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AVIATION

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REPORT ON REGULATORY REFORM

The Report of the CAB Special Staff on Regulatory Reform was issued on July 22, 1975. The unanimous recommendations set forth in the report represented the position of the Special Staff and did not represent positions of other elements of the Civil Aeronautics Board's (Board) Staff.

The Special Staff generally concluded that protective entry control, exit control and public utility-type price regulation under the Federal Aviation Act of 1958, as amended, are not justifiable in relation to the underlying cost and demand characteristics of commercial air transportation. The Special Staff stated that the airline industry is essentially naturally competitive as opposed to monopolistic and therefore believes that service quality and price will be highly responsive to demand created by immediate threats of new entry in markets presently served by a single carrier. In addition, the Special Staff felt that in the long term, possibilities for new entry will insure that the overall system will be composed of highly efficient carriers with the ability to adapt to rapidly changing conditions in the market place. Accordingly, the Special Staff suggested a statutory amendment to the Federal Aviation Act which would eliminate protective entry, exit and public utility-type price control in domestic air transportation within a three to five year period.

However, the staff did not advocate the removal or relaxation of those features of airline regulation which appear to be required in the public interest. In fact, the staff called for new requirements to assure the maintenance of safe operations and the adoption of measures to

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prevent or ameliorate market imperfections caused by external factors relating to airport, fuel allocation and State regulation.

Further recommendations in the deregulation program by the Special Staff included the following: (1) issuing temporary licenses for airlines only upon proof of financial fitness and renewal of such licenses upon continuing proof of financial fitness; (2) strengthening of FAA surveillance; (3) empowering the government to enable it to promulgate insurance and bonding requirements together with other measures reasonably necessary to assure that carrier economic conditions not impair substantial safety standards; (4) maintaining subsidized small community service by means of low-bid contracts awarded to operationally and financially qualified carriers; and (5) retaining and/or expanding Board authority over antitrust matters, including predatory conduct and mergers. Additionally, the Special Staff recommended that the precise scope and language of the aforementioned legislative proposals should be referred to and refined by an independent public body, such as the proposed National Commission on Regulatory Reform.

The Special Staff also recommended the Board support a legislative program which the Staff suggests be implemented independently of the general regulatory reform program. Such legislative proposals were formulated to comport with the statutory purpose of the existing regulatory scheme and were integrated with trends toward deregulation to master the following objectives: (1) increase price/quality options available to the American traveling and shipping public; (2) encourage greater efficiency through price competition and regulatory action which will lower costs, and (3) open defined sectors or zones of air transportation to regulation by market forces by removing entry and price controls in order to stimulate price competition, innovation and new services.

The condensed legislative proposals, as set forth in the *Report of the CAB Special Staff on Regulatory Reform: General Conclusions and Principal Recommendations*, dated July 22, 1975, read as follows:

- (1) *Statutory and other changes designed to create or widen less regulated zones*

The Board should press for legislation designed to authorize it to:

—Open entry for supplemental (charter only) carriers (subject to continuing proof of financial fitness) and gradually liberalize charter rules under legislation giving the Board authority to define “charters” as any full-up operation;¹

—open entry for all-cargo carriers (subject to continuing proof of financial fitness) and eliminate price controls in respect to domestic cargo air transportation in stages over a period of two years;

—establish low-bid contract system for the provision of small community subsidized air service² (or any other uneconomic service that is deemed to be required); and simultaneously (a) commence a gradual phase-out of certificated local service carrier small community operations and subsidy, and (b) allow economically unregulated commuter carriers to use aircraft of up to 55 revenue seats (instead of the present 30).

(2) *Discretionary policy changes*

The Board should administer rate, route, charter, and other policies so as to preserve the financial integrity of existing carriers, and also:

—Consider whether to establish ceiling fares under which carriers could reduce prices in response to competitive and other changing conditions subject to prohibitions against unlawful discrimination, predatory conduct, and causing other carriers to be placed in financial jeopardy;

—continue to perfect and expand domestic passenger fare standards with a view to creating incentives (as opposed to mandatory requirements) for greater carrier efficiency, and utilize these to determine the ceiling, if a ceiling approach is adopted;

—gradually liberalize charter rules consistently with the development of normal fare ceilings to widen the price/quality choice for consumers, and thus encourage price competition for discretionary travel between supplemental and scheduled carriers;

—expand route authority in accordance with demand and to permit congested large-hub airports to be by-passed, perfect the authority of local service carriers in on-line markets, approve new competitive authority to correct deficiencies or to improve services, and, to the extent feasible, select the most efficient carrier among competing applicants; and

—continue to discourage or disapprove mergers between large or viable carriers.

BAGGAGE AND DELAY LOSS

By Notice of Proposed Rule Making, EDR-282, dated March 6, 1975, and published at 40 F.R. 11602, March 12, 1975, the Civil Aeronautics Board (Board) gave notice that it had under consideration a proposed amendment to Part 221 of its Economic Regulations (14 CFR Part 221) which would remove the authority to file tariffs imposing time limits on the filing of passenger claims for loss of, damage to, or delay in the delivery of baggage. The Board described its actions as a concerted effort to formulate just and reasonable rules to prevent negligent and discriminatory baggage handling practices and to insure proper settlement of baggage claims in the event of loss, injury or delay. Citing existing tariffs³, it was noted that actions arising from baggage loss, damage or delay were barred unless written notice of the claim was received by the carrier within 45 days of the incident. The Board tentatively concluded that such tariffs were unlawful in that they barred recovery of legitimate claims and did not appear to serve a useful purpose. Thus, the Board proposed to amend Part 221 of the Economic Regulations by adding the following subparagraph (1) to section 221.38:

§221.38 *Rules and Regulations*

* * * *

(1) **Baggage liability rules.** No provision of the Board's regulations issued under this part or elsewhere shall be construed to permit on and after _____ the filing of any tariff rules stating any limitations on or condition relating to, the time period within which passengers must present written claims for loss of, damage to, or delay in delivering of baggage.

In a related action, Advance Notice of Proposed Rule Making, EDR-283, dated March 6, 1975, and published at 40 F.R. 11601, March 12, 1975, the Board gave notice that it had under consideration the issuance of a Notice of Proposed Rule Making looking towards the adoption of a regulation prescribing liquidated damages for delay in the receipt of baggage and a minimum liability for loss of baggage.

Compensation for Delayed Baggage

The Board noted the compensation for inconvenience suffered by passengers due to baggage delay was severely limited for two reasons:

(1) existing tariffs do not afford passengers compensation for consequential damages, and (2) damages resulting from delay in the receipt of baggage are by their nature intangible and difficult to quantify. Although carriers have made efforts to accommodate passengers whose baggage was delayed through authorizing reimbursement of costs for incidental necessities incurred by virtue of the temporary loss, no carrier was known to have established a policy of reimbursing passengers for frustration, inconvenience and other consequential effects of the delay. In fact, as noted *supra*, the carriers' tariffs appear to effectively disclaim liability for consequential damages.

Accordingly, the Board suggested a regulation prescribing liquidated damages to compensate passengers for damages common to all those suffering delays. Such liquidated damages would be in lieu of any right to recover for consequential damages and passenger eligibility for recovery would include those passengers whose baggage was not available in the normal course of unloading the flight. The Board contemplated that any regulation of this nature should apply to all trips on certified carriers in interstate or overseas air transportation.

Minimum Liability for Lost Baggage

Air carriers' lost baggage settlement practices which have generated the majority of consumer complaints to the Board are: (1) requiring purchase receipts for lost items; (2) limiting recovery for loss to depreciated value; and (3) strict adherence to time limitations on filing claims. It is recognized that air carriers must institutionalize some mechanisms to protect themselves from fraudulent claims but the Board has maintained that the protection of the air carrier cannot justify recovery procedures *in extremis* which serve to deny or arbitrarily reduce legitimate claims for loss.

The Board favors the establishment of regulated minimum liability for loss of baggage to reduce the abuse of the settlement process. Consequently, the Board recommends that any carrier which loses a passenger's baggage, or any piece thereof, automatically would be liable for a specified minimum dollar amount. Such established minimum liability would not preclude passengers, whose baggage value exceeded the minimum, from filing a claim for the additional loss up to the carrier's liability. However, acceptance of the minimum, would preclude the passenger from subsequently claiming additional damages. In addition, the Board tentatively concluded that if a bag had not been located within 60 days of the date of the

flight on which it was checked, it should be presumed lost for purpose of invoking the carriers' minimum liability.

Contemporaneously with the Notice of Proposed Rule Making and Advance Notice of Proposed Rule Making, the Board issued Order 75-3-18 (March 6, 1975) requiring the industry to show cause: (1) why the existing standard limitation on baggage liability should not be raised to \$750; (2) why consequential damages should not be included within both the standard liability limit and the provisions for declaration of excess value; (3) why the existing provisions of Rule 365—"Liability of Carrier" should not be found unlawful; (4) why the existing standard limitation of liability should not be waived where it can be shown that with regard to the particular claimant the baggage liability notice provisions of section 221.176 of Part 221 of the Board's Economic Regulations have not been complied with; and (5) why the above provisions should not, with equal effect, be applicable to all air carriers engaging in interstate and overseas air transportation of passengers.

Comments on the Board's proposals have been submitted together with replies. The Board has yet to take further action but some action is expected in the near future.

INFORMATION DESCRIBING AVAILABLE FARES

Section 403(a) of the Federal Aviation Act of 1958, as amended [49 U.S.C. 1373(a)] provides, *inter alia*, that every air carrier and foreign air carrier shall file with the Civil Aeronautics Board (Board) and keep open for public inspection, all of its rates, fares and charges for air transportation. In addition, Section 403(a) provides that the tariffs must be "filed, posted and published in such form and manner, and shall contain such information, as the Board shall by regulation prescribe. . .".

In light of the numerous discount fares recently filed by air carriers and subsequently approved by the Board, the Aviation Consumer Action Project (ACAP) petitioned the Board on May 23, 1975, to institute a rule making proceeding to formulate reasonable rules for dissemination of information on air fares.⁴ ACAP believes the Board should require fare tariffs be posted and published in a form and manner which will be both understandable and available to ticket purchasers.

In its petition, ACAP cites a report dated April 17, 1975, from the *Washington Post*, wherein a TWA executive stated that his company of-

ferred 20 different fares between New York and Los Angeles, ranging from \$115.24 to \$234.34. Due to the differences in discount plans, involving either advance ticket purchase, minimum trip duration or limitation as to time and day of travel, ACAP recommends that each carrier should be required to print and distribute a price list for all its major markets and a general description of its discount fare plans in all other markets.

By Advance Notice of Proposed Rule Making, EDR-285, dated June 5, 1975, the Board gave notice that it had under consideration a rule making action to amend Part 221 of the Board's Economic Regulations (14 CFR Part 221) to require carriers to publish and disseminate simplified information to the travelling public regarding the various available fares and their applicable restrictions. The Board particularly invited comments addressing the benefits and detriments of rules that would:

- (1) Require each carrier to publish and disseminate simplified statements describing all fares, and their attendant conditions, for service between each city-pair market which the carrier serves, or at least in the most heavily traveled markets; or
- (2) require each carrier to publish and disseminate a summary description of all its discount fares and their respective conditions, possibly along with a tabular presentation of sample comparisons with normal fares; or
- (3) require each carrier to compile and disseminate copies of tariff pages showing the entire list of fares in designated markets, along with pertinent excerpts of the actual text of its tariff rules describing available discount fares; or
- (4) require that specific information be included in carrier advertising; or
- (5) combine two or more of the foregoing requirements.

The date for filing comments on the proposed rule making was extended until August 11, 1975.

CAPACITY REDUCTION AGREEMENTS

In 7 *Law. Am.* 234-237, 1975, this report contained a section which reviewed a recent initial decision in C.A.B. Docket 22908 by an Administrative Law Judge (ALJ), wherein the judge concluded that the capacity

reduction agreement, originally approved in 1971, involving American, TWA and United Air Lines and covering four transcontinental markets, was adverse to the public interest. This decision was appealed to the full Civil Aeronautics Board (Board) for a final determination. The Board reached its decision on July 21, 1975, and affirmed the ALJ's conclusions in Order 75-7-98 (July 21, 1975).

In a departure from the initial decision, the Board condoned a less rigorous standard for weighing the merits and demerits of capacity agreements, in general. The Board adopted the standard for weighing anti-competitive agreements as defined in the *Local Cartage Agreement Case*, 15 C.A.B. 850 (1952), (hereafter *Local Cartage*). *Local Cartage* provided:

When an agreement has among its significant aspects elements which are plainly repugnant to established antitrust principles, approval should not be granted unless there is a clear showing that the agreement is required by a serious transportation need, or in order to secure important public benefits. *Local Cartage Agreement Case*, 15. C.A.B. 850, 853 (1952).

The Board finds that although arguments in favor of capacity agreements might run afoul of the Sherman Act, this does not necessarily mean that adequate justification for their implementation could not be found to exist in the air transportation field under the public interest standard which the Board is compelled to apply. The Board said it was of the opinion that there may be circumstances in the future where a short term departure from a normal reliance on competitive forces and unilateral restraint as a means of rectifying problems of excess capacity will be justified. However, the Board added, "such agreements should not become a normal, customary and continuing feature of the air transportation system."

The Board stated that initial approval of the 1971 capacity agreements, Order 71-8-91, was conditioned upon the urgent industry need to alleviate what was termed as an "extraordinary" excess-capacity problem, "which could not be remedied by normal competitive forces and unilateral action on a timely basis, and which threatened serious injury to certain of the carriers and the air transportation system as a whole."

However, the Board distinguished present market conditions from those existing during the original adoption period. The CAB pointed to presently effective Executive and Congressional economic recovery pro-

grams, increases in passenger traffic, and newly approved fare discount proposals. In addition, the Board was not persuaded that fuel cost savings resulting from capacity agreements could sufficiently outweigh the detriments arising from the impairment of a competitive air transportation system in the present market.

In the area of international aviation, the Board was careful to distinguish its views. The Board stated that its position with regard to domestic markets could "not be applied to international capacity agreements without taking into account the often decisively different circumstances which prevail in the international arena."⁵

FLOW-THROUGH SUBSIDY AWARD TO AIR TAXI OPERATOR

On July 11, 1975, the United States Court of Appeals for the District of Columbia Circuit, vacated CAB Order 74-4-77 (April 12, 1974) by which the Board had awarded "flow-through" subsidy to Air Midwest through Frontier Airlines, Inc., a local service air carrier. Air Midwest, Inc., an air taxi operator⁶ entered into a suspension/substitution arrangement with Frontier Airlines in 1970, whereby Air Midwest agreed to provide service to three cities⁷ which Frontier is obligated to serve under its certificate in return for which Frontier would suspend service to the same points.⁸ The arrangement requires, *inter alia*, that Frontier re-institute service to those cities if Air Midwest could not adequately provide or ceased to provide the service. Even though Air Midwest uses smaller aircraft and had lower operating expenses than did Frontier in serving those points, Air Midwest also found the service unprofitable and applied to the Board for a subsidy in 1973.⁹ The Board approved the subsidy sought, but determined that the subsidy should be paid initially to Frontier which would be passed to Air Midwest since section 406(a) of the Act provides for payment of subsidy to certificated carriers only.¹⁰ The Court held that section 406(a) gives the Board power to award subsidy to certificated air carriers only and cannot authorize public moneys to be paid to an uncertificated air carrier. The Court also held that the Board is required to consider the "need" of the certificated carrier prior to awarding subsidy. See *Delta Air Lines, Inc. v. Summerfield*, 347 U.S. 74 (1954). The Board must consider the current needs of the carrier considered as a whole and "not the needs of any other entity or of any sub-unit of the carrier." Furthermore, in citing *Trans World Airlines, Inc. v. CAB*, 385 F.2d 648 (1967), the Court stated that "the Focus of 406 need, as already noted, is to supply the year by year cash requirements for out-of-pocket expense."

In light of the legislative mandate, as well as the precedent cited above, the Court found that the Board failed to consider the financial condition of the certificated carrier but considered only the operating experience of the air taxi operator, Air Midwest, in awarding the subsidy and that furthermore the Board may subsidize a certificated air carrier only.

SEIZURE OF PHILLIPINE AIR LINES DC-10

Part 213 (14 CFR 213) of the Civil Aeronautics Board's Economic Regulations provides that the Civil Aeronautics Board (Board) may require a foreign air carrier, which is not the subject of an air transportation agreement between the United States government and the government of the foreign air carrier, to file its existing and proposed schedules of operations between points in the United States and any point outside the United States, with the Board. Such schedules must set forth data concerning arrival and departure times, frequency of flights and equipment to be utilized. Subject to Presidential disapproval, the Board may, in the public interest, disallow the inauguration of proposed schedules.

Historically, Part 213 was proposed to provide the United States with leverage in dealing with nations which chose not to enter into reciprocal treaties concerning air transportation. Hearings on the proposed regulation were held in 1961, and the examiner's initial decision recommended against adoption of Part 213. The Board chose not to adopt the examiner's decision and adopted Part 213 in April 1970. The regulation was then sent to the President (pursuant to 49 U.S.C. §1461) and was approved on June 3, 1970, with the direction that it go into effect immediately. Thus, the adoption of Part 213 resulted in amending foreign air carrier permits of those airlines whose governments did not have reciprocal air transport agreements with the United States by adding the requirement that they must file schedules with the Board which would be subject to Board approval.

Philippine Air Lines, Inc. (PAL) was made a party to the proceedings involving the proposed adoption of Part 213 in January of 1962, by virtue of its operations pursuant to a foreign air carrier permit.

On July 27, 1973, the Board implemented Part 213 by ordering PAL to file a schedule (Order 73-7-138). PAL complied with the Board order without appeal.

On April 4, 1974, PAL again filed proposed schedules indicating that PAL intended to substitute a DC-10 aircraft instead of the smaller DC-8

aircraft on its Manila-Honolulu-San Francisco route. On July 12, 1974, the Board, by Order 74-7-51, rejected the proposed DC-10 schedule. Such order was transmitted to the President and was approved.

Following the order of July 12th, PAL's Washington counsel represented to the Board on July 16, 1974, that an agreement between the United States and the Philippines on the reciprocal use of airspace had been reached. Thus, the Board approved the use of a DC-10 for a single flight on July 17, 1974. Two additional individual DC-10 flights shortly thereafter were approved due to the apparent imminence of an agreement between the United States and the Philippines.

On July 23, 1974, the Board received word that a PAL DC-10 was enroute to Honolulu. No Board representation of approval of the flight had been given to PAL. In addition, the Board had informed PAL that such daily individual approval could not continue. Notice was given to PAL that the Board had authorized the Bureau of Enforcement to take any necessary enforcement actions including seizure of the aircraft if it attempted landing at San Francisco International Airport. However, PAL was informed that no action would be taken if the aircraft returned to Manila after landing in Honolulu. Notwithstanding the Board's warnings, the PAL DC-10 proceeded to San Francisco where it was seized on July 24, 1975, to secure possible civil penalties in the amount of \$267,000, arising from the alleged violation of the Federal Aviation Act.

In the United States District Court for the Northern District of California, the United States contended that the July 24, 1975 flight was unauthorized and accordingly the aircraft was seized to secure any civil penalties which might arise from the violations.¹¹ Defendant, PAL, maintained that the seizure was unlawful and that Part 213 was invalid because, *inter alia*, the Board did not treat foreign airlines on an individual basis and that the Board could not amend a permit by administrative rule.

The court found that Part 213 was a valid amendment to PAL's permit since its permit was subject "to such reasonable terms, conditions and limitations required by the public interest as may be from time to time prescribed by the Board." It was pursuant to this limitation that Part 213 was adopted and PAL was included in the original hearings, with the opportunity to present evidence. The regulation amending PAL's permit was submitted and approved by the President and thus, the court found the amendment was well within the Board's statutory powers.

Regarding defendant's argument contesting the actual validity of Part 213, the court declined jurisdiction. Citing *Chicago & Southern Air*

Lines v. Waterman, 333 U.S. 103 (1948) the court held that the regulation “deals with subject matter exclusively of an international character and thus falls squarely within that area of Presidential authority considered to be sacrosanct.”

PAL further contended that the United States lacked the statutory and constitutional authority to seize the aircraft.

The United States predicated its seizure of the aircraft upon 49 U.S.C. section 1473(b)(2) which provides that “any aircraft subject to a lien [as provided for violation of 49 U.S.C. section 1471] may be summarily seized. . . .” In 14 CFR 302.808, the Board promulgated procedures to implement the seizure provision and such procedures were accordingly followed on July 24, 1974.

Defendants’ argument, contesting the United States statutory authority, centered upon whether the lien referred to in section 1473(b)(2) had to be an actual lien upon the aircraft in order to effect proper seizure and not merely a potential lien. The Court found that where plaintiff had constitutional authority to effect the seizure coupled with probable cause that the aircraft was in violation of the Federal Aviation Act, that “the United States must possess the potential to seize offending aircraft if the Act is to be effective.”

In its second seizure argument, PAL challenged the constitutionality of the seizure. Defendant relied upon the elements set forth in *Fuentes v. Shevin*, 407 U.S. 67 (1972) and *Sniadich v. Family Finance Corp.*, 395 U.S. 337 (1969). In light of the elements which must be satisfied before a pre-judicial seizure can be effective, the Court found this seizure to be constitutionally sound and stated:

That the seizure of this particular aircraft was necessary to preserve an important right cannot be gainsaid; . . . the President considered Part 213 an important tool in furthering United States foreign policy in the field of air transportation. It was considered essential that this government be able to maintain control over its policy regulating foreign air carriers operating within the United States. The necessity for prompt action, . . . is equally obvious; effective implementation of governmental policy required immediate action—especially in the case where an offending aircraft could easily have left the jurisdiction of the United States. Finally, the Court is satisfied that the statute is sufficiently narrow to provide control over the government’s authority in this area to prevent possible abuse.

The amount of civil penalties arising from PAL's unauthorized use of United States airspace is yet to be determined.

POLITICAL CONTRIBUTIONS CASE SETTLED

On March 12, 1975, the Bureau of Enforcement of the Civil Aeronautics Board filed charges in CAB Docket 26363 against American Airlines, Inc. (American) and certain individual respondents, based in part upon the January 30, 1974 complaint of the Aviation Consumer Action Project.¹² American was charged with, *inter alia*, the disbursement of corporate funds for political contributions and for failing to properly report such disbursements to the Board. The complaint prayed that American, its officers, agents, successors and assigns, the individually-named respondents, and persons acting in knowing concert therewith, be ordered to cease and desist from violating section 407 of the Federal Aviation Act (Act) and Part 241 of the Board's Economic Regulations, and from engaging in unfair and deceptive practices within the meaning of section 411 of the Act.¹³ Specifically, the complaint requested American to cease and desist from:

1. Maintaining any fund, cash, receivable or other asset of American not set forth in American's books of account;
2. receiving any revenue, or causing any disbursement of an asset, of American not fully and accurately set forth in American's books of account;
3. submitting to the Board any report, form or schedule required under Part 241 of the Regulations or otherwise, which falsely, inaccurately, deceptively, or incompletely represents any financial transaction or the financial condition of American.

In addition, certain remedial prayers were included in the complaint.

On May 27, 1975, in an Order to Cease and Desist, the Board approved a penalty settlement of \$150,000 (Order 75-5-102). Although American maintained and disbursed without proper disclosure to the Board for a nine-and-a-half-year period, approximately \$275,000 in corporate funds for political contributions and such amount would most closely approximate the injury to the public as a result of such activities, the Board agreed with the Bureau of Enforcement and determined not to impose a \$275,000 penalty based upon American's voluntary disclosure of the illegal

payments, its full cooperation during the investigation, and the repayment by certain American officials of \$125,000 to the corporation from their personal resources. The order provides that neither the penalty amounts nor related legal and accounting expenses can be included in the cost accounts upon which American's fares are based. This accounting procedure will insure that the illegal expenditures will not be passed on to air travelers.

AIRCRAFT WAKES

The National Aeronautics and Space Administration (NASA) has recently combined research efforts with the Federal Aviation Administration (FAA), in an attempt to find some way aircraft can be modified to reduce the intensity of aircraft wakes (trailing vortices) or to make the aircraft wakes (vortices) break down faster.

An aircraft wake is produced primarily by the lifting wings of a plane. The wings create vortices of swirling turbulent air-like small horizontal cyclones that trail behind the aircraft from the wingtips. The larger the aircraft, the stronger the wake and such wakes can cause a small aircraft, landing soon after a jumbo-jet to roll completely out of control.

Concern over aircraft wakes was commenced in the early 1950's with the introduction of the DC-6. The problem has since been amplified by today's jets that may weigh up to seven times more than the DC-6.

NASA is working with the Department of Transportation to investigate the problem. Ground simulations and in-flight tests at safe altitudes are being pursued at three NASA centers: Ames and Flight Research Centers, both in California, and Langley Research Center in Virginia. For instance, a specially-equipped Lear Jet and a T-37 jet trainer are flown through wakes created by larger aircraft and precise measurements of the aircraft upset are made. In this way, aeronautical engineers and scientists are gaining a better understanding of the mini-cyclones by measuring their speed. In addition, the FAA is working on avoidance schemes using instruments which would allow ground controllers and pilots to "see" a wake so that subsequently landing aircraft could veer away from hazardous zones.¹⁴

NASA's goal is to render vortices harmless at a distance compatible with other safety considerations, about two miles. If a two-mile spacing system could be instituted, airport towers could land and take off jets at

a greater rate. This spacing ability could save jet fuel that is presently wasted when jetcraft are subjected to holding patterns and wait to taxi to a runway.

Early results in the investigative research program indicate that there are several aerodynamic schemes which can alleviate the wake vortex upset problem. Such schemes include tailoring of lift across wings, engine placement, wing spoilers and drag devices. Further research efforts will be announced in the next few months.

U.S. FEDERAL AVIATION ADMINISTRATION

Firearms on Aircraft

Effective June 20, 1975, the Federal Aviation Administration (FAA) imposed tighter regulations governing the carrying of firearms on aircraft by law enforcement officers or other authorized persons. In addition, the FAA has developed restrictions on the transportation by air of prisoners in the custody of law enforcement officers and transportation of weapons in checked baggage.

In summary, the new regulations specify that:

- (1) Only officials or employees of the U.S., a state or political subdivision of a state, a municipality or persons authorized to do so by the air carrier involved and the Administrator of the FAA may carry firearms on their persons on large airplanes.
- (2) The air carrier be given at least one hour's notice that a prisoner is to be escorted on one of its aircraft and that a weapon will be carried aboard.
- (3) No more than one dangerous prisoner can be escorted on any one flight and that adequate devices be available to restrain the prisoner if necessary.
- (4) Liquor not be served to a prisoner, any of his escorts, or any other person authorized to carry a weapon.
- (5) Weapons cannot be transported in checked baggage unless they are unloaded, the baggage is locked, the carrier is notified in advance that it contains a weapon and the baggage is carried in an area that is inaccessible to passengers.

Before a law enforcement officer or other authorized person can carry a weapon aboard an aircraft, he must show a defined need in connection with the performance of his duty to have a weapon accessible to him during the course of the flight. The carrier must be notified at least one hour in advance of the flight on which the weapon is to be carried. In an emergency, the carrier should be informed "as soon as practicable."

Dangerous prisoners must be in the custody of at least two escorts and must be boarded on the aircraft in advance of other passengers and deplaned subsequent to other passengers. Dangerous prisoners are to be seated in the rear most seat that is not a lounge or exit. Carriers must be notified in advance of such prisoners' air carriage and advised of their dangerous nature by the governmental entity involved.

The new regulations were adopted as amendments to Part 121 of the Federal Air Regulations and apply to all operations of large passenger aircraft including those used by air travel clubs and air taxi operators.

Jumbo-Jets Modifications

On July 11, 1975, the FAA ordered major design changes for all U.S. wide-bodied aircraft (jumbo-jets) to improve their ability to withstand the type of damage which led to the crash of a McDonnell Douglas DC-10 outside Paris in May, 1974. The modifications prescribed involve expansion of relief-vent systems and strengthening of floors, and apply to Boeing's 747, Lockheed's L-10-11, as well as the DC-10. Deadline for compliance is December 31, 1977 at an estimated cost of approximately \$40 million to which must be added the revenues lost while the planes are out of service for modification.

The FAA order does not apply to jumbo-jets flown by foreign airlines although it is expected that some of these will voluntarily follow the lead of U.S. airlines.

Foreign Airlines Security Program

Also on July 11, 1975 the FAA ordered foreign airlines operating in the United States, to institute security programs at U.S. gateways similar to the antihijacking and antisabotage programs required of U.S. airlines since early 1974. In part, the order requires that the security programs "be designed to prevent or deter unauthorized access to aircraft and prevent cargo or checked baggage from being loaded" except in compliance with accepted procedures. The order provides sanctions up to \$1,000 per violation, as is the case with domestic airlines.

The FAA order came as no surprise to foreign airlines, many of which had already instituted safeguards to minimize the dangers of hijacking and sabotage while in U.S. territory.

USE OF SDR

A decision in principle to adopt the International Monetary Fund's SDR unit of currency as the central basic reference value for negotiating and establishing worldwide passenger fares, cargo rates, and associated financial transactions has been agreed to unanimously by International Air Transport Association (IATA) airline delegates to a special composite traffic conference which met in Nice, April 29-May 5, 1975. Subject to approval by the governments concerned and completion of the necessary additional technical work and agreements, the traditional U.S. dollar and pound sterling bases used for this purpose since the early 1940s will be translated into the SDR basing system by April 1, 1977.

Traditionally, all international passenger fares and cargo rates have been negotiated and agreed by IATA traffic conferences for submission to governments in two basic currencies, the U.S. dollar and the pound sterling. Devaluation and floating of these basic and other currencies since 1971 has led to a complicated system of surcharges and discount factors applied to currencies that have decreased or increased in market value.

No single currency base offers the possibility of matching the continuing wide range of currency fluctuations affecting international marketing transactions, and greater stability can be obtained by using the SDR basket of currencies system. In deciding to move to the SDR base, the IATA airlines are recognizing and following current government practices and actions to establish a more stable basis for settling international business and currency matters.

NOTES

¹The latter is a current Board proposal.

²Proposed by the Board in 1972 and 1973, but no legislative action was taken.

³See, e.g., Rule 40(B), CAB No. 142 Local and Joint Passenger Rules Tariff No. PR-6, Airline Tariff Publishers, Inc., Agent.

⁴Petition of Aviation Consumer Action Project for Issuance of Reasonable Rules Concerning Printing and Disseminating Information on Air Fares, CAB Docket 27769.

⁵See, Pan American World Airways, Inc. and Quantas Airways Ltd., Capacity Reduction, Order 75-7-27 (July 3, 1975); wherein the Board sets forth factors distinguishing international capacity limitations from domestic capacity agreements.

⁶The Board has established a classification for an air carrier known as an air taxi operator. The air taxi operator is not required to obtain a certificate of public convenience and necessity under Sec. 401 of the Federal Aviation Act of 1958, but is provided with certain exemption authority to engage in air transportation as set forth in 14 CFR Subpart A of the Board's Economic Regulations. The classification is established in 14 CFR Para. 298.3.

⁷Hutchinson, Great Bend and Dodge City, Kansas.

⁸See *ALPA v. CAB*, 494 F.2d 1118 (C.A.D.C. 1964) for discussion by the same Court approving such arrangements.

⁹Air Midwest estimated it would require a subsidy of \$131,891 in the following year to break even on the service while Frontier would require a subsidy of \$406,000 if it would be required to resume service at the three cities.

¹⁰Sec. 406(a) reads: "The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail connected therewith (including transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each carrier or class of air carriers; and (3) to publish the same."

¹¹*United States v. Philippine Airlines, Inc.*, D.C.N.O. Calif. No. C-74-1848-OJC, June 4, 1975.

¹²The individual respondents were George A. Spater, Chairman of the Board of American, Donald Loyd Jones, Executive Vice President of American, R. M. Bressler, Senior Vice President of Finance (until April 1973) of American, Cyrus S. Collins, Vice President, Public Affairs of American, J. P. Bass, Vice President of American, W. G. Woodward, Vice President of American, Thomas P. Smith, Assistant Treasurer of American and Douglas Stockdale, Vice President of American and General Manager of American Airlines of Mexico. American Airlines of Mexico, a wholly-owned subsidiary of American and existing as a separate corporation to satisfy Mexican law, was also included in the suit.

¹³Sec. 407 of the Act provides in pertinent part:

(d) The Board shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, memoranda of the movement of traffic, as well as of the receipt and expenditures of money, . . . *Provided*, that any air carrier may keep additional accounts, records or memoranda if they do not impair the integrity of the accounts, records or memoranda prescribed or approved by the Board and do not constitute an undue financial burden on such air carrier.

¹⁴In earlier days of commercial jet transport, engine exhausts were sooty and pilots could actually see the vortices ahead of them as swirling smoke. However, today's environmental clean air standards have removed the smoke from engine exhausts and have thereby increased wake hazards by rendering them invisible.