proposed two-track system. I would suggest instead simply revising Executive Order 11920 to reflect the transfer of CAB responsibilities in these cases to Transportation, without substantive changes. The only changes I would make, other than changing "CAB" to "Department of Transportation," are:

- ° include a new sentence specifically directing OMB to coordinate submission of agency recommendations to the President. OMB's current role in this regard is based only on custom and practice.

- ° change "defense or foreign policy" in Executive Order 11920 wherever it appears to "foreign relations or national defense." The Executive Order antedates the 1978 amendments to the Act, and restricted Presidential review of international aviation decisions to "defense or foreign policy" considerations before the 1978 amendments restricted Presidential review to "foreign relations or national defense" considerations. The Executive Order should be changed to track the new statutory terminology. (This is not a substantive change. Horner makes this change in her proposal.)

After consideration of our discussion after yesterday's staff meeting, I do not recommend expanding the current provision generally barring ex parte contacts in section 801 cases to cover all aviation matters, whether or not they are subject to Presidential review under section 801. In the first place, this Executive Order is concerned only with section 801 cases -- a provision governing ex parte contacts in other types of aviation decisions would be out of place. Second, our policy generally prohibiting White House participation in particular regulatory decisions, procurement matters, or adjudications is just that -- a policy. There is nothing illegal, as a general matter, with White House staff or the President becoming involved in such decisions, at least so long as the decision-making responsibility is in the Executive Branch, as it now is with respect to aviation decisions. In a rare case, we may want to become involved, and we should not elevate a prudential policy against such involvement to the level of regulation codified in an Executive Order.

It may be appropriate, however, to revise the White House staff manual (page F-9) to indicate that the Department of Transportation now has the CAB regulatory responsibilities,

and that the normal rules against ex parte contacts on particular cases now applies to aviation decisions at Transportation. We may also want to issue a brief memorandum to the staff.

Attachment

THE WHITE HOUSE

WASHINGTON

June 6, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

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

I have reviewed the changes in the review process for international aviation decisions proposed by Connie Horner. I agree that it is necessary to revise Executive Order 11920, in light of the "sunset" of the Civil Aeronautics Board (CAB). I am not convinced, however, of the desirability of the principal change in the review process proposed by Ms. Horner.

Ms. Horner would establish a two-track system for review of international aviation orders proposed by the Department of Transportation (DOT). Review would be coordinated by DOT unless an affected agency contemplated recommending disapproval of an order. In that event, review would be coordinated by OMB.

Providing distinct review processes depending on the merits of a case, however, discloses significant information about the Presidential deliberative process. Thus, whenever a case were channeled to OMB, interested parties and observers would know that at least one of the affected agencies objected to the proposed decision, even if the President ultimately decided not to disapprove it. In addition, agencies may become reluctant to voice minor qualms about an order, if doing so requires activating a special review process. The President, however, should be made aware of all agency concerns, and not have some filtered out because of the administrative costs of raising them.

These are, admittedly, not overly serious problems, but I see no benefits to the two-track approach that outweigh them. Indeed, the two-track approach is inefficient, in that it requires two sets of bureaucrats trained in handling Section 801 cases -- one in DOT and one in OMB -- rather than one.

I would delete all of section 3 of Ms. Horner's proposed order. I would add a new section 3(a) to read as follows: "After an Order under section 801 is transmitted to the President for review, OMB shall obtain the recommendations to the President of the agencies referred to in section 1(c) of this Order." Section 4(a) of the proposed order should then be changed to 3(b), and 4(b) to 3(c), and the remainder of the order renumbered accordingly. In section 2(b) of the proposed order, "outside" should be inserted between "agencies" and "of." I have no strong views on whether time deadlines for submission of agency views to OMB should be imposed in the Executive Order.

FFF:JGR:aea 6/6/85

cc: FFFielding
JGRoberts
Subj
Chron


THE WHITE HOUSE

WASHINGTON

June 5, 1985

MEMORANDUM FOR FRED F. FIELDING

THRU: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

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

Connie Horner has asked David Chew for White House reactions to a proposed revision of the Executive Order governing processing of international aviation decisions. Chew has asked for your views by June 5. Horner proposes transferring responsibility for coordinating the interagency review process from OMB to Transportation in all non-controversial cases. If any affected agency should recommend or contemplate recommending disapproval of a proposed order, OMB would reassume responsibility for processing the case. Horner's proposal would also establish a 28-day deadline for agencies to communicate their views to Transportation in non-controversial cases. The provisions on ex parte contacts would be unchanged, generally prohibiting individuals within the Executive Office of the President from discussing section 801 cases with private parties.

A new Executive Order should be issued, but I do not agree with Horner's proposed changes. Providing distinct review processes depending on the merits of a case discloses significant information about the Presidential deliberative process. Thus, whenever a case were channeled to OMB, interested parties and observers would know that at least one of the affected agencies objected to the proposed decision, even if the President ultimately decided not to disapprove it. In addition, agencies may become reluctant to voice minor qualms about an order, if doing so requires activating a special review process. The President, however, should be made aware of all agency concerns, and not have some filtered out because of the administrative costs of raising them.

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- ° include a new sentence specifically directing OMB to coordinate submission of agency recommendations to the President. OMB's current role in this regard is based only on custom and practice.

- ° change "defense or foreign policy" in Executive Order 11920 wherever it appears to "foreign relations or national defense." The Executive Order antedates the 1978 amendments to the Act, and restricted Presidential review of international aviation decisions to "defense or foreign policy" considerations before the 1978 amendments restricted Presidential review to "foreign relations or national defense" considerations. The Executive Order should be changed to track the new statutory terminology. (This is not a substantive change. Horner makes this change in her proposal.)

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Attachment

THE WHITE HOUSE

WASHINGTON

June 5, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

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

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I would delete sections 3(a), (b), and (c) of Ms. Horner's proposed order. I would style the first sentence of section 3 as section 3(a), change 4(a) to 3(b), and 4(b) to 3(c), and renumber the remainder of the order accordingly. I have no strong views on whether time deadlines for submission of agency views to OMB should be imposed in the Executive Order.

FFF:JGR:aea 6/5/85

cc: FFFielding
JGRoberts
Subj
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 / 1 /

Name of Correspondent: David Chew

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

Subject: Potential Changes in the Review Process for International Aviation Decisions submitted to the President.

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>CU Holl</u>	ORIGINATOR	<u>85 05 31</u>
<u>CU AT 18</u>	Referral Note: <u>D</u>	<u>85 05 31</u> <u>S 85 06 05</u>
<u>CU AT 04</u>	Referral Note: <u>I</u>	<u>85 05 31</u> <u> / / </u>
	Referral Note:	<u> / / </u> <u> / / </u>
	Referral Note:	<u> / / </u> <u> / / </u>
	Referral Note:	<u> / / </u> <u> / / </u>

ACTION CODES:

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

DISPOSITION CODES:

- A - Answered
- C - Completed
- B - Non-Special Referral
- S - Suspended

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- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

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APZ D
RAH I

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/31/85 ACTION/CONCURRENCE/COMMENT DUE BY: Wednesday, June 5th

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

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/> P	<input type="checkbox"/> SS	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FRIEDERSDORF	<input type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Could I please have your views on the attached memo by Wednesday, June 5th. Thanks.

RESPONSE:

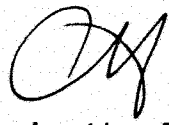
1985 MAY 31 PM 3:01

David L. Chew
Staff Secretary
Ext. 2702



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

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:

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

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

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

THE PRESIDENT

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,

THE PRESIDENT

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:

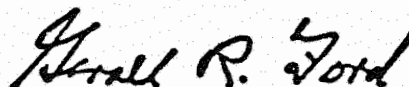
(a) establish public dockets for all written communications (other than those requiring confidential treatment for defense or foreign policy reasons) between their officers and employees and private parties in connection with the preparation of such recommendations; and

(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.



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

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:

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

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

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

THE PRESIDENT

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.

Herold R. Ford

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

THE WHITE HOUSE

WASHINGTON

June 11, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

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

I have reviewed the changes in the review process for international aviation decisions proposed by Connie Horner. I agree that it is necessary to revise Executive Order 11920, in light of the "sunset" of the Civil Aeronautics Board (CAB). I am not convinced, however, of the desirability of the principal change in the review process proposed by Ms. Horner.

Ms. Horner would establish a two-track system for review of international aviation orders proposed by the Department of Transportation (DOT). Review would be coordinated by DOT unless an affected agency contemplated recommending disapproval of an order. In that event, review would be coordinated by OMB.

Providing distinct review processes depending on the merits of a case, however, discloses significant information about the Presidential deliberative process. Thus, whenever a case were channeled to OMB, interested parties and observers would know that at least one of the affected agencies objected to the proposed decision, even if the President ultimately decided not to disapprove it. In addition, agencies may become reluctant to voice minor qualms about an order, if doing so requires activating a special review process. The President, however, should be made aware of all agency concerns, and not have some filtered out because of the administrative costs of raising them.

These are, admittedly, not overly serious problems, but I see no benefits to the two-track approach that outweigh them. Indeed, the two-track approach is inefficient, in that it requires two sets of bureaucrats trained in handling Section 801 cases -- one in DOT and one in OMB -- rather than one.

I would delete all of section 3 of Ms. Horner's proposed order. I would add a new section 3(a) to read as follows: "After an Order under section 801 is transmitted to the President for review, OMB shall obtain the recommendations to the President of the agencies referred to in section 1(c) of this Order." Section 4(a) of the proposed order should then be changed to 3(b), and 4(b) to 3(c), and the remainder of the order renumbered accordingly. In section 2(b) of the proposed order, "outside" should be inserted between "agencies" and "of." I have no strong views on whether time deadlines for submission of agency views to OMB should be imposed in the Executive Order.


FFF:JGR:aea 6/6/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 21, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

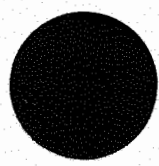
FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOT International Aviation Decisions: Action
Air Cargo Corporation and Air Express
International Corporation

Our office has reviewed the above-referenced Department of Transportation International Aviation decisions, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders or to the substance of the letter from the President to the Secretary of Transportation prepared by OMB.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET



- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 / 1

Name of Correspondent: Dave Chew

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

Subject: DOT AVIATION DECISION RE ACTION AIR CARGO CORPORATION AND AIR EXPRESS INTERNATIONAL CORPORATION

ROUTE TO:	ACTION	DISPOSITION	
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code Completion Date YY/MM/DD
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- 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.
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85-14

THE WHITE HOUSE

WASHINGTON

July 1, 1985

Presidential Determination
No. 85-14

MEMORANDUM FOR THE HONORABLE ELIZABETH H. DOLE
The Secretary of Transportation

SUBJECT: Suspension of Foreign Air Transportation to
Lebanon by U.S. Air Carriers and of Foreign Air
Transportation by Lebanese Carriers

By virtue of the authority vested in me by Section 1114(a) of the
Federal Aviation Act of 1958, as amended ("the Act"), I hereby:

- (1) determine that Lebanon is acting in a manner
inconsistent with the Convention for the Suppression of
Unlawful Seizure of Aircraft;
- (2) suspend the rights of all air carriers within the
meaning of Section 101(3) of the Act to engage in
foreign air transportation, whether direct or indirect
(including through interline agreements), to and from
Lebanon; and
- (3) suspend the rights of Middle East Airlines Airliban,
S.A.L. (MEA), on its own behalf, and Trans-Mediterranean
Airways, S.A.L. (TMA), both Lebanese carriers, to
engage in foreign air transportation within the meaning
of Section 101(24) of the Act.

You are requested to bring this determination and these
suspensions immediately to the attention of all air carriers
within the meaning of Section 101(3) of the Act and to the
attention of MEA and TMA.

This determination shall be published in the Federal Register.

Ronald Reagan

Remanded to file deposited

[Handwritten initials]

res and fees

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cumbia, the territories or posses-
agencies of two or more States)
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or the use of its facilities; and
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s section shall not apply to such

ded Pub.L. 93-44, § 7(a), June

Note

U.S.Code Cong. and Adm.News. p.

ferences

J.S. Taxation §§ 4, 5, 19.

visions

ting from city airports, are consti-
tually impermissible in face of this con-
n which was enacted pursuant to U.S.
Const. Art. 1, § 8, cl. 3 and which
h limited time exception for bond
rges enacted prior to May 21, 1973.
nders constitutionally invalid and con-
missible existing state or local airport
d taxes. Id.

1514. Suspension of air services by President; grounds; authority of President deemed condition to issuance of certificate of public convenience and necessity, etc.; unlawful activities

(a) Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft, or if he determines that a foreign nation permits the use of territory under its jurisdiction as a base of operations or training or as a sanctuary for, or in any way arms, aids, or abets, any terrorist organization which knowingly uses the illegal seizure of aircraft or the threat thereof as an instrument of policy, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend (1) the right of any air carrier or foreign air carrier to engage in foreign air transportation, and the right of any person to operate aircraft in foreign air commerce, to and from that foreign nation, and (2) the right of any foreign air carrier to engage in foreign air transportation, and the right of any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation. Notwithstanding section 1502 of this title, the President's authority to suspend rights under this section shall be deemed to be a condition to any certificate of public convenience and necessity or foreign air carrier or foreign aircraft permit issued by the Civil Aeronautics Board and any air carrier operating certificate or foreign air carrier operating specification issued by the Secretary of Transportation.

(b) It shall be unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or for any person to operate aircraft in foreign air commerce, in violation of the suspension of rights by the President under this section.

Pub.L. 85-726, Title XI, § 1114, as added Pub.L. 93-366, Title I, § 106, Aug. 5, 1974, 88 Stat. 413.

Historical Note

Legislative History. For legislative 1974 U.S.Code Cong. and Adm.News. p. history and purpose of Pub.L. 93-366, see 3975.

Library References

Aviation Ⓢ51.

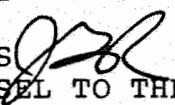
C.J.S. Aeronautics and Aerospace § 181 et seq.

THE WHITE HOUSE

WASHINGTON

July 11, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOT International Aviation Decision:
Transportes Aereos Bolivianos

Our office has reviewed the above-referenced Department of Transportation International Aviation decision, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order or to the substance of the letter from the President to the Secretary of Transportation prepared by OMB.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: D. Chew

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

Subject: DOT International Aviation Decision
(Transportes aereos Bolivianos)

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUHOLL</u>		ORIGINATOR	<u>85.07.10</u>			<u>1 1</u>
		Referral Note:				
<u>CUAT 18</u>		<u>R</u>	<u>85.07.10</u>		<u>S</u>	<u>85.07.11</u>
		Referral Note:				<u>12N</u>
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		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.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/10/85 **ACTION/CONCURRENCE/COMMENT DUE BY:** NOON, Thursday, 7/11/85

SUBJECT: DOT INTERNATIONAL AVIATION DECISION (TRANSPORTES AEREOS BOLIVIANOS)

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/> P	<input type="checkbox"/> SS	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FRIEDERSDORF	<input type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please submit your recommendation to my office by noon tomorrow, July 11.
Thank you.

RESPONSE:

1985 JUL 10 PM 3:22

David L. Chew
Staff Secretary
Ext. 2702



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

JUL 10 1985

ACTION

MEMORANDUM FOR: STAFF SECRETARY
AND DEPUTY ASSISTANT TO THE PRESIDENT

SUBJECT: Department of Transportation International
Aviation Decision:

Transportes Aereos Bolivianos
Docket 41932
Date due: July 13, 1985

Attached is a memorandum for the President about the above international aviation case. The interested executive agencies have reviewed the Department of Transportation's (DOT) decision and have no objection to the proposed order.

This is a routine, noncontroversial matter. No foreign policy or national defense reason for disapproving DOT's order has been identified. I recommend that the President sign the attached letter to the Secretary of Transportation which indicates that he does not intend to disapprove the proposed order within the 60 days allowed by statute. Otherwise, DOT's order becomes final on the 61st day.

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

Memorandum to the President
DOT letter of transmittal
DOT order
Letter to the Secretary



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

JUL 10 1985

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Department of Transportation International
Aviation Decision:

Transportes Aereos Bolivianos
Docket 41932
Date due: July 13, 1985

The Department of Transportation (DOT) proposes to take the following action with regard to the above international aviation case:

- Renew for five years the authority of Transportes Aereos Bolivianos to engage in foreign air transportation of property between Bolivia and the United States and engage in charter foreign air transportation.

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 approve DOT's decision by signing the attached letter to the Secretary which indicates that you do not intend to disapprove DOT's order within the 60 days allowed by statute for your review.

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

DOT letter of transmittal
DOT order
Letter to the Secretary

Options and Implementation Actions:

- () (1) Approve DOT's order (DOS, DOD, DOJ, NSC, OMB).
-- Sign the attached letter to the Secretary.
- () (2) Disapprove DOT's order.
-- Implementation materials to be prepared.
- () (3) See me.

THE WHITE HOUSE

WASHINGTON

Dear Madam Secretary:

I have reviewed the order proposed by the Department of Transportation in the following case:

Transportes Aereos Bolivianos
Docket 41932

I have decided not to disapprove the proposed order.

Sincerely,

The Honorable Elizabeth Dole
Secretary of Transportation
Washington, D.C. 20590



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

FOR OFFICIAL USE ONLY

Office of Assistant Secretary

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

MAY 15 1985

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

Dear Mr. President:

On April 16, 1985, I transmitted a letter to you with an enclosed proposed order on the application of Transportes Aereos Bolivianos, Docket 41932, for your consideration under section 801(a) of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978. The proposed order, if not disapproved, would renew the applicant's foreign air carrier permit under simplified procedures.

We would like to withdraw that item because the proposed renewed permit inadvertently excluded a standard condition, and resubmit, for your consideration, the enclosed proposed order. This proposed order is exactly the same as the earlier one, except the attachment to the foreign air carrier permit contains a necessary condition which requires that all flights to/from the United States must originate or terminate in the holder's homeland.

The new order will, unless you disapprove it within 60 days of this transmittal, renew the foreign air carrier permit of Transportes Aereos Bolivianos under simplified procedures.

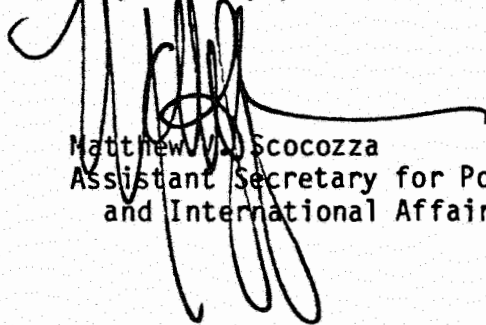
If you should decide earlier that you will not disapprove, please advise us to that effect; this will allow us to issue the order earlier.

FOR OFFICIAL USE ONLY

The President (2)

We are submitting the proposed decision to you before publication under the provisions of section 801(a) 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,

A handwritten signature in black ink, appearing to read 'M. Scocozza', with a long horizontal flourish extending to the right.

Matthew V. Scocozza
Assistant Secretary for Policy
and International Affairs

Enclosures



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

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Office of Assistant Secretary

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

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**Original Signed By
Matthew V. Scocozza**

Matthew V. Scocozza
Assistant Secretary for Policy
and International Affairs

Enclosures