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1962

## CONGRESSIONAL RECORD — DAILY DIGEST

D275

Michael Zarin, Port of New York Authority; Joseph Murphy, Inland Marine Underwriters Association; and Arthur Murphy, Baer, Marks, Friedman & Berliner, New York City.

## SUPPLEMENTAL AIR CARRIERS

*Conferees* continued, in executive session, to resolve the differences between the Senate- and House-passed versions of S. 1969, to amend the Federal Aviation Act so as to provide for supplemental air carriers, but did not reach final agreement, and recessed subject to call.

## BILLS SIGNED BY THE PRESIDENT

## New Law

(For last listing of public laws, see DIGEST, p. D255 (April 5, 1962))

H.R. 10573, to grant the American Numismatic Association perpetual succession. Signed April 10, 1962 (P.L. 87-433).

COMMITTEE MEETINGS FOR THURSDAY,  
APRIL 12

(All meetings are open unless otherwise designated)

## Senate

*Committee on Agriculture and Forestry*, executive, on S. 2786, farm bill, 10 a.m., 324 Old Senate Office Building.

*Committee on Armed Services*, Special Preparedness Subcommittee, on the troop information and education phase of its military censorship hearings, 10 a.m., 224 Old Senate Office Building.

Central Intelligence Subcommittee, executive, to hear CIA Director McCone, 10:30 a.m., 212 Old Senate Office Building.

*Committee on Banking and Currency*, Small Business Subcommittee, on S. 2970, proposing amendments to the Small Business Act, 10 a.m., 5302 New Senate Office Building.

*Committee on Commerce*, on S. 2814, providing for the establishment of a commercial communications satellite system, 10 a.m., 1202 New Senate Office Building.

*Committee on Finance*, on H.R. 10650, Internal Revenue Act amendments, 10 a.m., 2221 New Senate Office Building.

*Committee on Foreign Relations*, on S. 2996, the foreign aid bill, open and executive, at 10:30 a.m., on funds for European programs, 4221 New Senate Office Building; and executive at 2:30 p.m., on contributions to international organizations, room F-53, Capitol.

*Committee on Government Operations*, Permanent Subcommittee on Investigations, on the pyramiding of profits and costs in the missile procurement industry, 10:30 a.m., 3302 New Senate Office Building.

*Committee on Interior and Insular Affairs*, executive, to meet with members of the National Fuels Policy Study Group, 10 a.m., 3110 New Senate Office Building.

*Committee on the Judiciary*, Constitutional Rights Subcom-

mittee, on S. 480, 2750, and 2979, relating to literacy requirements for voting standards, 10 a.m., 457 Old Senate Office Building.

Antitrust and Monopoly Subcommittee, on antitrust phases of control and ownership of a space communications satellite system, 10 a.m., 1114 New Senate Office Building.

*Committee on Labor and Public Welfare*, Subcommittee on Education, on S. 2826, to improve the quality of elementary and secondary education, 10 a.m., 4232 New Senate Office Building.

*Committee on Public Works*, on S. 2965 and S. 2817, authorizing plans for accelerated public works programs, 9:30 a.m., 4200 New Senate Office Building.

## House

*Committee on Agriculture*, executive, on general farm bill, 10 a.m., 1310 New House Office Building.

*Committee on Appropriations*, Subcommittee on Public Works, executive, 10 a.m., 313, east front, U.S. Capitol Building. Subcommittee on Military Construction, executive, 10 a.m., 228 Old House Office Building.

*Committee on Armed Services*, Subcommittee No. 1 on H.R. 7656, to amend the Uniform Code of Military Justice, 10 a.m., 313-A Old House Office Building.

Subcommittee for Special Investigations, on procurement practices in the purchase of M-113 armored personnel carriers, 2 p.m., 304 Old House Office Building.

*Committee on Education and Labor*, executive, on migratory labor legislation, 9:45 a.m., 429 Old House Office Building.

*Committee on Foreign Affairs*, on the Foreign Assistance Act of 1962, 10:30 a.m., G-3 U.S. Capitol Building.

Subcommittee on International Organization and Movements, executive, 2:20 p.m., G-3 U.S. Capitol Building.

*Committee on Interior and Insular Affairs*, Subcommittee on Indian Affairs, 9:45 a.m., 1324 New House Office Building.

*Committee on Interstate and Foreign Commerce*, executive, on pending legislation, 10 a.m., 1334 New House Office Building.

*Committee on the Judiciary*, Subcommittee No. 2, on H.R. 9475, for the relief of victims of the Cal-Poly air disaster, 10 a.m., 327 Old House Office Building.

Subcommittee No. 4, on H.R. 4855, to amend the Bankruptcy Act; and H.J. Res. 261 and Res. 643, similar resolutions, regarding establishment of the sesquicentennial commission for the celebration of the Battle of New Orleans, 10 a.m., 346 Old House Office Building.

Subcommittee No. 5, executive, on pending legislation, 10 a.m., 347 Old House Office Building.

*Committee on Post Office and Civil Service*, executive, on pending business, 10 a.m., 215 Old House Office Building.

*Committee on Science and Astronautics*, on H.R. 10100, NASA authorization bill, 10 a.m., 214-B New House Office Building.

*Committee on Ways and Means*, executive, on H.R. 9900, the Trade Expansion Act of 1962, 10 a.m., committee room, New House Office Building.

## Joint Committees

*Joint Committee on the Library*, executive, on committee business, 2 p.m., room G-53, Capitol.

*Conferees*, executive, on S. 205, educational television bill, 3 p.m., room F-82, Capitol.

# Calendar No. 664

87<sup>TH</sup> CONGRESS }  
*1st Session* }

SENATE }

REPORT  
No. 688

## AMENDMENTS TO THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR A CLASS OF SUPPLEMENTAL AIR CARRIERS

—————  
AUGUST 8, 1961.—Ordered to be printed  
—————

Mr. MONRONEY, from the Committee on Commerce, submitted the  
following

### R E P O R T

[To accompany S. 1969]

The Committee on Commerce, to whom was referred the bill (S. 1969) to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment, in the nature of substitute, is as follows:

Strike out all after the enacting clause and insert the following:

That (a) section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (13) through (31) as (14) through (32) and inserting therein a new paragraph to read as follows:

“(13) ‘Charter service’ means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour.”

(b) Section 101 of the Federal Aviation Act, as amended, is further amended by redesignating paragraphs (32) and (33) as (35) and (36), respectively, and inserting therein two new paragraphs to read as follows:

“(33) ‘Supplemental air carrier’ means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

“(34) ‘Supplemental air transportation’ means charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act.”

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read as follows:

“(3) (i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate, to any applicant not holding a certificate under paragraphs (1) or (2) of this subsection, authorizing the whole or any part of the transportation covered by the application, and for such period, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to the type of supplemental air transportation for which authority is sought, including the nature of the public need therefor and the extent to which the applicant will be required to provide such air transportation.

“(ii) Any certificate issued pursuant to this paragraph authorizing individually ticketed or waybilled service shall contain such limitations, including the term thereof, as the Board finds are required to insure that such service will not result in significant diversion of traffic from any air carrier authorized to render service between the same points by a certificate or certificates of public convenience and necessity issued pursuant to paragraphs (1) and (2) of this subsection.”

SEC. 3. Subsection (c) of section 401 of the Federal Aviation Act is amended to read as follows:

“TERMS AND CONDITIONS OF CERTIFICATE

“(e) (1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

“(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

“(3) A certificate issued under this section to engage in supplemental air transportation shall, with respect to charter service, designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within or between which service may be rendered.

“(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d) (3) (ii) of this section.

“(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

“(6) Any air carrier, other than a supplemental air carrier, may perform charter service or any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board.”

SEC. 4. Clause (3) of section 405(b) of the Federal Aviation Act is amended by inserting after “each such air carrier” the words “(other than a supplemental air carrier)”.

SEC. 5. Title IV of the Federal Aviation Act is amended by adding at the end thereof a new section to read as follows:

“SPECIAL OPERATING AUTHORIZATIONS

“Authority of Board To Issue

“SEC. 417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—

“(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

“(2) that there is a temporary requirement for air transportation between two points one or both of which is not regularly served by any air carrier; and

“(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental carrier a special operating authorization to engage in air transportation between such points.

#### “Terms of Authorization

“(b) A special operating authorization issued hereunder shall—

“(1) contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which would otherwise exist, without significant diversion of traffic from the holders of certificates for the route;

“(2) be valid for not more than thirty days and extended not more than twice; and

“(3) not be deemed a license within the meaning of the Administrative Procedure Act (5 U.S.C. 1001, et seq., as amended).

#### “Procedure

“(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved.”

SEC. 6. Section 901(a) of the Federal Aviation Act of 1958 is amended to read as follows:

#### “CIVIL PENALTIES

##### “Safety, Economic, and Postal Offenses

“SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided*, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

“(2) Any such civil penalty may be compromised by the Administrator in the case of violations of title III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of title IV and VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.”

SEC. 7. (a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show—

(1) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board order E-9744 of November 15, 1955, and has pending before the Board an application for certification as a supplemental air carrier which was filed prior to July 14, 1960;

(2) that between January 1, 1960, and May 25, 1961, the applicant or his predecessor in interest lawfully performed either (A) any portion of the service authorized by the certificate or interim operating authority, or (B) any operations for the Military Establishment of the United States;

(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this Act: *Provided*, That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect, notwithstanding a pending judicial review of such order; and

(4) that such certificate or interim operating authority is held by the original grantee or has been transferred with Board approval pursuant to section 401(h) of the Federal Aviation Act: *Provided*, That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall extend the authority hereunder if it approves the transfer pursuant to section 401(h) of such Act;

the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to the terms, conditions, and limitations attached thereto pending issuance or denial of a certificate pursuant to section 401(d)(3) of such Act authorizing the whole or any part of the transportation covered by the application.

(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act for a certificate for supplemental air transportation within 30 days after the date of enactment of this Act shall show that it or its predecessor has received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74 Stat. 527), the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's interim authority and subject to the terms, conditions, and limitations attached thereto pending issuance or denial of a certificate pursuant to section 401(d)(3) of such Act authorizing the whole or any part of the transportation covered by the application.

SEC. 8. (a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adapted January 28, 1959, or order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74 Stat. 527), it may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act within said thirty days, until the Board has granted or denied interim authority under section 7 of this Act. Any air carrier whose application for certification as a supplement air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority for thirty days from the date of enactment of the Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act within said thirty days, until the Board has granted or denied interim authority under section 7 of this Act. The certificates of public convenience and necessity issued by the Board pursuant to order E-13436 adopted January 28, 1959, and order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the exemption

authority issued by the Board under order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under order E-10161 of April 3, 1956, shall terminate on the date of an order of the Board granting or denying interim authority under section 7 of this Act, or if the carrier files no application under section 401(d)(3) within 30 days from the date of enactment of this Act, at the end of said 30-day period. Any carrier whose operating authority in interstate air transportation under Board order E-9744 is continuing solely by virtue of a judicial stay of a Board order which would otherwise terminate such operating authority, is hereby authorized to continue to operate, subject to all conditions and limitations contained in order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to order E-13436 or order E-14196 or against the holder of interim authority issued under section a(1) of public Law 86-661 pending before the Board on the date of enactment of Public Law 86-661 or this Act, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or interim authority or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air carrier for violations occurring prior to the extension of its authority under section 7 or the issuance to such carrier of a certificate of public convenience and necessity for supplemental air transportation under section 401(d)(3) of the Federal Aviation Act may be imposed upon such extension of authority or certificate issued to such air carrier.

(c) Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 et al., shall be deemed to have been finally disposed of upon the date of enactment of this Act.

Amend the title so as to read:

A bill to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes.

#### SUMMARY OF THE BILL

The present measure would make it clear that a carrier may request and be authorized to perform limited services supplemental to those furnished by the regular air carriers and would authorize the Board to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized. This authority was requested by the Civil Aeronautics Board as a result of the decision of the U.S. Court of Appeals for the District of Columbia in *United Airlines et al. v. Civil Aeronautics Board*, which determined that the Board lacked authority under existing law to issue limited certificates.

The bill would (1) grant statutory interim operating rights, in the nature of temporary "grandfather" rights, to existing holders of supplemental air carrier certificates who have performed a portion of the service authorized by their present certificates, (2) make clear that a supplemental certificate is primarily a certificate for charter service and provide that the Board may, when the public convenience and necessity requires, also authorize individually ticketed service, (3) make clear that supplemental air carriers are not eligible for subsidy payments, (4) permit the Board to issue a special operating authorization for temporary service between particular points during periods when regular service is inadequate, (5) permit the Board to impose civil penalties for violations of title IV of the act relating to economic regulations, (6) amend the act to provide for a statutory definition of

6 PROVIDE A CLASS OF SUPPLEMENTAL AIR CARRIERS

charter service, (7) make clear that a regularly certificated carrier cannot also be certificated as a supplemental carrier, and (8) enable the Board to make a determination of fitness based upon considerations peculiar to the type of supplemental transportation for which authority is sought.

HEARINGS

Your committee conducted hearings over a period of 3 days and received testimony from the following witnesses: Senators John Sparkman and Howard W. Cannon; Alan Boyd, Chairman, Civil Aeronautics Board; Robert Fraley, Quaker City Airways, Philadelphia, Pa., and Mantz Air Services, Burbank, Calif.; Jesse Stallings, president, Capitol Airways, Nashville, Tenn.; Dr. Ralph Cox, Jr., president, U.S. Overseas Airlines, Wildwood, N.J.; George Patterson, president and general manager, President Airlines, Inc., Burbank, Calif.; Reed Pigman, president, American Flyers, Fort Worth, Tex.; Alfred Blatz, president, Blatz Airlines, Burbank, Calif.; Angus McDonald, assistant director, National Farmers Union, Washington, D.C.; Stuart Tipton, Air Transport Association, Washington, D.C.; James Anton, Quaker City Airways; Clayton L. Burwell, president, Independent Airlines; Robert E. Commerce, president, Airline Dispatchers Association; and Robert C. Goodman, Saturn Airways. With the exception of the Air Transport Association and the Airline Dispatchers Association, all witnesses strongly supported the objectives of the bill.

SECTION-BY-SECTION ANALYSIS

*Section 1*

This section would amend section 101 of the Federal Aviation Act to include additional statutory definitions. "Charter service" would be defined as air transportation where the entire capacity of one or more aircraft has been engaged on a time, mileage, or trip basis, but specifically excluding transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides, or offers to provide, transportation services to individual members of the general public other than as a member of a group on an all-expense-paid tour. This definition would be applicable to all certificated air carriers including both route carriers and supplemental carriers.

"Supplemental air carrier" would be defined as an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"Supplemental air transportation" would be defined as charter service and other air transportation rendered pursuant to a supplemental certificate.

*Section 2*

Subsection 401(d) of the act would be amended by adding a new paragraph which would authorize the Board to issue a certificate to engage in air transportation as a supplemental air carrier to any applicant other than certificated route carriers. The Board could authorize the whole or any part of the transportation covered by the application, and authorize it for such periods, as the public convenience and necessity may require, provided the applicant is found to be fit,



willing, and able to properly perform such transportation. This provision would permit the Board to make a finding of fitness on the basis of the type of supplemental transportation for which authority is sought. The Board would be permitted to authorize individually ticketed or waybilled services but would be required to include in the certificate such terms and limitations as it finds are necessary to insure that such services will not result in significant diversion of traffic from the certificated route carriers authorized to render service between the same points.

### *Section 3*

Section 401(e) of the act would be amended to permit the Board, in issuing certificates for supplemental air transportation for charter service, to designate terminal or intermediate points only insofar as the Board deems practicable and otherwise permits the Board to designate only the geographical area, or areas, within or between which service may be rendered.

Individually ticketed operations would be permitted only between designated points.

The Board would be permitted to impose terms, conditions, or limitations as to frequency of schedules and as to equipment in a supplemental certificate to insure that such individually ticketed service is supplemental to the service being provided by the certificated route carriers. Such limitations are prohibited in certificates issued to route carriers. This section would continue the present authority of a certificated route carrier to perform charter service under regulations prescribed by the Board.

### *Section 4*

Section 406(b) of the act would be amended to specifically exclude supplemental air carriers from eligibility for subsidy.

### *Section 5*

A new section 417 would be added at the end of title IV of the act to permit the Board to issue "special operating authorizations" to supplemental air carriers. Such authorizations would be limited to periods when the capacity of the certificated route carriers was insufficient to meet the requirements of the public or the postal service. Certificated route carriers would not be eligible to receive such authorizations. Specifically, the Board could issue this special operating authorization upon a finding that (1) the service of a certificated route carrier is temporarily insufficient to meet the requirements of the public or the postal service, (2) there is a temporary requirement for transportation between two points, one or both of which is not regularly served by any air carrier, and (3) any supplemental air carrier can supply the additional service temporarily required in the public interest.

Such authorizations must contain limitations as to frequency and types of equipment so as to assure that the service authorized will alleviate insufficiencies which would otherwise exist without significant diversion of traffic from certificated route carriers. The authorization would be limited to 30 days. However, the Board would be permitted to extend it, but not more than twice. The authorizations would not be deemed licenses within the meaning of the Administrative Procedures Act.

The Board would be required to establish procedures for the expeditious investigation and determination of requests for such authorizations. The bill would require written notice to air carriers certificated to provide service between the points involved and afford such carriers the opportunity to protest the application in writing. This section contemplates that procedures will be adopted so as to avoid undue delay in the issuance of special operating authorizations and that the Board shall take into account in investigating such applications the degree of emergency involved.

*Section 6*

Section 901(a) would be amended to give the Board jurisdiction to impose the same civil penalties for violations of the economic provisions of the act as are now provided for violations of other provisions of the act. This jurisdiction would extend to all of the provisions of title IV and would include violations by the certificated route carriers as well as those committed by the supplemental air carriers and other persons.

*Section 7*

This section would require the Board to issue interim operating authority in the nature of temporary grandfather rights to any applicant who, within 30 days following enactment of this legislation, applies for a supplemental certificate and shows: (1) That it has been authorized to engage in supplemental air transportation, by certificate, interim operating authority, or exemption; (2) that it has operated under the authority or performed transportation for the Military Establishment; and (3) that this authority has not been terminated or expired. Upon proof of these facts, the Board would be required to issue interim authority of the applicant to engage in supplemental air transportation to the same extent authorized in the applicant's present certificate or authority until the Board disposes of its applications under section 401(d)(3)—the new provision for supplemental certificates effective upon enactment of this bill.

This section also contains a provision which would enable a carrier who received interim operating authority under Public Law 86-661 to qualify automatically for the grandfather interim authority.

*Section 8*

This section would permit any supplemental carrier who previously received a certificate or interim operating authority under Public Law 86-661, to continue its operations under existing authority for 30 days after enactment of the bill, and, if it has filed an application under section 401(d)(3) for a supplemental certificate within said 30 days, to continue to operate until the Board passes upon its request for the interim authority provided for in section 7 of the bill.

This section also has a similar provision for those carriers who were not certificated but were still authorized to conduct interstate air transportation as a supplemental carrier pursuant to the Board's original exemption order, and who (1) had an application pending before the Board for a certificate on July 14, 1960, and (2) filed an application for a certificate under section 401(d)(3) within 30 days after enactment of the bill. This latter provision is designated to continue the operations of only those supplemental carriers who received authority under Order E-9744 whose applications for a cer-

tificate in docket 5132 have not yet been finally disposed of by the Board.

Section 8(a) also contains a provision which would cancel (a) the certificate previously issued to the supplemental carriers by Order E-13436 and Order E-14196, (b) any interim operating authority issued under Public Law 86-661, and (c) the exemption authority issued under Order E-9744 or prior orders. Such authorizations would terminate on the date of an order of the Board granting or denying grandfather rights—i.e., the interim authority provided for in section 7. If the carrier did not file an application under section 401(d)(3) within 30 days after enactment of the bill, such authorization would terminate 30 days after enactment.

In addition, a provision is included to permit the continuation of those supplemental carriers operating under Order E-9744 which are operating solely by virtue of a judicial stay of a Board order revoking their authority. Their operations would continue until the court lifts such stay or until final disposition of judicial review, whichever occurs first.

Section 8(b) would preserve the Board's power to institute enforcement proceedings for violations which occurred before enactment of the bill. It would also permit the Board to impose sanctions for past violations, either upon the interim extensions of authority issued under section 7 or upon new certificates issued pursuant to section 401(d)(3).

Section 8(c) would clear the Board's docket of applications filed in docket 5132 by declaring that they shall be deemed to have been finally disposed of upon the date of enactment of the bill.

#### BACKGROUND

The origin of the supplemental air carrier industry traces back to the period shortly following the enactment of the Civil Aeronautics Act of 1938. It was during this period that the Board issued an exemption order authorizing nonscheduled operations. Initially, and up until the end of World War II, nonscheduled operations were generally conducted with aircraft of smaller size than those utilized by the certificated route carriers. Following the end of World War II surplus transport-type aircraft became available and were acquired in significant numbers by the nonscheduled operators. With larger aircraft of increased capacity their cargo and passenger operations substantially expanded. As a result, the Board, in 1947, revised its exemption regulations to require letters of registration as condition precedent to operations and to distinguish between operators of transport-type aircraft and operators of small aircraft, which were termed, respectively, "large irregulars" and "small irregulars."

The large irregular carriers were precluded from operating "regularly or with a reasonable degree of regularity." Under criteria and regulations prescribed by the Board, the carriers could operate between 8 and 12 flights per month between the same 2 points. Charter, individually ticketed, and waybilled flights were all counted in determining whether operations between the same two points were excessive. Operations were permitted in interstate, oversea, and foreign air transportation for the carriage of property and in other than foreign air transportation for the carriage of persons.

10 PROVIDE A CLASS OF SUPPLEMENTAL AIR CARRIERS

Subsequent changes in the regulations proved inadequate to meet the various problems confronting the Board in its effort to satisfactorily determine the appropriate role of the nonscheduled carriers. As a result, in 1951 the Board instituted the large irregular air carrier investigation, docket 5132, to determine:

- (1) Their role in the air transportation system and the extent of the operations which should be permitted;
- (2) The carriers which were to receive authority; and
- (3) Whether the authorization should be by certificate or exemption.

After protracted hearings, with some 30 applicants still to be heard, the Board in 1954 determined it was necessary to expedite the proceeding by first deciding the issue as to the role of the carriers and the scope of their operations, leaving for future decision the remaining two issues. As a result, on November 15, 1955, in Order E-9744, the Board found that irregular carriers comprise a "separate class of carriers" performing varied and flexible services, and being "unhampered and unrestricted by schedule and route requirement \* \* \* make themselves available to serve whenever and wherever the demand exists." The Board further found that their operations would not adversely affect the regular route carriers and that unlimited charter authority should be granted, together with individually ticketed authority not to exceed 10 flights per month in the same direction between any two points. The 10-flight limitation was derived from an average of the 8 to 12 flights permitted under the prior regulations. Its purpose was to remove uncertainties as to the extent and scope of operations permitted, with the resulting and obvious benefits to the carriers and the Board in administration and enforcement.

The Board decided to grant new authority to all members of the class on an interim exemption basis pending its final decision as to the qualifications of individual carriers and as to whether the final authorization should be by certificate or exemption.

The order granting interim exemption authority was set aside by the Court of Appeals for the District of Columbia Circuit on July 19, 1956, on the ground that the Board had not made sufficient subsidiary finding to sustain the statutory finding required for exemption that a requirement for certification would be an undue burden on the carriers. A petition for writ of certiorari was denied by the Supreme Court. On December 21, 1956, the court of appeals stayed the issuance of its mandate until 60 days after the date of final Board decision in docket 5132.

On January 28, 1959, in order E-14196 the Board granted temporary certificates of public convenience and necessity for supplemental air service to 23 carriers found by the Board fit to receive them. Subsequently, on July 8, 1959, in Order E-14196, the Board issued two additional certificates. These 25 certificates authorized the supplemental carriers to render unlimited planeload charter service and to conduct, without specified terminal or intermediate points, individually ticketed flights not to exceed 10 between the same 2 points during any month. Authority was limited to operations conducted in interstate air transportation. Applications of five other carriers remained to be decided pending further consideration of their qualifications.

The Board's decision was contested and the U.S. Court of Appeals for the District of Columbia found, in *United Air Lines et al. v. Civil Aeronautics Board*, that the order of January 28, 1959, was legally deficient in three respects:

1. The certificates issued by the Board do not specify the terminal and intermediate points between which air transportation is authorized but grant a blanket authorization to operate between any two points in the United States.

2. The certificates issued by the Board contain a limitation of 10 flights per month in the same direction between the same two points. In the opinion of the court, this limitation was in violation of section 401(e) of the act which provides:

"No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules \* \* \*"

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out—one judge dissenting—the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations. It would thus appear that the court's standard of fitness that each carrier must establish would be greater than that found by the Board to be necessary for supplemental service.

In view of the fact that it was the same court which, on July 19, 1956, had invalidated the Board's efforts to authorize supplemental air transportation by means of an exemption order, it became a serious question whether supplemental carriers could operate under either exemption or certificate of authority. Consequently, the Board, on April 28, 1960, submitted to Congress proposed legislation (S. 1543 and H.R. 7593) to provide the authority which the court found the Board lacked.

Your committee favorably reported S. 1543, with amendments, on June 13, 1960. However, the House Interstate and Foreign Commerce Committee in its report (No. 1877) of June 15, 1960, stated that it did not have sufficient time to adequately study the entire question of supplemental air transportation, and recommended enactment of temporary legislation to maintain the status quo for 1 year since without immediate action by Congress, the supplemental carriers might not be able to continue operating. Thereafter, Congress enacted Public Law 86-661, approved July 14, 1960, granting temporary operating authority to the supplementals until March 14, 1962.

#### BASIC CONCEPTS

The Civil Aeronautics Board has always treated the supplemental carriers as a class, each member of which was given substantially identical authority—the right to provide charter service and to perform no more than 10 scheduled trips a month between any two points. As a matter of fact, the type of operations conducted by

these carriers has been almost as varied as the number of carriers. Many have performed charter operations for the Military Establishment. Others have derived almost their total revenue from civil charter. A few have conducted fairly balanced operations, deriving substantial revenues from military charter, civil charter, and scheduled passenger service.

There is also great variation in the capability of these carriers, in their financial resources and in the number and types of aircraft which they own and operate. Many have operated continuously and grown steadily. Others have operated only sporadically or on a very limited scale. To some extent, these variations reflect the differences in interest, experience, and managerial skill of their owners.

The committee is aware that to some extent these carriers must be treated as a class. All of them are certificated to provide transportation to supplement the existing air transportation system, which will be based in the future as it has been in the past on scheduled route carriers. Under the committee bill, many aspects of this class characteristic are retained. None of these carriers will be eligible for subsidy. None of them will be permitted to provide scheduled service except subject to limitations of a type which could not be imposed by the Board on scheduled route carriers. All of them will probably depend for a substantial part of their revenue on charter operations. They have had and will continue to have problems and perform services distinct from the scheduled route carriers.

However, the committee has carefully analyzed the reports of all of these carriers to the Board over the past few years. It is impressed by their variety and is convinced that they will achieve a permanent and stable place in our air transportation system only when the Board begins to issue individual certificates more specifically designed for the individual carrier. It is only by this means that the Board can insure that each piece which it fits into the mosaic of the supplemental industry will properly contribute to the final total picture.

In deciding what authority should be given each carrier the Board should certainly start with what the carrier wants to do; what its experience has been; what its capability is in terms of financing, personnel, and equipment. A supplemental industry constructed on this basis requires courage and imagination on the part of the carriers in developing and proposing how they can best serve the public interest. It requires on the part of the Board a sense of liberality and experimentation and a willingness to undertake a trial, even at the cost of occasional error.

#### CHARTER SERVICE

Every witness who discussed the subject in the hearings on this measure agreed that the basic role of the supplemental carriers is the provision of charter service. Even the spokesman for the Air Transport Association, representing the scheduled route carriers, while strongly opposing any authority for the supplemental carriers to perform scheduled service, supported the supplemental carriers being given charter authority. The supplemental carriers themselves were unanimous in their view that charter service represented both their greatest potential contribution to air transportation and their greatest potential source of revenue. A substantial part of their revenues in

the past have come either from civil charter or charter service performed under contracts with the Military Establishment of the United States.

The keystone of the committee bill is the concept that the authority to provide charter service should be the basic ingredient of a certificate as a supplemental air carrier. The committee has defined "supplemental air transportation" to mean—

charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) \* \* \*.

The committee has also defined "charter service" as being "air transportation" which under section 401 of the Federal Aviation Act no air carrier can perform except pursuant to a certificate issued by the Board.

Because the committee is convinced that individual certificates as a supplemental air carrier must be tailored to the public need and to the capability and interests of the particular carrier, the bill does not require the Board to grant every supplemental carrier any particular charter authority. The Board is specifically authorized to designate the geographical area or areas within or between which charter service may be rendered. The charter authority of one carrier may be quite different from that provided to another, but charter authority remains in the view of the committee the basic, if not absolutely indispensable, ingredient of the supplemental certificate. It is the type of service which most clearly supplements the scheduled route service provided by other carriers.

The committee is also strongly of the opinion that the Board's practice of routinely permitting continual large-scale charter operations by exemption is not only unwise, but illegal, because not within the "unusual circumstances" contemplated by section 416. The committee hopes that hence forth charter service will be provided by the certificated carriers authorized to provide it and not provided under an exemption by anyone who professes a desire to do so.

A charter, by common law and general practice in the transportation industry, means essentially the lease of the entire vehicle, in this case the aircraft, for a period of time or for a particular trip. Because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter, particularly in international air transportation, the committee has incorporated the common law definition of charter in the statutory definitions contained in the Federal Aviation Act. The bill thus provides that—

"charter service" means air transportation \* \* \* where the entire capacity of one or more aircraft has been engaged \* \* \* on a time, mileage or trip basis \* \* \*.

However, it is not the intention of the committee to permit individually ticketed service to be offered to the general public under the guise of charter. The proposed statutory definition, therefore, provides that charter shall not include such individually ticketed service whether offered by an air carrier directly or by a travel agent.

This restriction is subject to one exception because there is one circumstance in which a carrier or travel agent may offer the services

to individual members of the public and still conform to the traditional concept of charter. This is in connection with an all-expense-paid group tour. If a travel agent charters an aircraft for an all-expense-paid tour and then offers to individual members of the public the right to participate as a member of the group, this is a very different sort of service from individually ticketed transportation.

The proposed statutory definition incorporates this exception by providing that charter shall not include transportation offered to individual members of the general public "other than as a member of a group on an all-expense-paid tour." The committee has received representations that this exception is open to the abuse that it might be used as a guise to offer individually ticketed service. However, the Civil Aeronautics Board has ample authority, because of its power to specify the terms, conditions, and limitations of the certificate under section 401 and its general power to make any necessary rules or regulations to carry out the provisions of the act under section 204, to prevent any violation of the clear intent of the statute. This the Board can accomplish by specifying in its regulations the minimum requirements which must be met before the service offered qualifies under the statutory exception.

However, several members of your committee have expressed the desire that the Board submit reports setting forth its experiences in administering the provision pertaining to all-expense-paid tours. Accordingly, your committee requests the Board to report annually on this subject for the next 3 years, either in a separate report or in its annual report to the Congress. If the Board's experience in administering this section should demonstrate that additional statutory authority is necessary, your committee will expect the Board to incorporate appropriate recommendations to that end in its report.

#### INDIVIDUALLY TICKETED SERVICE

A far more controversial aspect of the present authority of supplemental carriers is their right to sell individual tickets for scheduled service subject to the limitation that not more than 10 trips per month be performed between any two points. The scheduled route carriers have expressed grave apprehension over this authority.

One of the principal reasons which the court assigned in its opinion in *United Airlines v. C.A.B.* for invalidating the Board's action in granting supplemental certificates was that they permitted operations between points selected by the carrier and did not specify the terminal points between which the carrier was authorized to engage in air transportation as required by section 401(e) of the act. The limitation on the number of trips, in lieu of specifying the terminal points, was likewise held by the court to violate the provision of that subsection prohibiting the Board from placing a limitation in a certificate restricting the right of an air carrier to add to or change schedules. The bill originally submitted by the Board had as its primary purpose amendment of the act to permit the Board to grant just this kind of a certificate to supplemental air carriers, that is, authority to provide a limited number of trips between any two points without specifying them.

The committee has determined that the act should not be amended to permit the Board to issue a certificate authorizing scheduled service



without specifying the terminals, although it has relieved the Board of this necessity with reference to certificates authorizing charter service. The committee recommends this position for two reasons. First, the points between which there is a demonstrable need and a ready market for supplemental air transportation are sufficiently limited that it appears perfectly feasible for the Board to specify these terminals in the certificate. Second, only by specifying where such service will be provided and which supplemental carriers shall furnish it can the Board insure that a large number of carriers will not elect to furnish service between the same points with possible serious effect upon the scheduled route carriers certificated to render service between such points.

The committee has provided the Board with authority to limit the number of schedules or the type of equipment employed by a supplemental air carrier, adopting in this regard the amendment offered by Senator Morris Cotton. The proposed new paragraph 3 of subsection 401(d) is thus amended to provide that any supplemental certificate which authorizes individually ticketed service shall contain such limitations, including limitations as to the term of the certificate, as the Board finds are required to insure that the service will not result in significant diversion of traffic from any scheduled route carrier certificated to serve between the same points. Section 401(e) is amended to permit the Board to impose such terms and conditions in a supplemental certificate as are required by the foregoing provision.

Both the Civil Aeronautics Board and the supplemental air carriers made strong representations to the committee in the hearing that such limited scheduled service to supplement that provided by the regular carriers served a real public need, was essential to the continued survival of the supplemental industry, and had resulted in no demonstrable injury to the scheduled carriers. It is the committee's considered view that the Board should be empowered to provide this type of operating authority and that the limitations contained in the committee amendment as described above insure that such operations will in fact supplement and not undermine the scheduled air transportation system.

#### TEMPORARY REQUIREMENT FOR SUPPLEMENTAL SERVICE

The committee concluded as a result of its hearings that neither the type of certificates heretofore issued to the supplemental carriers nor the more specialized certificates contemplated under the committee bill were well adapted to provide supplemental air transportation to meet a temporary need for additional service, such as that which frequently occurs between major traffic points during holiday seasons. Neither were they well adapted to meet the need for temporary service to points, such as resort areas, not regularly served by any air carrier but which might require service for a brief period during a particular season of the year.

Therefore, in section 5 of the bill the committee proposes the addition of a new section 417 of the Federal Aviation Act providing for "special operating authorizations" to meet these situations. That section would provide that if the Board finds that the air transport capacity being offered between particular points is or will be temporarily insufficient to meet the needs of the public or the postal service,

or that there is a temporary requirement for air transportation between two points one or both of which is not regularly served by any air carrier, it may issue such special operating authorization to a supplemental air carrier to provide service between those points.

The new section would require that such an authorization contain limitations as to the amount of service or the type of equipment used to assure that it will eliminate the shortage without significant diversion of traffic from the carriers holding certificates for the route. The section provides that such authorization shall be for not more than 30 days, but can be extended for like periods not more than twice.

It is the committee's intention that the Board should take steps to keep itself informed as to the need for such temporary additional service. The committee believes that it is practical for the Board to maintain representatives at key traffic centers during some or all of each year whose responsibility it would be to advise the Board of any actual or anticipated shortage of capacity so that the Board could immediately issue the necessary authorization to provide temporary additional service.

The Board is directed to establish a procedure for expeditiously handling these situations. It is required to give written notice to the air carriers certificated to provide service between the points involved and to provide an opportunity for such carrier to protest the issuance of such operating authorization in writing. Whether the carrier would be heard orally in support of the protest would be a matter for the Board's discretion, taking into account the degree of emergency involved in meeting the shortage.

The committee believes that a conscientious effort to make maximum use of this section will provide the Board with greater flexibility in meeting seasonal traffic peaks than it has ever had heretofore, and that it will also provide the supplemental air carriers with an effective means of providing a needed public service to supplement the existing air transportation system. The committee believes that there is no provision of the bill which, if properly used, would contribute more directly to providing the public with more convenient and adequate air transportation.

#### THE ENFORCEMENT PROBLEM

One cause for apprehension as to the possible adverse impact on the scheduled industry of the supplemental carriers, which was reflected in the committee's hearings, was the difficulties which have been encountered by the Board in effectively enforcing the limitations on supplemental operations which it has imposed in past orders. There have been rather notorious examples of supplemental carriers entering into illegal combinations resulting in a de facto pooling of their operating rights to provide scheduled service of far greater frequency and regularity than had been authorized by the Board. Efforts of the Board to end such practices by cease-and-desist orders or revocations of authority have been frustrated by protracted appeals to the court during which the Board's orders have been stayed. This has permitted the continuation of palpably illegal but highly profitable operations by carriers using every conceivable means to delay the inevitable legal sanction.

Such operations have never been conducted by more than a handful of supplemental carriers. The vast number of such carriers have prob-

ably suffered more from such activities than have the scheduled carriers, for they have found it impossible to compete on a legal basis, offering a severely limited number of trips, with carriers who have illegally combined to provide daily scheduled service. Unfortunately, they have probably suffered even more from the less tangible damage done by such operations to the reputation of the supplemental industry. It is implicit in the committee's action on this bill that it regards the vast majority of supplemental air carriers as responsible, safe, and useful operators who have made and will continue to make a major contribution to the development of air transportation, and particularly to national defense. The committee is determined that the supplemental industry, as well as the scheduled industry, be more effectively protected from the depredations of illegal operators.

In recommending the means to accomplish this end the committee has accepted the recommendations of the Civil Aeronautics Board, made continually over several years, that the civil penalties now provided in the Federal Aviation Act for violations of safety and other provisions of the act be made applicable to violation of the economic provisions under title IV and of certificates issued thereunder. Section 901 of the act now provides a civil penalty not to exceed \$1,000 for each violation and provides that in the case of a continuing violation each day shall constitute a separate offense subject to the \$1,000 penalty. The committee bill would amend this section to make it applicable to the provisions of title IV and certificates issued thereunder, and would thus provide the Board with the weapon it has lacked—the ability to take the profit out of illegal operations performed over a long period of time under a judicial stay.

#### THE GRANDFATHER PROVISIONS

The grandfather provisions as amended by the committee are designed to permit the existing supplemental carriers to operate until such time as the Board can issue new certificates conforming to the principles heretofore discussed. The committee regrets that the grandfather provisions cannot be more simply stated than they are in sections 7 and 8 of the bill. Their complexity is the result of an unbelievable hodge-podge of exemptions, orders, and stays which have marked the Board's activity in connection with the supplemental air carriers. The committee believes that the provisions of sections 7 and 8 will have the effect of clearing the accumulated debris without injustice to the carriers that have been more its victims than its beneficiaries.

Section 8 of the bill requires any carrier desiring to continue to operate in the future as a supplemental air carrier to file a new application under section 401(d)(3) seeking such certificate within 30 days from the time of enactment of the bill. If no application for a new certificate is filed within that period, the carrier's present authority will terminate, whether derived from an exemption, a certificate, or interim operating authority under Public Law 86-661. Any carrier which files an application for a certificate within 30 days is permitted to continue to operate under its present authority until the Board acts under section 7 of the bill. When the Board acts under section 7, the existing authority of a carrier will terminate, whether that authority is derived from a certificate, an exemption, or interim operating authority under Public Law 86-661.

If a carrier files a new application for a certificate as a supplemental air carrier under section 401(d)(3) within 30 days after enactment of this bill, the Board will next consider whether such carrier should be issued new interim authority to engage in supplemental air transportation pending Board action on the certificate application. The committee is aware that the issuance of new interim authority identical to that which the carriers now hold, rather than an extension of their present certificate or exemption, may appear to be an unnecessary step. Only those who have been forced to wind their way through the Chinese maze of orders and exemptions can appreciate how directly the public interest would be served by the issuance of a new single order clearly specifying what carriers are permitted to conduct what operations pending action on their certificate applications.

The Board is directed to issue new interim authority to four categories of carriers. The first category consists of a single carrier, Vance Roberts, which was given operating authority by the Board pursuant to section 1(2) of Public Law 86-661. Since the Board has just acted on this application within the last few months, the bill requires the automatic issuance by the Board of new interim operating authority without any further showing by the carrier.

The remaining three categories of carriers holding some form of operating authority from the Board must satisfy certain specific requirements before the Board is required to issue new interim operating authority to them. These requirements have been included in section 7 by the committee to insure that the effect of the grandfather provisions is to avoid hardship by permitting legally operating carriers to continue to operate, and not to revive dormant carriers which have not operated. A carrier which is not now operating will have the same right as a new applicant to apply for and receive a certificate as a supplemental air carrier. Justice does not require that such a carrier be permitted to begin operations prior to the time that the Board has passed on its application for a certificate.

A carrier in one of these three categories must be able to show that between January 1, 1960, and May 25, 1961 (the date of introduction of the bill), it performed any portion of the service authorized by its certificate or other operating authority or operations for the Military Establishment; that such certificate or operating authority has not been revoked or otherwise terminated by the Board; and that the certificate or operating authority is held by the original grantee or or has been transferred with the Board's approval. Special provision is made for an application for transfer which may be pending at the time of enactment of the bill. The following, then, are the three categories of carriers which may be entitled to receive new operating authority under section 7. The categories are mutually exclusive. A carrier is in one category, and one only, or in none.

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to order E-13436, of January 28, 1959. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

CARRIERS	COMMENT
American Flyers Airline Corp. Arctic-Pacific, Inc-----	Certificate expired May 30, 1961; no application for renewal was filed. Authority terminated by Board Order E-16734 of April 28, 1961.
Associated Air Transport, Inc. Aviation Corp. of Seattle, d/b/a West- air Transport Blatz Airlines, Inc. Capitol Airways, Inc. Coastal Air Lines (formerly Coastal Cargo Co., Inc.) Conner Air Lines, Inc-----	Application for transfer and renewal of certificate pending.
General Airways, Inc-----	No transport operations performed in supplemental air service during test period.
Imperial Airlines, Inc. (formerly Regina Cargo Airlines, Inc.) Johnson Flying Services, Inc. Paul Mantz Air Services Modern Air Transport, Inc. Overseas National Airways President Airlines, Inc. (formerly California Eastern Aviation, Inc.) Saturn Airways, Inc. (formerly All-American Airways, Inc.) Sourdough Air Transport Southern Air Transport, Inc. Standard Airways, Inc. Stewart Air Service Transocean Air lines United States Overseas Airlines, Inc. World Airways, Inc.	Certificate sold by trustee in bank- ruptcy but no application for transfer to the purchaser has been filed.

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to order E-14196, of July 8, 1959. The committee is aware of no circumstance which would prevent their receiving interim operating authority.

Trans International Airlines, Inc.  
(formerly Los Angeles Air Service, Inc.)  
Quaker City Airways, Inc.

The following carriers were given interim authority to operate in interstate air transportation as a supplemental air carrier under Board Order E-9744, of November 15, 1955, and have pending before the Board applications for a certificate as a supplemental air carrier which was filed prior to July 14, 1960. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

CARRIERS	COMMENT
Air Cargo Express, Inc. <sup>1</sup> -----	No transport operations performed in supplemental air service during test period.
Airline Transport Carriers, Inc., d/b/a California Hawaiian Airlines. Argonaut Airways Corp----- Meteor Air Transport, Inc-----	Operating authority terminated by Order E-15183 of May 4, 1960.
Miami Airline, Inc----- S.S.W., Inc-----	Operating authority terminated by Order E-15252 of May 20, 1960.
World Wide Airlines, Inc-----	

<sup>1</sup> The certificate application of Air Cargo Express, Inc., was denied in Order E-13436, but the Board action reversed and the application remanded for further proceeding by the Court of Appeals for the District of Columbia in the case of *Great Lakes Airlines et al. v. C.A.B.*, decided Feb. 24, 1961.

There remains one additional category of carriers for which the bill makes special provision. Four carriers were given exemption authority for supplemental air service by order E-9744, but have no applications for certificates pending before the Board because their operating authority under the exemption order was specifically terminated by the Board in order E-13436. These carriers appealed the Board's order denying a certificate and revoking their exemption authority to the courts and are now operating under a judicial stay pending review. Certiorari has been denied by the Supreme Court, but a petition for reconsideration of this action is pending. Carriers in this category are Central Air Transport, Inc., Curry Air Transport, Ltd., Great Lakes Airlines, Inc., and Trans-Alaskan Airlines. Section 8 provides that these carriers are authorized to continue to operate subject to all conditions contained in order E-9744 or imposed by the court until the court shall lift its stay or until final disposition of the judicial proceeding.

#### NEED FOR LEGISLATION

The Civil Aeronautics Board, after many years of deliberate consideration determined that the public interest required the unique and flexible services of supplemental air carriers (order E-9744, November 15, 1955) and that certain carriers found fit to perform these services should be granted temporary certificates of public convenience and necessity (order E-13436, January 28, 1959; E-14196, July 8, 1959). Although the court found certain provisions of the statute prevented the grant of the type of operating rights which the Board attempted to give to these carriers, it did not question the Board's judgment in determining the issue of public need for their services. The court, in *United Airlines v. Civil Aeronautics Board* (278 F. 2d 446, Apr. 7, 1960) observed:

If the requirements of section 401(e) interpose an insuperable obstacle to the full development of supplemental air service, which they may well do, the problem is for the Congress. The Board should present it there.

The Board, quite properly, has done just as court suggested. In testimony before your committee, both last year and this year the Board has reaffirmed its confidence in the soundness of the 1955 decision, and has strongly urged enactment of legislation to provide for

the continued existence of the supplemental air carrier industry. Your committee shares the Board's view as to this need.

The supplemental carriers constitute an important element in national defense. During the Berlin airlift, while representing only 5 percent of the Nation's civilian air transport, these carriers moved approximately 25 percent of the passengers and 57 percent of the cargo carried by civilian aircraft supporting this strategic operation. They contributed materially during the Korean war, and were the first to airlift Hungarian refugees out of Vienna in 1956. They have supplied a substantial part of the airlift needs of the Arctic DEW line, and stood ready, after only a few hours of notice, with 38 four-engine aircraft to assist the military in the Lebanon crisis.

These carriers have been instrumental in expanding the horizon of air commerce. To a large extent they are responsible for the tremendous expansion in the charter field which has taken place in the last few years. They pioneered the military contract business and the airfreight or all-cargo field. They were the first to develop aircoach travel and as a result opened a vast new field of air transportation by encouraging people to travel by air who had never done so previously.

Since its origin, the supplemental air carrier industry has existed in an atmosphere of uncertainty from one month to the next as to whether operating authority would continue. It has been an era of continued court challenges, protracted, costly, and tedious Government deliberations, anxiety and frustration. Your committee is unanimous in its conviction that the supplemental air carriers have a vital role to play in meeting the air transportation needs of this country. After considerable study your committee prepared an amendment in the nature of substitute to S. 1969, which it is convinced without exception, meets every reasonable objection to the original bill. The bill, as amended, will provide firm assurances as to operating authority with the resultant stability essential to the health of any industry, while at the same time incorporating adequate safeguards to protect the regularly certificated route carriers from unreasonable competition and traffic diversion.

#### CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; and existing law in which no change is proposed is shown in roman):

### THE FEDERAL AVIATION ACT OF 1958

(72 Stat. 731)

#### TITLE I—GENERAL PROVISIONS

##### DEFINITIONS

SEC. 101. As used in this Act, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Federal Aviation Agency.

(2) "Aeronautics" means the science and art of flight.

(3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest.

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation or aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Administrator may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(12) "Board" means the Civil Aeronautics Board.

(13) "*Charter service*" means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour.



[(13)] (14) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

[(14)] (15) "Civil aircraft" means any aircraft other a public aircraft.

[(15)] (16) "Civil aircraft of the United States" means any aircraft registered as provided in this Act.

[(16)] (17) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

[(17)] (18) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

[(18)] (19) "Federal airway" means a portion of the navigable airspace of the United States designated by the Administrator as a Federal airway.

[(19)] (20) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

[(20)] (21) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

[(21)] (22) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce, between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

[(22)] (23) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

[(23)] (24) "Mail" means United States mail and foreign-transit mail.

[(24)] (25) "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this Act, and shall include airspace needed to insure safety in take-off and landing of aircraft.

[(25)] (26) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

[(26)] (27) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this Act.

[(27)] (28) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

[(28)] (29) "Propeller" includes all parts, appurtenances, and accessories thereof.

[(29)] (30) "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, refer-

ences in this Act to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

[(30)] (31) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

[(31)] (32) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(33) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(34) "Supplemental air transportation" means charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act.

[(32)] (35) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

[(33)] (36) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

\* \* \* \* \*

## TITLE IV—AIR CARRIER ECONOMIC REGULATION

### CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

#### Certificate Required

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

#### Application for Certificate

(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

### Notice of Application

(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for a public hearing, and the Board shall dispose of such application as speedily as possible.

### Issuance of Certificate

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

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3)(i) *In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate, to any applicant not holding a certificate under paragraphs (1) or (2) of this subsection, authorizing the whole or any part of the transportation covered by the application, and for such period, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to the type of supplemental air transportation for which authority is sought, including the nature of the public need therefor and the extent to which the applicant will be required to provide such air transportation.*

(ii) *Any certificate issued pursuant to this paragraph authorizing individually ticketed or waybilled service shall contain such limitations, including the term thereof, as the Board finds are required to insure that such service will not result in significant diversion of traffic from any air carrier authorized to render service between the same points by a certificate or certificates of public convenience and necessity issued pursuant to paragraphs (1) and (2) of this subsection.*

### Terms and Conditions of Certificate

[(e) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of

the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board. ]

(e)(1) *Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.*

(2) *A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.*

(3) *A certificate issued under this section to engage in supplemental air transportation shall, with respect to charter service, designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within or between which service may be rendered.*

(4) *No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3)(i) of this section.*

(5) *No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.*

(6) *Any air carrier, other than a supplemental air carrier, may perform charter service or any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board.*

### Effective Date and Duration of Certificate

(f) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Board shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Board shall certify that operations thereunder have ceased: *Provided*, That if any service authorized by a certificate is not inaugurated within such period, not less than ninety days, after the date of the authorization as shall be fixed by the Board, or if, for a period of ninety days or such other period as may be designated by the Board any such service is not operated, the Board may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

### Authority to Modify, Suspend, or Revoke

(g) The Board upon petition or complaint or upon its own initiative, after notice and hearings, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided*, That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of the certificate.

### Transfer of Certificate

(h) No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

### CERTAIN RIGHTS NOT CONFERRED BY CERTIFICATE

(i) No certificate shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal airway, landing area, or air-navigation facility.

### Application for Abandonment

(j) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment to be in the public interest. Any interested person may file with the Board a protest or memorandum of opposition to or in support of any such abandonment. The Board may, by regulations or otherwise, authorize such temporary suspension of service as may be in the public interest.

### Compliance With Labor Legislation

(k)(1) Every air carrier shall maintain rates of compensation maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including take-off and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and holds a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

### Requirement as to Carriage of Mail

(l) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

### Application for New Mail Service

(m) Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Board and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for at least twenty days in the office of the secretary of the Board. The Board shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such additional service, and the

30 PROVIDE A CLASS OF SUPPLEMENTAL AIR CARRIERS

facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

SEC. 402. \* \* \*

SEC. 403. \* \* \*

SEC. 404. \* \* \*

SEC. 405. \* \* \*

RATES FOR TRANSPORTATION OF MAIL

Authority to Fix Rates

SEC. 406. (a) 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 by aircraft, the facilities used and useful therefor, and the services connected therewith (including the 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 method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same.

Ratemaking Elements

(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, (1) the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; (2) such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and (3) the need of each such air carrier *other than a supplemental air carrier* for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

\* \* \* \* \*



*SPECIAL OPERATING AUTHORIZATIONS*

*Authority of Board to issue*

*SEC. 417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—*

*(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or*

*(2) that there is a temporary requirement for air transportation between two points one or both of which is not regularly served by any air carrier; and*

*(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;*  
*the Board may issue to such supplemental carrier a special operating authorization to engage in air transportation between such points.*

*Terms of Authorization*

*(b) A special operating authorization issued hereunder shall—*

*(1) contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which would otherwise exist, without significant diversion of traffic from the holders of certificates for the route;*

*(2) be valid for not more than thirty days and extended not more than twice; and*

*(3) not be deemed a license within the meaning of the Administrative Procedure Act (5 U.S.C. 1001, et seq., as amended).*

*Procedure*

*(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved.*

**TITLE IX—PENALTIES**

**CIVIL PENALTIES**

**【Safety and Postal Offenses**

**【SEC. 901. (a)(1) Any person who violates (A) any provision of titles III, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation: *Provided*, That this subsection shall not apply to members of the Armed Forces of the**

United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

[(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of title VII, or any rule, regulation, or order issued thereunder, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.]

### *Safety, Economic, and Postal Offenses*

*SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: Provided, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.*

*(2) Any such civil penalty may be compromised by the Administrator in the case of violations of title III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of titles IV and VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.*

### *Liens*

*(b) In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: Provided, That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General.*

AGENCY COMMENTS

The following communications were received by Government agencies and considered by the committee:

CIVIL AERONAUTICS BOARD,  
*Washington, D.C., June 5, 1961.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your letter of May 26, 1961, asking for a report on S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes. S. 1969 was drafted by the Board and introduced at its request as a part of the Board's current legislative program.

The purpose and need for the legislation are set forth in the enclosed statement which the Board prepared to accompany the draft legislation. The Board is prepared to appear and present testimony in further justification for the enactment of the proposed legislation, and urges that the bill be set down for hearing at an early date. The Board wholeheartedly endorses S. 1969 and recommends its enactment.

Sincerely yours,

ALAN S. BOYD, *Chairman.*

STATEMENT OF PURPOSE AND NEED FOR PROPOSED LEGISLATION

A bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

The Board, on January 28, 1959, in the *Large Irregular Air Carrier Investigation*, docket 5132, issued temporary certificates of public convenience and necessity for supplemental air service to a number of air carriers found by the Board to be fit to receive them. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services. This authorization was limited to interstate air transportation. It was the latest step in the development of this industry which was originally known as large irregular air carriers.

A number of air carriers certificated to render route-type service petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the Board's order and opinion of January 28, 1959. On April 7, 1960, the court rendered its decision in *United Air Lines et al. v. Civil Aeronautics Board* (278 F. 2d 446), in which it found that the Board's action in certificating supplemental air carrier operations was legally deficient in three respects:

1. The certificates issued by the Board do not specify the terminal and intermediate points between which air transportation is authorized but grant a blanket authorization to operate between any two points in the United States.

2. The certificates issued by the Board contain a limitation of 10 flights per month in the same direction between the same two points. In the opinion of the court, this limitation was in violation of section 401(e) of the act which provides: "No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules. \* \* \*"

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out (one judge dissenting) that the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations. It would thus appear that the court's standard of fitness that each carrier must establish would be greater than that found by the Board to be necessary for supplemental service.

As a stopgap measure to avoid immediate cessation of the supplemental air carrier industry, the Congress enacted Public Law 86-661, approved July 14, 1960. Under this legislation the Board is given temporary authority to permit supplemental air carriers to conduct operations for 20 months. However, legislation of a more permanent nature is needed if there is to be any assurance that the supplemental air carrier industry is to continue in existence.

The Board has found that the supplemental air carriers have performed a useful public service and have a definite place and role in meeting this Nation's air transportation needs. There can be no doubt that the continued existence of the irregular air carrier fleet is of real value in terms of national defense, and it is evident that the future ability of the irregular air carriers to serve the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military.

The Board recommends changes in the law as follows:

1. The law should be made clear that a carrier may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers, and the Board should be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized.

2. The Board should be authorized to grant a blanket authorization without having to designate specific points.

3. The present stringent requirement of fitness should be reduced so that only general findings of fitness need be made for supplemental service.

4. Statutory operating rights should be granted to the existing holders of supplemental air carrier certificates in the nature of a "grandfather" provision, thus assuring the continuity of operations presently being conducted by the supplemental air carriers.

The draft bill attached has been prepared to carry out these recommendations.

THE SECRETARY OF COMMERCE,  
*Washington, D.C., June 29, 1961.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of May 26, 1961, requesting the views of the Department on S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes. S. 1969 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under sections 401(d) (1) and (2) of the act, the new class to be known as "supplemental air carriers"; that such carriers may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers; that the Civil Aeronautics Board be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized; that the Board be authorized to grant blanket authorizations without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. S. 1969 would also provide for grant of statutory operating rights to the existing holders of supplemental air carrier certificates, in the nature of "grandfather" rights.

On January 28, 1959, in the *Large Irregular Air Carrier Investigation*, CAB docket 5132, the Board issued temporary certificates of public convenience and necessity for supplemental air carrier operation in interstate air transportation. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services.

The issuance of such certificates was challenged in the courts by regularly authorized air carriers, i.e., air carriers certificated to render route-type service. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit set aside the Board action of January 28, 1959, *United Air Lines et al. v. Civil Aeronautics Board* (278 F. 2d 446). The court found that the certificates issued for supplemental air service did not specify the terminal and intermediate points between which air transportation had been authorized, contained limitation as to the number of flights contrary to section 401(e) of the act, and were not based on standards of fitness for applicants for certificate required by section 401(d) of the act.

As a stopgap measure to avoid immediate cessation of 25 supplemental air carrier authorizations, the Congress enacted Public Law 86-661, approved July 14, 1960. Such legislation was designed to maintain the status quo of the supplemental air carriers for up to 20 months after enactment so as to permit further consideration to be given the entire matter of supplemental air transportation without interim cessation of the then-existing authority of the carriers involved.

This Department is of the opinion that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense. At the present time eight supplemental air carriers have executed Civil Reserve Air Fleet (CRAF) standby contracts which provide for the furnishing of air transportation on an international scale to the Department of Defense in the event of war on national emergency.

Of a total of 212 aircraft allocated by the Department's Defense Air Transportation Administration to the basic CRAF program, 40 have been allocated from supplemental air carrier inventories. In addition, the aircraft remaining in such air carrier inventories after CRAF requirements have been met (approximately 123 in number) are subject to DATA's allocation authority for purposes of DOD domestic wartime requirements, such as the Navy's "quicktrans" and the Air Force's "logair" operations, and for the needs of civil economy under the War Air Service pattern program.

The Department also concludes that it would be unrealistic, as well as inherently unsound, for the continued existence of the supplemental air carriers to be entirely dependent in peacetime upon military business. Therefore, we agree that supplemental airlines should be eligible to operate their planes in peacetime in commercial air services.

Accordingly, the Department supports the proposed legislation.

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,  
*Under Secretary of Commerce.*

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DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE SECRETARY,  
*Washington, July 29, 1961.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 1969, 87th Congress, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes. The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of the proposed legislation is to amend the Federal Aviation Act of 1958 to provide for a class of supplemental air carriers, and for other purposes.

This proposed legislation has been brought about by virtue of a decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *United Air Lines, et al. v. Civil Aeronautics Board* (278 F. 2d 446 (1960)). (See 364 U.S. 297, where petition for certiorari was granted.) In that case the court found that the Civil Aeronautics Board's prior actions in certificating supplemental air carrier operations were legally deficient in three separate

areas. The effect of the court's holding was that the Board did not possess the legal power to grant certificates of public convenience and necessity to authorize supplemental air transportation. Thus, those carriers who held certificates to engage in supplemental air transportation did not then have legal operating authority. As a stopgap measure Congress enacted Public Law 86-661, approved July 14, 1960, which measure was designed to preserve the supplemental air carrier industry for a period of 20 months, and until the matter could be studied more fully. The proposed legislation is designed to be of a permanent nature and, in effect, to replace the temporary stopgap legislation which allows the supplemental air carrier industry to operate for only 20 months from July 1960. In effect, the Board has found that supplemental air carriers have performed a useful public service and that they have a definite place and role in meeting the Nation's air transportation requirements. It, therefore, has proposed the subject legislation designed to amend the Federal Aviation Act of 1958, in various respects in order that it can legally award certificates for supplemental air transportation to those carriers who would be eligible for such authority under the proposed legislation.

The amendments proposed in S. 1969 to the Federal Aviation Act of 1958 are all amendments of a technical nature designed to give the Board appropriate legal authority to issue certificates to carriers for supplemental air transportation. These proposed technical amendments include a so-called grandfather provision which would authorize the issuance of a certificate for supplemental air transportation to those carriers who were previously authorized to engage in such transportation. (See line 7 and following on p. 3 of S. 1969.)

The continued existence of the irregular air carrier fleet is of real value in terms of national defense and it is evident that the future ability of the irregular air carriers to service the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military. In this regard, the current, April 1, 1961, allocation of aircraft to the civil reserve air fleet (CRAF) program shows that there are 8 supplemental air carriers participating in this program which now includes 22 air carriers.

The Department of the Air Force, on behalf of the Department of Defense, has no objection to the enactment of S. 1969, but defers to the views of the Civil Aeronautics Board concerning the technical details of the bill.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOSEPH S. IMIRIE,  
*Assistant Secretary of the Air Force.*

COMPTROLLER GENERAL  
OF THE UNITED STATES,  
*Washington, June 9, 1961.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate.*

DEAR MR. CHAIRMAN: Further reference is made to your letter of May 26, 1961, acknowledged on May 31, requesting the comments of the General Accounting Office concerning S. 1969, 87th Congress, 1st session, entitled "A bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes."

We have no special information or knowledge as to the need for or desirability of the proposed legislation and, therefore, we make no recommendation with respect to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

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FEDERAL AVIATION AGENCY,  
*Washington, D.C., July 11, 1961.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of May 26, 1961, for the views of this Agency with respect to S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

This bill, introduced at the request of the Civil Aeronautics Board, would provide permanent certification procedures for the supplemental air carrier industry. Under existing law (Public Law 86-661) the Civil Aeronautics Board has temporary authority, which will expire in March 1962, to permit supplemental air carriers to conduct operations. It is the view of the Civil Aeronautics Board that supplemental air carriers have performed a valuable service in meeting the needs of the national defense and that their future ability to serve the needs of the military depends upon their present and continued ability to operate their aircraft in commercial activities.

This measure is directed to operations within the particular province of the Civil Aeronautics Board, and, accordingly, this Agency defers to the views of the Civil Aeronautics Board on the subject proposal.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely,

N. E. HALABY, *Administrator.*

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87TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
1st Session } { No. 1177

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## SUPPLEMENTAL AIR CARRIERS

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SEPTEMBER 13, 1961.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. HARRIS, from the Committee on Interstate and Foreign  
Commerce, submitted the following

### R E P O R T

[To accompany H.R. 7318]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7318) to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert:

That section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and by inserting immediately after paragraph (31) the following new paragraphs:

“(32) ‘Supplemental air carrier’ means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

“(33) ‘Supplemental air transportation’ means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act.”

Sec. 2. Subsection (d) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is amended by adding at the end thereof the following new paragraph:

“(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered

pursuant thereto will be limited to supplemental air transportation as defined in this Act."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(e)) is amended to read as follows:

"TERMS AND CONDITIONS OF CERTIFICATE

"(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

"(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

"(3) A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.

"(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section.

"(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter trips or any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board."

SEC. 4. Title IV of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"SPECIAL OPERATING AUTHORIZATIONS

"AUTHORITY OF BOARD TO ISSUE

"SEC. 417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—

"(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

"(2) that there is a temporary requirement for air transportation between two points, one or both of which is not regularly served by any air carrier; and

"(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental air carrier a special operating authorization to engage in air transportation between such points.

"TERMS OF AUTHORIZATION

"(b) A special operating authorization issued under this section—

"(1) shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route;

"(2) shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days; and

“(3) shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

“PROCEDURE

“(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved.”

SEC. 5. (a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show—

(1) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States under a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board order E-9744 of November 15, 1955, and has pending before the Board an application for certification as a supplemental air carrier which was filed prior to July 14, 1960;

(2) that, during the period beginning on the date such certificate was issued or such interim operating authority was conferred by the Board and ending on the date of enactment of this Act, such applicant or his predecessor in interest lawfully performed (A) a substantial portion of the transportation authorized by such certificate or interim operating authority, (B) substantial operations in overseas or foreign air transportation, as a supplemental or large irregular air carrier, authorized by the Board, or (C) substantial operations for the Military Establishment of the United States authorized by the Board;

(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this Act: *Provided*, That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect on or before the date of enactment of this Act, notwithstanding a pending judicial review of such order; and

(4) that such certificate or interim operating authority is held by the original grantee or has been transferred to the applicant with Board approval pursuant to section 401(h) of the Federal Aviation Act of 1958: *Provided*, That application under this section may also be made by a person who on the date of enactment of this Act had on file with the Board an application for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue to such person a new interim certificate or new interim operating authority under this section if it approves the transfer pursuant to section 401(h) of the Federal Aviation Act of 1958;

the Board, upon proof of such facts, shall issue a new interim certificate or new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority, or both, and subject to the terms, conditions, and limitations attached thereto, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 authorizing the whole or any part of the transportation covered by the application.

(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show that it or its predecessor has received interim operating authority from the Civil Aeronautics Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's interim authority, and subject to the terms, conditions, and limitations attached thereto, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 authorizing the whole or any part of the transportation covered by the application.

(c) A new interim certificate or new interim authority issued under this section shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

SEC. 6. (a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), it may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, until the Board has granted or denied a new interim certificate or new interim authority under section 5 of this Act. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, until the Board has granted or denied a new interim certificate or new interim authority under section 5 of this Act.

(b) The certificates of public convenience and necessity issued by the Board pursuant to order E-13436 adopted January 28, 1959, and order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the exemption authority issued by the Board under order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under order E-10161 of April 3, 1956, shall terminate on the date of an order of the Board granting or denying a new interim certificate or new interim authority under section 5 of this Act, or if the carrier files no application under section 401(d)(3) of the Federal Aviation Act of 1958 within thirty days from the date of enactment of this Act, at the end of said thirty-day period.

(c) Any air carrier whose operating authority in interstate air transportation under Board order E-9744 is continuing solely by virtue of a judicial stay of a Board order which otherwise would terminate such operating authority, is hereby authorized to continue to operate, subject to the conditions and limitations contained in order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of the judicial review proceeding of such Board order, whichever shall first occur.

SEC. 7. The provisions of this Act shall in no way affect the authority of the Board—

(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board order E-13436 of January 28, 1959, or Board order E-14196 of July 8, 1959, or against the holder of any interim operating authority conferred by the Board under paragraph (2) of the first section of Public Law 86-661 or under Board order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act; or

(2) to institute, on or after the date of enactment of this Act, any enforcement or compliance proceeding or action against the holder of any certificate or interim operating authority referred to in paragraph (1) of this section with respect to any violation of—

- (A) the Federal Aviation Act of 1958,
- (B) the provisions of such certificate,
- (C) the terms of such operating authority, or
- (D) the regulations of the Board,

without regard to when such violation occurred.

Any sanction which the Board lawfully could have imposed on the operating authority of the holder of any certificate or interim operating authority referred to in paragraph (1) of this section for any violation referred to in paragraph (2) of this section, which violation occurred prior to the issuance to such holder of a new interim certificate or new interim authority under section 5 of this Act or the

issuance to such holder of a certificate of public convenience and necessity to engage in supplemental air transportation under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958, may be imposed on the certificate or other operating authority issued to such holder under section 5 of this Act or under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958.

SEC. 8. Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 and others, shall be deemed to have been finally disposed of upon the date of enactment of this Act.

SEC. 9. Section 901(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)) is amended to read as follows:

“SAFETY, ECONOMIC, AND POSTAL OFFENSES

“SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or order issued thereunder, or under section 1002(i) or any term, condition, or limitation of any permit or certificate issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided*, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

“(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of titles IV or VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.”

SEC. 10. Section 902(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(a)) is amended to read as follows:

“GENERAL

“SEC. 902. (a) Any person who knowingly and willfully violates any provision of this Act (except titles III, V, VI, VII, and XII), or any order, rule, or regulation issued under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise provided in this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than \$500, and for any subsequent offense to a fine of not more than \$2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense.”

SEC. 11. (a) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading “TITLE IV—AIR CARRIER ECONOMIC REGULATION” is amended by adding at the end thereof the following:

“Sec. 417. Special operating authorizations.

“(a) Authority of Board to issue.

“(b) Terms of authorization.

“(c) Procedure.”

(b) That portion of such table of contents which appears under the heading “Sec. 901. Civil penalties.” is amended by striking out

“(a) Safety and postal offenses.” and inserting in lieu thereof

“(a) Safety, economic, and postal offenses.”.

PURPOSE OF LEGISLATION

This legislation is needed to stabilize the supplemental air carrier industry. The reported bill would do this by giving the Civil Aeronautics Board authority to issue a new type of limited air carrier charter certificate and to grant permits to carriers holding such certificates to conduct, on a temporary basis, individually ticketed service to meet the public needs for air transportation in special situations.

Permanent legislation is needed so that the affected carriers can make longer range plans and financial arrangements for future operations.

As a result of court decisions, the Civil Aeronautics Board now lacks authority to license air carriers to conduct limited operations to supplement the services provided by the scheduled route carriers. The reported bill provides a means of accomplishing this without undermining the financial stability of the scheduled route carriers, a situation which could result in the curtailment of essential service or calls for additional subsidy, or both.

SUMMARY OF REPORTED BILL

The reported bill would—

(1) Authorize the Board to issue certificates to supplemental carriers to conduct charter operations;

(2) Provide a method whereby holders of supplemental certificates may furnish individually ticketed service on a temporary basis under regulations of the Board;

(3) Permit the Board to expedite procedures in the issuance of special operating permits authorizing such temporary service;

(4) Grant interim operating authority in the nature of grandfather rights to permit operations until the Board can pass upon applications for new certificates provided for by this legislation;

(5) Permit the Board to impose civil penalties for violations of the economic provisions of existing law and regulations issued thereunder, thus providing an effective method of deterring illegal operations detrimental to the public interest, which have penalized carriers operating in compliance with existing law. Penalties would follow the pattern set in existing law to enforce safety regulations.

COMMITTEE ACTION

The committee is reporting herewith a substitute for H.R. 7318, a bill drafted by the Civil Aeronautics Board to permit the granting of limited certificates to supplemental air carriers, authority which the U.S. Court of Appeals for the District of Columbia has held the Board does not have under existing law. H.R. 7318, as introduced, would have granted the Board the authority which the court held it did not possess and would have permitted the Board to authorize supplemental operations to continue along the lines of present operations.

The committee substitute, drafted after careful consideration by the full committee and the Subcommittee on Transportation and Aeronautics, would give the Board some, but not all, of the authority requested by it. The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate supple-

mental carriers, especially, in the field of individually ticketed operations.

The subcommittee conducted hearings on June 20, 21, and 23, 1961, on H.R. 7318 by Mr. Williams, H.R. 7512 by Mr. Moulder, and H.R. 7679 by Mr. Collier, all members of this committee. Testimony was received from the following witnesses: Alfred F. Blatz, president, Blatz Airlines, Inc.; Hon. Alan S. Boyd, Chairman, Civil Aeronautics Board; Clayton L. Burwell, president, Independent Airlines Association; Ralph Cox, Jr., president, United States Overseas Airlines, Inc.; Robert E. Fraley, on behalf of Quaker City Airways, Inc., and Paul Mantz Air Services, Inc.; Ross I. Newman, Associate General Counsel for Rules and Legislation, Civil Aeronautics Board; George S. Patterson, general manager, President Airlines, Inc.; Reed Pigman, Independent Airlines Association; J. W. Rosenthal, Routes and Agreements Division, Bureau of Economic Regulation, Civil Aeronautics Board; Jesse Stallings, Independent Airlines Association; Cliff Stratton, Jr., Air Transport Association of America; Stuart G. Tipton, president, Air Transport Association of America; John H. Wanner, general counsel, Civil Aeronautics Board; and DeWitt T. Yates, general counsel, Independent Airlines Association.

#### BACKGROUND INFORMATION

##### *Origin of supplemental air carriers*

The supplementals, also known as "non-skeds," did not make an appreciable impact on air commerce until after World War II, although such carriers had been in existence several years.

The Civil Aeronautics Act of 1938 stabilized the then existing route structure by giving "grandfather" rights to the 16 major, or trunklines, in existence at that time. Shortly after passage of this act, the Civil Aeronautics Board issued an order under section 416(b)<sup>1</sup> exempting the little nonscheduled operators who were offering now-and-then flights in small planes from their home bases to scattered destinations over the country.

Generally these operations were conducted with aircraft smaller than those used in regular scheduled service.

But after the war three new factors entered the picture. The military had a surplus of used aircraft for sale at cut rates. Thousands of trained and experienced pilots were discharged from the services. The established airlines were hard pressed to meet the boom in demands for air transportation following the war.

<sup>1</sup> SEC. 416. (a) \* \* \*

#### EXEMPTIONS

(b)(1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this title or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

(2) The Board shall not exempt any air carrier from any provision of subsection (k) of section 401 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B), to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of such subsection if the Board finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the enforcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such air carrier from such paragraphs would not adversely affect the public interest: *Provided*, That nothing in this subsection shall be deemed to authorize the Board to exempt any air carrier from any requirement of this title, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or co-pilots. (Identical with sec. 416(b) of the Federal Aviation Act of 1958.)

The result was a substantial increase in passenger-carrying operations by the nonscheduled operators. In a short time there were almost 150 of these operators in the field.

In an effort to provide more effective regulation of this transportation, the Board, in 1947, revised its exemption regulations to require these operators to obtain letters of registration. Two classes were established, designated "large irregulars" and "small irregulars." The carriers operating large, transport-type aircraft were prohibited from operating, or advertising to the public that they were operating, regularly or with a reasonable degree of regularity. These revised regulations established criteria under which the carriers could operate as many as 8 to 12 flights per month carrying individually ticketed passengers between the same 2 points, depending on the spacing of flights and "breaks" in service.

#### *Large irregular air carrier investigation*

When it became apparent that the revised procedure was inadequate to cope with the regulatory problems encountered the Board in September 1951 instituted the large irregular air carrier investigation (docket 5132). In that investigation, where 66 nonskeds sought operating rights, the Board sought to determine—

- (1) The future role of the large irregular carriers and the extent of operations which would be permitted;
- (2) The selection of carriers to receive operating authority; and
- (3) Whether the authority should be by certificate or by exemption.

After extended hearings, the Board in 1954, with some 30 applicants remaining to be heard, decided to expedite the proceedings by splitting it into two parts—

- (1) The public interest issues (the role to be assigned the irregular carriers and the scope of operations to be authorized); and
- (2) Consideration of individual qualifications.

#### *Exemption authority for supplementals*

On November 15, 1955, the Board, with three members for and two against, issued a decision (order E-9744) on the public interest aspects of the case, finding that the irregulars comprise a "separate class of carriers" performing varied and flexible services. The Board found that the operations of these carriers would not adversely affect the certificated route carriers. The Board determined that unlimited charter authority should be granted, together with authority to perform individually ticketed or waybilled service not to exceed 10 flights per month in each direction between any 2 points. The 10-flight limitation was arrived at by averaging the 8 to 12 flights permitted under prior regulations.

This new authorization was granted to all members of the class on an interim exemption basis, pending the Board's final decision on the qualifications of individual carriers and the question of whether the final authority should be by certificate or by exemption.

The Board's decision of November 15, 1955, was challenged by the certificated industry, and on July 19, 1956, the Court of Appeals for the District of Columbia Circuit held the order invalid because the Board had not made appropriate findings to support its conclusion that a requirement of certification would be an undue burden on the carriers. The Supreme Court denied a petition for writ of certiorari.



On December 21, 1956, the court of appeals stayed the issuance of its mandate until 60 days after the date of the final Board decision in the *Large Irregular Carrier* case, docket 5132.

#### *Certification of supplementals*

On January 28, 1959, with two members, the Board issued its decision in docket 5132 granting temporary certificates of public convenience and necessity for supplemental air service to 23 carriers found by the Board to be fit to provide the service authorized (order E-13436). On July 8, 1959, the Board issued 2 additional certificates (order E-14196) for a total of 25 such certificates. Under these certificates, supplemental air carriers were authorized to provide unlimited plane-load charter service, and to conduct, without reference to any specific terminal or intermediate points, not more than 10 flights carrying individually ticketed passengers or individually way-billed property in the same direction between any single pair of points in any calendar month in interstate air transportation.

#### *Court decision on certification of supplementals*

This decision was challenged in the U.S. Court of Appeals for the District of Columbia Circuit, and on April 7, 1960, the court found (*United Air Lines et al. v. Civil Aeronautics Board*) that the Board's action was legally deficient in three respects:

1. The certificates issued by the Board did not specify the terminal and intermediate points between which air transportation was authorized but granted a blanket authorization to operate between any two points in the United States.
2. The court held that the 10-flights-a-month limitation was in violation of section 401(e) of the act which provides: "No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules \* \* \*"
3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out (one judge dissenting) that the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations.

Concerning what should be done about the matter, the court said:

If the requirements of section 401(e) interpose an insuperable obstacle to the full development of supplemental air service, which they may well do, the problem is for the Congress. The Board should present it there.

#### *History of congressional action*

The Board then submitted to Congress proposed legislation to give the Board the authority which the court held it did not have and this was introduced in the House and Senate (H.R. 7593 and S. 1543, 86th Cong., 2d sess.).

Hearings were held on May 23 and 24, 1960, but after consideration of the testimony, it was decided that the issues involved could not be considered adequately in the short time remaining before adjournment, and the committee recommended the enactment of temporary legislation maintaining the status quo to permit further consideration during the 87th Congress (H. Rept. 1877, 86th Cong., 2d sess.).

Subsequently Public Law 86-661 was enacted to permit continuation of supplemental air operations until March 14, 1962.

Early in the present session, the Board again submitted a draft bill to authorize the issuance of limited certificates for supplemental operations. This proposed legislation was introduced as H.R. 7318 and S. 1969.

Board Member Gurney did not join in the recommendation. His views are explained in a letter included hereafter in this report.

#### ROLE OF SUPPLEMENTALS

##### *Need for charter service*

Witnesses who testified in the hearings were in agreement that the basic role of the supplementals in the air transportation picture is to provide charter service.

Even the witness for the Air Transport Association, speaking for the scheduled airlines, while strongly opposing the granting of authority to the Board to issue certificates permitting individually ticketed, route-type service, supported legislation to clarify the Board's authority to issue certificates to the supplementals for all-charter operations.

That charter service is the mainstay of the supplementals is shown by statistics supplied the committee by the Civil Aeronautics Board during the hearings.

These statistics show that during fiscal year 1960, the certificated supplemental carriers generated approximately 1.8 billion revenue passenger miles as compared with 1 billion revenue passenger miles for fiscal 1959. This constituted 4.3 percent of the total revenue passenger miles generated by the air carrier industry, including the certificated route air carriers. In 1959 the supplemental carriers obtained only 2.7 percent of the total revenue passenger miles.

The domestic traffic of the supplemental carriers increased from 312 million passenger miles in fiscal 1959 to 346 million in 1960. This traffic was 40 percent civilian and 60 percent military. The international traffic of the supplementals increased from 696 million passenger miles in 1959 to 1.4 billion in 1960, 18 percent of which was civilian and 82 percent military. This includes all traffic, i.e., individually ticketed, charter, and contract.

The supplemental carriers increased their total transport operating revenues from \$51 million in 1959 to \$59 million in 1960. Contract and charter services, both military and civilian, accounted for \$40 million in 1959 and \$48 million in 1960. Revenue from individually ticketed services, both passenger and freight, was \$11 million in 1960, the same as in 1959.

Thus, it is clear that charters are the principal source of revenue for the supplementals.

The basic concept written into the substitute bill reported herewith is that the supplementals essentially are charter operators. The committee recognizes that under special circumstances and in temporary situations, individually ticketed supplemental service fills a definite need in our transportation system. The committee recognizes also that individually ticketed supplemental service must necessarily be subject to close scrutiny by the Civil Aeronautics Board to make certain that such service is restricted to supplemental needs and does

not provide unfair or discriminatory competition to scheduled carriers, whose routes and operating conditions are necessarily to a large extent inflexible because of conditions which must be met to provide the service required for public convenience and necessity.

The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.

Your committee, however, after considering the problem, came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications.

#### *Individually ticketed operations*

H.R. 7318, as introduced, would have authorized the Board to issue certificates without specifying the terminal and intermediate points, and with such limitations as to frequency of service, size or type of equipment, or otherwise, to assure that the service so authorized remained supplemental to the service of the certificated route carriers.

How much, if any, individually ticketed service supplementals should be authorized to perform is a very difficult and controversial question.

Supplementals now operating under Board authority are permitted to sell individually ticketed service, but in rendering such service are limited to not more than 10 trips per month between any two points.

The legislation proposed by the Board would have permitted the issuance of certificates authorizing individually ticketed service "for such periods as may be required for the public convenience and necessity."

One of the principal reasons which the court assigned in its opinion in *United Airlines v. CAB* for invalidating the Board's action in granting supplemental certificates was that the certificates permitted operations between points selected by the carrier and did not specify the terminal points between which the carrier was authorized to engage in air transportation as required by section 401(e) of the act. The limitation on the number of trips, in lieu of specifying the terminal points, was likewise held by the court to violate the provisions of that subsection prohibiting the Board from placing a limitation in a certificate restricting the right of an air carrier to add to or change schedules.

In the hearings, both the Civil Aeronautics Board and the supplemental air carriers testified that such limited individually ticketed operations to supplement service by the scheduled carriers filled a real public need, were essential to the continued survival of the supplementals, and resulted in no demonstrable injury to the scheduled carriers.

The scheduled carriers opposed any authority for supplementals to conduct individually ticketed operations as a serious threat to the health and prosperity of the scheduled industry, citing the poor earnings of the scheduled carriers for the past 5 years. A witness for the industry testified that in 1960 the 12 domestic trunklines had a net profit of \$1,188,000 on gross operating revenues of almost \$2 billion.

*Regulatory concepts of existing law*

The so-called certificates issued by the Civil Aeronautics Board to the supplementals were illegal. This illegality was not a mere technical infraction of the act. It was fundamental. The 10-flight individually ticketed grant violated basic principles of the economic regulatory philosophy of the Federal Aviation Act of 1958. Thus, the act recognizes that a carrier's ability to provide good public service should not be hampered by artificial limits on the number of regular schedules for ticketed traffic it can operate over its routes. The act rejects the restrictionist philosophy prevalent in some foreign countries that a governmental bureau should divide the market by assigning each carrier an allowed number of flights.

The committee has carefully considered the testimony and all available evidence and failed to find any sound reason why these fundamental principles of the act should be changed. From the standpoint of good public service, and from the standpoint of opportunity for each carrier to compete and develop its business, any air carrier certificated to operate individually ticketed service over a route should be able to do so without CAB-imposed limitations on the frequency of service. If there is room for competition over a route, the CAB has authority in section 401 to certificate additional carriers. If there is not room for such competition, the Board should not be free to avoid the consequences of competition by limiting the volume of service to be provided by one, some, or all of the carriers in the market. Moreover, the committee does not consider it either feasible or desirable to authorize an air transport system in which the amount of service is half regulated and half unregulated.

The committee recognizes, however, that there may be exceptional circumstances in which, for a limited period of time, it may be desirable for a carrier not regularly certificated for a route to be authorized to conduct ticketed operations over the route. Thus, during the Christmas holidays and other periods of peak or unusual traffic demand, where the capacity of the carrier or carriers serving the route may be insufficient to meet the demand, it may be desirable and economically sound for the Board to permit another carrier to provide supplemental service for a temporary period. The special operating authorization under the new section 417 is designed to meet this situation. In the committee's view, this type of special authority to supplement the service over a certificated route should be strictly limited in nature and of short duration—normally, not over 30 days.

It is the committee's view that the granting of such temporary special operating authority by the Board should not be regarded as constituting any vested right or interest in the route by the carrier so authorized. If the insufficiency of capacity is a chronic problem over the particular route, and can be solved only by an additional carrier, the solution should be in permanent or temporary certification under section 401(d) (1) or (2) of existing law.

The new section 417 would require that an authorization under that section contain limitations as to the amount of service or the type of equipment used to assure that it will meet the requirements for additional transportation without significant diversion of traffic from the carriers holding certificates for the route. The section provides that such authorization shall be for not more than 30 days, but can be extended for additional periods aggregating not more than 60 days.

The Board is directed to establish a procedure for expeditiously handling these situations. It is required to give written notice to the air carriers certificated to provide service between the points involved and to provide an opportunity for such carrier to protest the issuance of such operating authorization in writing. Whether the carrier would be heard orally in support of the protest would be a matter for the Board's discretion, taking into account the degree of emergency involved in meeting the shortage.

A conscientious effort to make maximum use of this section will provide the Board with greater flexibility in meeting seasonal traffic peaks than it has ever had heretofore, and it will also provide the supplemental air carriers with an effective means of providing a needed public service to supplement the existing air transportation system. The committee believes that there is no provision of the bill which, if properly used, would contribute more directly to providing the public with more convenient and adequate air transportation.

#### PROVISIONS FOR ENFORCEMENT

The grants of individually ticketed authority in the past led to a multitude of enforcement problems and evasions, which the Board has been unable to cope with under existing law.

Supplemental carriers on occasion have entered into illegal pooling arrangements to provide what amounts to scheduled service contrary to the intent of the Board. Board efforts to end such practices have been frustrated by protracted litigation. Judicial stays of Board orders have permitted the continuation of highly profitable, although palpably illegal, operations by some of the carriers.

Although such operations have never been conducted by any large number of carriers, the record shows that the resultant diversion of traffic from carriers operating legally has been substantial, to the detriment not only of scheduled carriers but of those supplementals operating legally.

In an effort to protect both the supplementals and the scheduled industry by making such illegal operations unprofitable, the committee has accepted the recommendations of the Civil Aeronautics Board by extending the civil penalty provisions of the Federal Aviation Act of 1958 to cover violations of the economic provisions of title IV and of certificates issued thereunder. This has been accomplished by incorporating into the reported bill the provisions of H.R. 7303, a bill recommended by the Civil Aeronautics Board to authorize the imposition of civil penalties in certain cases, to permit a civil penalty of not to exceed \$1,000 for each violation.

#### INTERIM OPERATING AUTHORITY

The interim operating authority in the nature of "grandfather" provisions in sections 5 and 6 of the reported bill are designed to permit the existing supplemental carriers to operate until such time as the Board can pass upon applications for new certificates under the terms of this legislation.

The committee believes that the provisions of sections 5 and 6 strengthen the bill and will have the effect of eliminating various complexities resulting from a series of exemptions, orders, and stays, without injustice to the carriers involved.

Section 6 of the bill requires any carrier desiring to continue to operate in the future as a supplemental air carrier to file a new application under section 401(d)(3) seeking such certificate within 30 days from the time of enactment of the bill. If no application for a new certificate is filed within that period, the carrier's present authority will terminate, whether derived from an exemption, a certificate, or interim operating authority under Public Law 86-661. Any carrier which files an application for a certificate within 30 days is permitted to continue to operate under its present authority until the Board acts under section 5 of the bill. When the Board acts under section 5, the existing authority of a carrier will terminate, whether that authority is derived from a certificate, an exemption, or interim operating authority under Public Law 86-661.

If a carrier files a new application for a certificate as a supplemental air carrier under section 401(d)(3) within 30 days after enactment of this bill, the Board will next consider whether such carrier should be issued new interim authority to engage in supplemental air transportation pending Board action on the certificate application. The committee is aware that the issuance of new interim authority identical to that which the carriers now hold, rather than an extension of their present certificate or exemption, may appear to be an unnecessary step. Only those who have been forced to wind their way through the Chinese maze of orders and exemptions can appreciate how directly the public interest would be served by the issuance of a new single order clearly specifying what carriers are permitted to conduct what operations pending action on their certificate applications.

The Board is directed to issue new interim authority to four categories of carriers. As of this time the first category consists of a single carrier, Vance Roberts, which was given operating authority by the Board pursuant to section 1(2) of Public Law 86-661. Since the Board has just acted on this application within the last few months, the bill requires the automatic issuance by the Board of new interim operating authority without any further showing by the carrier.

The remaining three categories of carriers holding some form of operating authority from the Board must satisfy certain specific requirements before the Board is required to issue new interim operating authority to them. These requirements have been included in section 5 by the committee to insure that the effect of the grandfather provisions is to avoid hardship by permitting legally operating carriers to continue to operate, and not to revive dormant carriers which have not operated. A carrier which is not now operating will have the same right as a new applicant to apply for and receive a certificate as a supplemental air carrier. Justice does not require that such a carrier be permitted to begin operations prior to the time that the Board has passed on its application for a certificate.

A carrier in one of these three categories must be able to show that between the dates of issuance of its operating authority and of the enactment of this bill, it performed a substantial portion of the service authorized by its certificate or other operating authority or substantial operations in oversea or foreign air transportation authorized by the Board or substantial operations for the Military Establishment as authorized by the Board; that such certificate or operating authority has not been revoked or otherwise terminated by the Board; and that the certificate or operating authority is held by the original grantee

or has been transferred with the Board's approval. Special provision is made for an application for transfer which may be pending at the time of enactment of the bill. The following, then, are the three categories of carriers which may be entitled to receive new operating authority under section 5. The categories are mutually exclusive. A carrier is in one category, and one only, or in none.

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to order E-13436, of January 28, 1959. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

CARRIERS	COMMENT
American Flyers Airline Corp. Arctic-Pacific, Inc.....	Certificate expired May 30, 1961; no application for renewal was filed. Authority terminated by Board Order E-16734 of April 28, 1961.
Associated Air Transport, Inc. Aviation Corp. of Seattle, d/b/a West- air Transport Blatz Airlines, Inc. Capitol Airways, Inc. Coastal Air Lines (formerly Coastal Cargo Co., Inc.) Conner Air Lines, Inc.....	Application for transfer and renewal of certificate pending.
General Airways, Inc.....	No transport operations performed in supplemental air service during test period.
Imperial Airlines, Inc. (formerly Regina Cargo Airlines, Inc.) Johnson Flying Services, Inc. Paul Mantz Air Services Modern Air Transport, Inc. Overseas National Airways President Airlines, Inc. (formerly Cali- fornia Eastern Aviation, Inc.) Saturn Airways, Inc. (formerly All- American Airways, Inc.) Sourdough Air Transport Southern Air Transport, Inc. Standard Airways, Inc. Stewart Air Service Transocean Airlines United States Overseas Airlines, Inc. World Airways, Inc.	Certificate sold by trustee in bank- ruptcy but no application for transfer to the purchaser has been filed.

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to order E-14196, of July 8, 1959. The committee is aware of no circumstance which would prevent their receiving interim operating authority.

Trans International Airlines, Inc. (for-  
merly Los Angeles Air Service, Inc.)  
Quaker City Airways, Inc.

The following carriers were given interim authority to operate in interstate air transportation as a supplemental air carrier under Board Order E-9744, of November 15, 1955, and have pending before the

Board applications for a certificate as a supplemental air carrier which were filed prior to July 14, 1960. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

CARRIERS	COMMENT
Air Cargo Express, Inc. <sup>1</sup> -----	No transport operations performed in supplemental air service during test period.
Airline Transport Carriers, Inc., d/b/a California Hawaiian Airlines. Argonaut Airways Corp.-----	
Meteor Air Transport, Inc.-----	Operating authority terminated by Order E-15183 of May 4, 1960.
Miami Airline, Inc.-----	
S.S.W., Inc.-----	Operating authority terminated by Order E-15252 of May 20, 1960.
World Wide Airlines, Inc.-----	

<sup>1</sup> The certificate application of Air Cargo Express, Inc., was denied in Order E-13436, but the Board action reversed and the application remanded for further proceeding by the Court of Appeals for the District of Columbia in the case of *Great Lakes Airlines et al. v. C.A.B.*, decided Feb. 24, 1961.

There remains one additional category of carriers for which the bill makes special provision. Four carriers were given exemption authority for supplemental air service by order E-9744, but have no applications for certificates pending before the Board because their operating authority under the exemption order was specifically terminated by the Board in order E-13436. These carriers appealed the Board's order denying a certificate and revoking their exemption authority to the courts and are now operating under a judicial stay pending review. Certiorari has been denied by the Supreme Court, but a petition for reconsideration of this action is pending. Carriers in this category are Central Air Transport, Inc., Curry Air Transport, Ltd., Great Lakes Airlines, Inc., and Trans-Alaskan Airlines. Section 6 provides that these carriers are authorized to continue to operate subject to all conditions contained in order E-9744 or imposed by the court until the court shall lift its stay or until final disposition of the judicial proceeding.

#### NEED FOR LEGISLATION

The supplemental carriers constitute an important element in national defense. During the Berlin airlift, with only 5 percent of the Nation's civil air transport capacity, these carriers moved approximately 25 percent of the passengers and 57 percent of the cargo carried by civilian aircraft. In 1950, the supplementals supported the Korean airlift by supplying over half the commercial capability requested by the military. The supplementals flew the first planes to Vienna in 1956 to provide airlift for Hungarian refugees. In the Lebanon crisis, the supplementals offered the military 38 four-engine aircraft within 4 hours.

The Department of the Air Force, in a letter included hereafter in this report, stated that continued existence of the supplementals is a real value in terms of national defense.

The Civil Aeronautics Board in December 1955 characterized the supplementals as: "A reserve air fleet, capable of being called into action to meet emergency transportation needs with a minimum amount of notice."



The legislation reported herewith is needed to stabilize the supplemental industry, which has existed in an atmosphere of uncertainty for many years.

Enactment of this legislation will give the supplemental industry a more permanent role in air transportation. It will permit the industry to make plans for the future and to complete financial arrangements for the purchase of modern equipment requiring amortization over a period of years. A more permanent status will brighten the economic outlook for the industry which, a witness testified in the hearings, has shown losses from 1957 to date, after making a profit in 5 of the 7 years between 1950 and 1957.

#### SECTION-BY-SECTION EXPLANATION OF THE COMMITTEE AMENDMENT

The following is a section-by-section explanation of the substitute amendment reported by the committee. Unless otherwise indicated, existing law referred to is the Federal Aviation Act of 1958.

##### *Section 1*

This section would amend section 101 of existing law by adding a new paragraph (32) defining the term "supplemental air carrier" and a new paragraph (33) defining the term "supplemental air transportation".

"Supplemental air carrier" would be defined as an air carrier holding a certificate of public convenience and necessity authorizing such air carrier to engage in supplemental air transportation.

"Supplemental air transportation" would be defined as charter trips in air transportation rendered pursuant to a certificate issued by the Civil Aeronautics Board to supplement the scheduled service authorized to be performed by the certificated route air carriers, but would not include the transportation of mail by aircraft.

##### *Section 2*

This section would amend section 401(d) of existing law by adding a new paragraph (3) which would authorize the Civil Aeronautics Board to issue to any applicant, other than a certificated route air carrier, a certificate of public convenience and necessity to engage in all or any part of the supplemental air transportation covered by the application. The Board could issue such certificate for such periods as it determines that the transportation for which authority is sought is required by the public convenience and necessity. Before issuing such a certificate, the Board would be required to make a determination that the applicant is fit, willing, and able to perform the transportation authorized by the certificate and to conform to the provisions of existing law and the regulations of the Board issued thereunder. Under the amendment to existing law made by section 3 of the committee substitute, each supplemental certificate would designate the terminal and intermediate points between which the air carrier concerned could operate, or, if the Board determines that such designation is not practicable, the certificate would designate the geographical area or areas within or between which such air carrier could operate. The standard of fitness to be applied by the Board to an applicant for a supplemental certificate could vary according to the scope of the transportation authority granted by the certificate. It is obvious, for example, that the fitness requirements of the

Board with respect to the financial resources of an applicant could vary considerably as between an applicant seeking unlimited authority to engage in supplemental air transportation within a large geographical area and an applicant seeking limited authority to engage in such transportation between two specific points. The Board also would be required to include in each supplemental certificate such limitations as it finds necessary to insure that the service rendered thereunder will be supplemental to the scheduled service authorized to be performed by certificated route air carriers.

### *Section 3*

This section would amend section 401(e) of existing law by dividing it into six numbered paragraphs as follows:

1. Paragraphs (1) and (2) would repeat provisions presently contained in section 401(e) of existing law (relating to terms of certificates held by air carriers) without substantive change.

2. Paragraph (3) would be added to such section 401(e) of existing law so as to require that each supplemental certificate issued by the Civil Aeronautics Board designate the terminal and intermediate points between which the air carrier is authorized to operate, unless the Board determines that such designation of points is not practicable. If the Board determines that such designation of points is not practicable, it would be required to designate the geographical area or areas within or between which the air carrier is authorized to operate.

3. Paragraph (4) would repeat the provision of such section 401(e) of existing law which prohibits the imposition of limitations on a certificate of public convenience and necessity restricting the right of an air carrier to change schedules, equipment, accommodations, and facilities for performing the authorized transportation as may be required by the development of the business and the public demand. This provision would be amended so as to permit the Board to impose such limitations on a supplemental certificate whenever the Board deems it necessary in order to insure that the service rendered thereunder will be supplemental to the service authorized to be rendered by certificated route air carriers. The imposition of such limitations would continue to be prohibited with respect to certificates issued to scheduled route air carriers.

4. Paragraph (5) would repeat the provisions of section 401(e) of existing law (relating to operations of air carriers during an emergency) without substantive change.

5. Paragraph (6) repeats the provision of section 401(e) of existing law authorizing any air carrier to perform charter trips or any other special service, under Board regulation, without regard to points specified in its certificate. This provision would be amended so as to exclude from this authorization any air carrier holding a supplemental certificate issued by the Board under the proposed new section 401(d)(3).

### *Section 4*

This section would add a new section 417 to existing law to permit the Civil Aeronautics Board to issue to a supplemental air carrier a special operating authorization under which such air carrier would have limited authority to engage in air transportation, temporarily, between specified points. It would be under this provision of the committee substitute that supplemental air carriers could be author-

ized to engage in individually ticketed and individually waybilled operations.

Subsection (a) of the proposed new section 417 would grant the Board authority to issue a special operating authorization to a supplemental air carrier (but not to a certificated route air carrier) to engage in air transportation temporarily between specified points. Such authorization could be issued only if the Board finds, after an investigation, that the capacity for air transportation between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service, or, that there is a temporary requirement for air transportation between two points, one or both of which are not regularly served by any air carrier. The Board also would be required to find that a supplemental air carrier can provide the additional service temporarily required in the public interest.

Subsection (b) of the proposed new section 417 would require, in effect, that each special operating authorization contain such limitations as the Board determines to be necessary to insure that the air transportation authorized thereunder will alleviate the temporary insufficiency in air transportation found to exist, without a significant diversion of traffic from certificated route air carriers holding certificates authorizing them to engage in air transportation between the points involved. No such special operating authorization could be issued for more than 30 days. However, the Board could extend a special operating authorization for additional periods aggregating not more than 60 days, thus enabling the holder of such authorization to continue operations for a total of not more than 90 days.

This subsection also would provide that a special operating authorization shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act. The purpose of this provision is to make it clear that such authorization is not to be considered a license to engage in any activity of a continuing nature such as would enable the holder thereof to file an application for renewal before the expiration of the authority granted and continue to operate until the Board could dispose of such renewal application. This provision would not prevent the holder of a special operating authorization from applying for a renewal thereof, subject to the limitations contained in the proposed new section 417, but it would prevent such holder from continuing to operate after the expiration of such authorization unless the Board had affirmatively renewed it.

Subsection (c) of the proposed new section 417 would require the Board to prescribe regulations establishing procedures for the expeditious handling of requests for special operating authorizations. The Board would be required to include in such procedures written notice to certificated route air carriers authorized to engage in air transportation between the points involved so as to give such air carriers an opportunity to protest the issuance of a special operating authorization affecting such points. Since the issuance of a special operating authorization would depend upon the fact that air transportation being offered between particular points had been found to be temporarily insufficient to meet the needs of the public or the postal service, it is obvious that the Board must be able to act with reasonable speed in order to alleviate such temporary insufficiency of air transportation. Therefore, there is no specific requirement that the Board con-

duct a hearing at which it would be required to take evidence from opposing parties, and oral argument before the Board is left to its discretion. The Board could conduct such a hearing and provide for oral argument if the circumstances of the case would permit such procedures without causing undue delay in the issuance of the special operating authorization involved. The discretion vested in the Board is necessary to enable it to carry out its duty, under the proposed new section 417, of handling requests for special operating authorizations as expeditiously as possible, taking into account the degree of emergency involved.

*Section 5*

Under subsection (a) of this section the Board would be required to issue a new interim certificate or new interim operating authority (in the nature of temporary grandfather rights) to any applicant who, within 30 days after the enactment of this legislation, applies to the Board for a certificate to engage in supplemental air transportation and can show the Board—

(1) that it holds authority previously granted by the Board to engage in interstate air transportation as a supplemental air carrier and has an application pending before the Board for certification as a supplemental air carrier which was filed before July 14, 1960 (the date of enactment of Public Law 86-661, enabling the Board to authorize supplemental air transportation on a temporary basis);

(2) that it has conducted substantial operations under such authority, or substantial operations (authorized by the Board) in oversea or foreign air transportation as a supplemental or large irregular air carrier, or substantial operations (authorized by the Board) for the Military Establishment of the United States;

(3) that the operating authority held by the applicant had not been terminated by the Board, or had not expired, before the enactment of this legislation (such authority would be deemed to have been so terminated if the Board had issued a final order to that effect on or before the date of enactment of this legislation, notwithstanding a pending judicial review of such Board order); and

(4) that such operating authority is held by the original grantee or has been transferred to the applicant with Board approval. (Provision is also made for the extension of grandfather rights under this section to a person who has an application pending before the Board for approval of a transfer to him of operating authority referred to in this section, but the Board could not extend grandfather rights to such person unless it approves such transfer.)

The new interim certificate or new interim authority issued by the Board under this section would replace the certificate or interim operating authority held by the applicant at the time of the enactment of this legislation and would be valid until the Board grants or denies the applicant's request for the supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

Subsection (b) of this section would enable an air carrier which holds interim operating authority to engage in supplemental air transportation under Public Law 86-661 to qualify for new interim

authority (in the nature of temporary grandfather rights) by applying for a supplemental certificate under the proposed new section 401(d)(3) within the 30-day period following the enactment of this legislation and by showing that it or its predecessor received interim operating authority under such Public Law 86-661.

Subsection (c) of this section would provide that a new interim certificate or new interim authority issued under this section shall not be deemed to be a license within the meaning of section 9(b) of the Administrative Procedure Act. The purpose of this provision is to make it clear that any such certificate or authority would be valid only until the Board grants or denies the applicant's request for a supplemental certificate under the new section 401(d)(3) proposed by section 2 of the committee substitute. In other words, the certificate or authority issued under section 5 shall not be considered a license to engage in any activity of a continuing nature so as to enable the holder thereof to file an application for renewal and continue to operate until the Board can dispose of the renewal application.

#### *Section 6*

Subsections (a) and (b) of this section would enable any air carrier, with certain exceptions noted in the explanation of subsection (c) of this section, which is presently operating in air transportation as a supplemental air carrier under authority previously granted by the Board to continue its operations, for a limited period of time, under the terms of such authority. If such air carrier does not file an application with the Board for a supplemental certificate under the proposed new section 401(d)(3) within the 30-day period following the enactment thereof, its authority to operate in air transportation as a supplemental air carrier, previously granted by the Board, would be terminated upon the expiration of such 30-day period. If such air carrier does file such an application within such 30-day period, it would be able to continue its operations under the terms of the authority previously granted, until the Board grants or denies the issuance to such air carrier of a new interim certificate or new interim authority (temporary grandfather rights) under section 5 of the committee substitute. As noted previously in the explanation of such section 5, the new certificate or authority issued thereunder would be valid until the Board grants or denies such air carrier's request for a supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

Subsection (c) of this section would permit certain air carriers who previously received authority from the Board to operate in air transportation as supplemental air carriers, and who are presently continuing their operations solely by virtue of a judicial stay of an order of the Board terminating such authority, to continue their operations until such judicial stay is lifted or until the final disposition of the judicial review proceeding of such Board order, whichever first occurs. The significance of this provision is that it would permit a group of air carriers (referred to as the "Great Lakes group") to continue operations until the courts have finally disposed of their case. The operating authority of this group was previously terminated by the Board because they were found to have operated illegally. Of course, this provision does not prevent any air carrier in the so-called Great Lakes group from applying for a new supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

*Section 7*

This section would preserve to the Board authority to institute or maintain enforcement proceedings against any air carrier which obtains a new interim certificate or new interim authority under the grandfather provisions of this legislation, or obtains a new supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3), for violations committed by such air carrier with respect to the provisions of existing law, the terms of any certificate or other operating authority held by such air carrier, or Board regulations, without regard to when such violations occurred. This provision also would permit the Board to impose sanctions for such violations upon (1) the existing authority held by the air carrier concerned, (2) the new interim certificate or new interim authority issued under the grandfather provisions of this legislation, or (3) the supplemental certificate issued under the proposed new section 401(d)(3).

*Section 8*

This section provides that applications of air carriers filed in the Large Irregular Air Carrier Investigation (docket No. 5132, and others) would be deemed to have been finally disposed of by the Board on the enactment of this legislation. The investigation referred to was begun by the Board in 1951 and had as one of its purposes the determination by the Board of the proper role of supplemental air carriers in this Nation's system of air transportation. Since this legislation would amount to a policy declaration by the Congress as to the role of supplemental air carriers in our system of air transportation, it is appropriate to provide for the termination of the Board's investigation into this question upon the enactment of this legislation.

*Section 9*

This section would amend section 901(a) of existing law so as to enable the Board to impose civil penalties for violations of the economic provisions of existing law, and the regulations and orders of the Board issued thereunder. At the present time such violations are subject to criminal prosecution, under section 902(a) of existing law, if such violations are committed "knowingly and willfully." In the case of minor violations or actions falling short of knowing and willful misconduct, criminal prosecution may be too drastic or inappropriate. The availability of the civil penalty would enable the Board, in acting upon less serious violations, to improve the enforcement program with respect to economic violations by speedily imposing civil penalties, thus avoiding situations such as have existed in the past where offenders have been able to persist in violations during the time required to prosecute a formal proceeding or court action. This section also would add to the civil penalties section of existing law a provision (similar to the provision applicable in the case of criminal penalties) that, if any economic violation is a continuing one, each day of such violation shall constitute a separate offense. No change is made in the amount of the civil penalty which could be imposed, which amount is set forth in existing law as "a civil penalty of not to exceed \$1,000" for each violation. The Board would have authority to compromise any civil penalty imposed by it.

The amendments to the civil penalties section of existing law proposed by this section of the committee substitute would not be

limited in application to violations committed by supplemental air carriers, but would include violations by certificated route air carriers or any other person.

Since this section of the committee substitute would not take effect until the date of enactment of this legislation, the Board could not impose civil penalties for economic violations committed before such date of enactment.

*Section 10*

This section would amend section 902(a) of existing law so as to preserve the criminal penalties contained in such section for knowing and willful violations of the economic provisions of existing law. Such section 902(a) contains an exception clause which excepts from the provisions of such section violations "for which no penalty is otherwise herein provided." Under the amendment made by section 9 of this legislation, economic violations would be subject to the civil penalties provided for in section 901(a) of existing law. If the phrase "for which no penalty is otherwise herein provided" contained in section 902(a) of existing law is interpreted to refer to violations for which no penalty is otherwise provided in the Federal Aviation Act of 1958, rather than violations for which no penalty is otherwise provided in such section 902(a), the application of civil penalties to economic violations would place such violations within the exception clause of such section 902(a). To prevent the possibility of such an interpretation, the language of the exception clause would be changed to read as follows: "for which no penalty is otherwise provided in this section." Thus, it would be clear that the criminal penalties remain applicable to economic violations.

*Section 11*

This section would make technical amendments to conform the table of contents contained in the first section of existing law with the changes made by the committee substitute.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**FEDERAL AVIATION ACT OF 1958**

\* \* \* \* \*

**TITLE I—GENERAL PROVISIONS**

**DEFINITIONS**

SEC. 101. As used in this Act, unless the context otherwise requires—

\* \* \* \* \*

(32) "*Supplemental air carrier*" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(33) "*Supplemental air transportation*" means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401 (d) (1) and (2) of this Act.

[(32)] (34) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

[(33)] (35) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

\* \* \* \* \*

## TITLE IV--AIR CARRIER ECONOMIC REGULATION

### CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

#### CERTIFICATE REQUIRED

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

#### APPLICATION FOR CERTIFICATE

(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

#### NOTICE OF APPLICATION

(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Board shall dispose of such application as speedily as possible.

#### ISSUANCE OF CERTIFICATE

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



that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3)(i) *In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the service of a supplemental air carrier and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to supplemental air transportation, including the nature of the public need found to exist and the extent of the obligation imposed on an air carrier engaging in such air transportation to provide the service authorized by the certificate. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.*

(ii) *If any applicant who makes application for a certificate for supplemental air transportation within thirty days after the date of enactment of this paragraph shall show—*

(A) *that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or that it or its predecessor has received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960, 74 Stat. 527;*

(B) *that between the effective date of the certificate or interim operating authority and the date of enactment hereof, the applicant or his predecessor in interest lawfully performed either (1) any portion of the service authorized by the certificate or interim operating authority, or (2) any operations for the Military Establishment of the United States authorized by the Board; and*

(C) *that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this paragraph, and is held by the original grantee or has been transferred with Board approval pursuant to section 401(h): Provided, That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue*

*a certificate hereunder if it approves the transfer pursuant to section 401(h) of this Act;*  
*the Board, upon proof of such facts only, shall issue a certificate authorizing such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to the terms, conditions, and limitations attached thereto for such period as the Board deems proper: Provided, That this period shall not extend beyond the effective date of an order of the Board denying renewal of the certificate or interim operating authority in a renewal proceeding pending at the time of enactment hereof.*

## TERMS AND CONDITIONS OF CERTIFICATE

(c) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board. *A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board in specifying the service to be rendered under a certificate for supplemental air transportation from placing such limitations on such certificate as it may find to be necessary to assure that the services are limited to supplemental air transportation: Provided, That the Board may not impose such limitations upon certificates issued pursuant to paragraphs (1) and (2) of subsection (d).*

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

For the information of the Members of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**FEDERAL AVIATION ACT OF 1958**

AN ACT To continue the Civil Aeronautics Board as an agency of the United States, to create a Federal Aviation Agency, to provide for the regulation and promotion of civil aviation in such manner as to best foster its development and safety, and to provide for the safe and efficient use of the airspace by both civil and military aircraft, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act, divided into titles and sections according to the following table of contents, may be cited as the "Federal Aviation Act of 1958":

## TABLE OF CONTENTS

*	*	*	*	*	*	*
TITLE IV—AIR CARRIER ECONOMIC REGULATION						
Sec. 401.	Certificate of public convenience and necessity.					
	(a) Certificate required.					
	(b) Application for certificate.					
	(c) Notice of application.					
	(d) Issuance of certificate.					
	(e) Terms and conditions of certificate.					
	(f) Effective date and duration of certificate.					
	(g) Authority to modify, suspend, or revoke.					
	(h) Transfer of certificate.					
	(i) Certain rights not conferred by certificate.					
	(j) Application for abandonment.					
	(k) Compliance with labor legislation.					
	(l) Requirement as to carriage of mail.					
	(m) Application for new mail service.					
Sec. 402.	Permits to foreign air carriers.					
	(a) Permit required.					
	(b) Issuance of permit.					
	(c) Application for permit.					
	(d) Notice of application.					
	(e) Terms and conditions of permit.					
	(f) Authority to modify, suspend, or revoke.					
	(g) Transfer of permit.					
Sec. 403.	Tariffs of air carriers.					
	(a) Filing of tariffs required.					
	(b) Observance of tariffs; rebating prohibited.					
	(c) Notice of tariff change.					
	(d) Filing of divisions of rates and charges required.					
Sec. 404.	Rates for carriage of persons and property.					
	(a) Carrier's duty to provide service, rates, and divisions.					
	(b) Discrimination.					

- Sec. 405. Transportation of mail.
  - (a) Postal rules and regulations.
  - (b) Mail schedules.
  - (c) Maximum mail load.
  - (d) Tender of mail.
  - (e) Foreign postal arrangement.
  - (f) Transportation of foreign mail.
  - (g) Evidence of performance of mail service.
  - (h) Emergency mail service.
  - (i) Experimental airmail service.
  - (j) Free travel for postal employees.
- Sec. 406. Rates for transportation of mail.
  - (a) Authority to fix rates.
  - (b) Rate-making elements.
  - (c) Payment.
  - (d) Treatment of proceeds of disposition of certain property.
  - (e) Statement of Postmaster General and carrier.
  - (f) Weighing of mail.
  - (g) Availability of appropriations.
  - (h) Payments to foreign air carriers.
- Sec. 407. Accounts, records, and reports.
  - (a) Filing of reports.
  - (b) Disclosure of stock ownership.
  - (c) Disclosure of stock ownership by officer or director.
  - (d) Form of accounts.
  - (e) Inspection of accounts and property.
- Sec. 408. Consolidation, merger, and acquisition of control.
  - (a) Acts prohibited.
  - (b) Power of Board.
  - (c) Interests in ground facilities.
  - (d) Jurisdiction of accounts of noncarriers.
  - (e) Investigation of violations.
- Sec. 409. Prohibited interests.
  - (a) Interlocking relationships.
  - (b) Profit from transfer of securities.
- Sec. 410. Loans and financial aid.
- Sec. 411. Methods of competition.
- Sec. 412. Pooling and other agreements.
  - (a) Filing of agreements required.
  - (b) Approval by Board.
- Sec. 413. Form of control.
- Sec. 414. Legal restraints.
- Sec. 415. Inquiry into air carrier management.
- Sec. 416. Classification and exemption of carriers.
  - (a) Classification.
  - (b) Exemptions.
- Sec. 417. *Special operating authorizations.*
  - (a) *Authority of Board to issue.*
  - (b) *Terms of authorization.*
  - (c) *Procedure.*

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TITLE IX—PENALTIES

- Sec. 901. Civil penalties.
  - (a) **[Safety and postal offenses.]** *Safety, economic, and postal offenses.*
  - (b) Liens.

\* \* \* \* \*

TITLE I—GENERAL PROVISIONS

DEFINITIONS

- SEC. 101. As used in this Act, unless the context otherwise requires—
  - (1) “Administrator” means the Administrator of the Federal Aviation Agency.

(2) "Aeronautics" means the science and art of flight.

(3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest.

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Administrator may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(12) "Board" means the Civil Aeronautics Board.

(13) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or con-

trolled by persons who are citizens of the United States or of one of its possessions.

(14) "Civil aircraft" means any aircraft other than a public aircraft.

(15) "Civil aircraft of the United States" means any aircraft registered as provided in this Act.

(16) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

(17) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(18) "Federal airway" means a portion of the navigable airspace of the United States designated by the Administrator as a Federal airway.

(19) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(20) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(21) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation

or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(22) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(23) "Mail" means United States mail and foreign-transit mail.

(24) "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this Act, and shall include airspace needed to insure safety in take-off and landing of aircraft.

(25) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

(26) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this Act.

(27) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(28) "Propeller" includes all parts, appurtenances, and accessories thereof.

(29) "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this Act to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(30) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(31) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(32) "*Supplemental air carrier*" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(33) "*Supplemental air transportation*" means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act.

[(32)] (34) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

[(33)] (35) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

\* \* \* \* \*

## TITLE IV—AIR CARRIER ECONOMIC REGULATION

### CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

#### CERTIFICATE REQUIRED

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

#### APPLICATION FOR CERTIFICATE

(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

#### NOTICE OF APPLICATION

(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Board shall dispose of such application as speedily as possible.



ISSUANCE OF CERTIFICATE

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

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3) *In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.*

TERMS AND CONDITIONS OF CERTIFICATE

(e) (1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

(3) *A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.*

(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized trans-

portation and service as the development of the business and the demands of the public shall require; *except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section.*

(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an [emergency under] *emergency, under* regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

(6) Any air [carrier may make] *carrier, other than a supplemental air carrier, may perform* charter trips or [perform] any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board.

#### EFFECTIVE DATE AND DURATION OF CERTIFICATE

(f) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Board shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Board shall certify that operations thereunder have ceased: *Provided, That* if any service authorized by a certificate is not inaugurated within such period, not less than ninety days, after the date of the authorization as shall be fixed by the Board, or if, for a period of ninety days or such other period as may be designated by the Board any such service is not operated, the Board may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

#### AUTHORITY TO MODIFY, SUSPEND, OR REVOKE

(g) The Board upon petition or complaint or upon its own initiative, after notice and hearings, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided, That* no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of the certificate.

#### TRANSFER OF CERTIFICATE

(h) No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

CERTAIN RIGHTS NOT CONFERRED BY CERTIFICATE

(i) No certificate shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal airway, landing area, or air-navigation facility.

APPLICATION FOR ABANDONMENT

(j) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment to be in the public interest. Any interested person may file with the Board a protest or memorandum of opposition to or in support of any such abandonment. The Board may, by regulations or otherwise, authorize such temporary suspension of service as may be in the public interest.

COMPLIANCE WITH LABOR LEGISLATION

(k)(1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including take-off and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and holds a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

REQUIREMENT AS TO CARRIAGE OF MAIL

(l) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by

the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

#### APPLICATION FOR NEW MAIL SERVICE

(m) Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Board and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for at least twenty days in the office of the secretary of the Board. The Board shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such additional service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

#### PERMITS TO FOREIGN AIR CARRIERS

##### PERMIT REQUIRED

SEC. 402. (a) No foreign air carrier shall engage in foreign air transportation unless there is in force a permit issued by the Board authorizing such carrier so to engage.

##### ISSUANCE OF PERMIT

(b) The Board is empowered to issue such a permit if it finds that such carrier is fit, willing, and able properly to perform such air transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation will be in the public interest.

##### APPLICATION FOR PERMIT

(c) Application for a permit shall be made in writing to the Board, shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

##### NOTICE OF APPLICATION

(d) Upon the filing of an application for a permit the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a permit. Such application shall be set for public hearing and the Board shall dispose of such application as speedily as possible.

TERMS AND CONDITIONS OF PERMIT

(e) The Board may prescribe the duration of any permit and may attach to such permit such reasonable terms, conditions, or limitations as, in its judgment, the public interest may require.

AUTHORITY TO MODIFY, SUSPEND, OR REVOKE

(f) Any permit issued under the provisions of this section may, after notice and hearing, be altered, modified, amended, suspended, canceled, or revoked by the Board whenever it finds such action to be in the public interest. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, modification, amendment, suspension, cancellation, or revocation of a permit.

TRANSFER OF PERMIT

(g) No permit may be transferred unless such transfer is approved by the Board as being in the public interest.

TARIFFS OF AIR CARRIERS

FILING OF TARIFFS REQUIRED

SEC. 403. (a) Every air carrier and every foreign air carrier shall file with the Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the Board shall by regulation prescribe; and the Board is empowered to reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void. The rates, fares, and charges shown in any tariff shall be stated in terms of lawful money of the United States, but such tariffs may also state rates, fares, and charges in terms of currencies other than lawful money of the United States, and may, in the case of foreign air transportation, contain such information as may be required under the laws of any country in or to which an air carrier or foreign air carrier is authorized to operate.

OBSERVANCE OF TARIFFS; REBATING PROHIBITED

(b) No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for air transportation, or for any service in connection therewith, than the rates, fares, and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with

respect to matters required by the Board to be specified in such tariffs, except those specified therein. Nothing in this Act shall prohibit such air carriers or foreign air carriers, under such terms and conditions as the Board may prescribe, from issuing or interchanging tickets or passes for free or reduced-rate transportation to their directors, officers, and employees (including retired directors, officers, and employees who are receiving retirement benefits from any air carrier or foreign air carrier), the parents and immediate families of such officers and employees, and the immediate families of such directors; widows, widowers, and minor children of employees who have died as a direct result of personal injury sustained while in the performance of duty in the service of such air carrier or foreign air carrier; witnesses and attorneys attending any legal investigation in which any such air carrier is interested; persons injured in aircraft accidents and physicians and nurses attending such persons; immediate families, including parents, of persons injured or killed in aircraft accidents where the object is to transport such persons in connection with such accident; and any person or property with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation; and, in the case of overseas or foreign air transportation, to such other persons and under such other circumstances as the Board may by regulations prescribe. Any air carrier or foreign air carrier, under such terms and conditions as the Board may prescribe, may grant reduced-rate transportation to ministers of religion on a space-available basis.

#### NOTICE OF TARIFF CHANGE

(c) No change shall be made in any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, specified in any effective tariff of any air carrier or foreign air carrier, except after thirty days' notice of the proposed change filed, posted, and published in accordance with subsection (a) of this section. Such notice shall plainly state the change proposed to be made and the time such change will take effect. The Board may in the public interest, by regulation or otherwise, allow such change upon notice less than that herein specified, or modify the requirements of this section with respect to filing and posting of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

#### FILING OF DIVISIONS OF RATES AND CHARGES REQUIRED

(d) Every air carrier or foreign air carrier shall keep currently on file with the Board, if the Board so requires, the established divisions of all joint rates, fares, and charges for air transportation in which such air carrier or foreign air carrier participates.

#### RATES FOR CARRIAGE OF PERSONS AND PROPERTY

##### CARRIER'S DUTY TO PROVIDE SERVICE, RATES, AND DIVISIONS

SEC. 404. (a) It shall be the duty of every air carrier to provide and furnish interstate and overseas air transportation, as authorized by its certificate, upon reasonable request therefor and to provide

reasonable through service in such air transportation in connection with other air carriers; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to such air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers.

#### DISCRIMINATION

(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

### TRANSPORTATION OF MAIL

#### POSTAL RULES AND REGULATIONS

SEC. 405. (a) The Postmaster General is authorized to make such rules and regulations, not inconsistent with the provisions of this Act, or any order, rule, or regulation made by the Board thereunder, as may be necessary for the safe and expeditious carriage of mail by aircraft.

#### MAIL SCHEDULES

(b) Each air carrier shall, from time to time, file with the Board and the Postmaster General a statement showing the points between which such air carrier is authorized to engage in air transportation, and all schedules, and all changes therein, of aircraft regularly operated by the carrier between such points, setting forth in respect of each such schedule the points served thereby and the time of arrival and departure at each such point. The Postmaster General may designate any such schedule for the transportation of mail between the points between which the air carrier is authorized by its certificate to transport mail, and may, by order, require the air carrier to establish additional schedules for the transportation of mail between such points. No change shall be made in any schedules designated or ordered to be established by the Postmaster General except upon ten days' notice thereof filed as herein provided. The Postmaster General may by order disapprove any such change or alter, amend, or modify any such schedule or change. No order of the Postmaster General under this subsection shall become effective until ten days after its issuance. Any person who would be aggrieved by any such order of the Postmaster General under this subsection may, before the expiration of such ten-day period, apply to the Board, under such regulations as it may prescribe, for a review of such order. The Board may review, and, if the public convenience and necessity so require, amend, revise, suspend, or cancel such order; and, pending such review and

the determination thereof, may postpone the effective date of such order. The Board shall give preference to proceedings under this subsection over all proceedings pending before it. No air carrier shall transport mail in accordance with any schedule other than a schedule designated or ordered to be established under this subsection for the transportation of mail.

#### MAXIMUM MAIL LOAD

(c) The Board may fix the maximum mail load for any schedule or for any aircraft or any type of aircraft; but, in the event that mail in excess of the maximum load is tendered by the Postmaster General for transportation by any air carrier in accordance with any schedule designated or ordered to be established by the Postmaster General under subsection (b) of this section for the transportation of mail, such air carrier shall, to the extent such air carrier is reasonably able as determined by the Board, furnish facilities sufficient to transport, and shall transport, such mail as nearly in accordance with such schedule as the Board shall determine to be possible.

#### TENDER OF MAIL

(d) From and after the issuance of any certificate authorizing the transportation of mail by aircraft, the Postmaster General shall tender mail to the holder thereof, to the extent required by the Postal Service, for transportation between the points named in such certificate for the transportation of mail, and such mail shall be transported by the air carrier holding such certificate in accordance with such rules, regulations, and requirements as may be promulgated by the Postmaster General under this section.

#### FOREIGN POSTAL ARRANGEMENT

(e) (1) Nothing in this Act shall be deemed to abrogate or affect any arrangement made by the United States with the postal administration of any foreign country with respect to transportation of mail by aircraft, or to impair the authority of the Postmaster General to enter into any such arrangement with the postal administration of any foreign country.

(2) The Postmaster General may, in any case where service may be necessary by a person not a citizen of the United States who may not be obligated to transport the mail for a foreign country, make arrangements, without advertising, with such person for transporting mail by aircraft to or within any foreign country.

#### TRANSPORTATION OF FOREIGN MAIL

(f) (1) Any air carrier holding a certificate to engage in foreign air transportation and transporting mails of foreign countries shall transport such mails subject to control and regulation by the United States. The Postmaster General shall from time to time fix the rates of compensation that shall be charged the respective foreign countries for the transportation of their mails by such air carriers, and such rates shall be put into effect by the Postmaster General in accordance with the provisions of the postal convention regulating



the postal relations between the United States and the respective foreign countries, or as provided hereinafter in this subsection. In any case where the Postmaster General deems such action to be in the public interest, he may approve rates provided in arrangements between any such air carrier and any foreign country covering the transportation of mails of such country, under which mails of such country have been carried on scheduled operations prior to January 1, 1938, or in extensions or modifications of such arrangements, and may permit any such air carrier to enter into arrangements with any foreign country for the transportation of its mails at rates fixed by the Postmaster General in advance of the making of any such arrangement. The Postmaster General may authorize any such air carrier, under such limitations as the Postmaster General may prescribe, to change the rates to be charged any foreign country for the transportation of its mails by such air carrier within that country or between that country and another foreign country.

(2) In any case where such air carrier has an arrangement with any foreign country for transporting its mails, made or approved in accordance with the provisions of paragraph (1) of this subsection, it shall collect its compensation from the foreign country under its arrangement, and in case of the absence of any arrangement between the air carrier and the foreign country consistent with this subsection, the collections made from the foreign country by the United States shall be for the account of such air carrier: *Provided*, That no such air carrier shall be entitled to receive compensation both from such foreign country and from the United States in respect of the transportation of the same mail or the same mails of foreign countries.

#### EVIDENCE OF PERFORMANCE OF MAIL SERVICE

(g) Air carriers transporting or handling United States mail shall submit, under signature of a duly authorized official, when and in such form as may be required by the Postmaster General, evidence of the performance of mail service; and air carriers transporting or handling mails of foreign countries shall submit, under signature of a duly authorized official, when and in such form as may be required by the Postmaster General, evidence of the amount of such mails transported or handled, and the compensation payable and received therefor.

#### EMERGENCY MAIL SERVICE

(h) In the event of emergency caused by flood, fire, or other calamitous visitation, the Postmaster General is authorized to contract, without advertising, for the transportation by aircraft of any or all classes of mail to or from localities affected by such calamity, where available facilities of persons authorized to transport mail to or from such localities are inadequate to meet the requirements of the Postal Service during such emergency. Such contracts may be only for such periods as may be necessitated, for the maintenance of mail service, by the inadequacy of such other facilities. No operation pursuant to any such contract, for such period, shall be air transportation within the purview of this Act. Payment of compensation for service performed under such contracts shall be made, at rates provided in such contracts, from appropriations for the transportation of mail by the means normally used for transporting the mail transported under such contracts.

SUPPLEMENTAL AIR CARRIERS

EXPERIMENTAL AIRMAIL SERVICE

(i) Nothing contained in this Act shall be construed to repeal in whole or in part the provisions of section 6 of the Act entitled "An Act to provide for experimental airmail service, to further develop safety, efficiency, economy, and for other purposes", approved April 15, 1938, as amended. The transportation of mail under contracts entered into under such section shall not, except for sections 401(k) and 416(b), be deemed to be "air transportation" as used in this Act, and the rates of compensation for such transportation of mail shall not be fixed under this Act.

FREE TRAVEL FOR POSTAL EMPLOYEES

(j) Every air carrier carrying the mails shall carry on any plane that it operates and without charge therefor, the persons in charge of the mails when on duty, and such duly accredited agents and officers of the Post Office Department, and post office inspectors, while traveling on official business relating to the transportation of mail by aircraft, as the Board may by regulation prescribe, upon the exhibition of their credentials.

RATES FOR TRANSPORTATION OF MAIL

AUTHORITY TO FIX RATES

SEC. 406. (a) 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 by aircraft, the facilities used and useful therefor, and the services connected therewith (including the 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 method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same.

RATE-MAKING ELEMENTS

(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, (1) the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; (2) such standards respecting the character and quality of service to be rendered by air carriers as **may**

be prescribed by or pursuant to law; and (3) the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

#### PAYMENT

(c) The Postmaster General shall make payments out of appropriations for the transportation of mail by aircraft of so much of the total compensation as is fixed and determined by the Board under this section without regard to clause (3) of subsection (b) of this section. The Board shall make payments of the remainder of the total compensation payable under this section out of appropriations made to the Board for that purpose.

#### TREATMENT OF PROCEEDS OF DISPOSITION OF CERTAIN PROPERTY

(d) In determining the need of an air carrier for compensation for the transportation of mail, and such carrier's "other revenue" for the purpose of this section, the Board shall not take into account—

(1) gains derived from the sale or other disposition of flight equipment if (A) the carrier notifies the Board in writing that it has invested or intends to reinvest the gains (less applicable expenses and taxes) derived from such sale or other disposition in flight equipment, and (B) submits evidence in the manner prescribed by the Board that an amount equal to such gains (less applicable expenses and taxes) has been expended for purchase of flight equipment or has been deposited in a special reequipment fund, or

(2) losses sustained from the sale or other disposition of flight equipment.

Any amounts so deposited in a reequipment fund as above provided shall be used solely for investment in flight equipment either through payments on account of the purchase price or construction of flight equipment or in retirement of debt contracted for the purchase or construction of flight equipment, and unless so reinvested within such reasonable time as the Board may prescribe, the carrier shall not have the benefit of this paragraph. Amounts so deposited in the reequipment fund shall not be included as part of the carrier's used and useful investment for purposes of section 406 until expended as provided above: *Provided*, That the flight equipment in which said gains may be invested shall not include equipment delivered to the carrier prior to April 6, 1956: *Provided further*, That the provisions of this subsection shall be effective as to all capital gains or losses realized on and after April 6, 1956, with respect to the sale or other disposition of flight equipment whether or not the Board shall have entered a final order taking account thereof in determining all other revenue of the air carrier.

## STATEMENT OF POSTMASTER GENERAL AND CARRIER

(e) Any petition for the fixing of fair and reasonable rates of compensation under this section shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under this section a comprehensive statement of all service to be required of the air carrier and such other information in his possession as may be deemed by the Board to be material to the inquiry.

## WEIGHING OF MAIL

(f) The Postmaster General may weigh the mail transported by aircraft and make such computations for statistical and administrative purposes as may be required in the interest of the mail service. The Postmaster General is authorized to employ such clerical and other assistance as may be required in connection with proceedings under this Act. If the Board shall determine that it is necessary or advisable, in order to carry out the provisions of this Act, to have additional and more frequent weighing of the mails, the Postmaster General, upon request of the Board shall provide therefor in like manner, but such weighing need not be for continuous periods of more than thirty days.

## AVAILABILITY OF APPROPRIATIONS

(g) Except as otherwise provided in section 405(h), the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Air Mail Act of 1934, as amended, and the unexpended balances of all appropriations available for the transportation of mail by aircraft in Alaska, shall be available in addition to the purposes stated in such appropriations, for the payment of compensation by the Postmaster General, as provided in this Act, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the continental United States or between points in Hawaii or in Alaska or between points in the continental United States and points in Canada within one hundred and fifty miles of the international boundary line. Except as otherwise provided in section 405(h), the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Act of March 8, 1928, as amended, shall be available, in addition to the purposes stated in such appropriations, for payment to be made by the Postmaster General, as provided by this Act, in respect of the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the United States and points outside thereof, or between points in the continental United States and Territories or possessions of the United States, or between Territories or possessions of the United States.

## PAYMENTS TO FOREIGN AIR CARRIERS

(h) In any case where air transportation is performed between the United States and any foreign country, both by aircraft owned or operated by one or more air carriers holding a certificate under this

title and by aircraft owned or operated by one or more foreign air carriers, the Postmaster General shall not pay to or for the account of any such foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country, which, in his opinion, will result (over such reasonable period as the Postmaster General may determine, taking account of exchange fluctuations and other factors) in such foreign air carrier receiving a higher rate of compensation for transporting such mail than such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and the United States, or receiving a higher rate of compensation for transporting such mail than a rate determined by the Postmaster General to be comparable to the rate such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and intermediate country on the route of such air carrier between such foreign country and the United States.

### ACCOUNTS, RECORDS, AND REPORTS

#### FILING OF REPORTS

SEC. 407. (a) The Board is empowered to require annual, monthly, periodical, and special reports from any air carrier; to prescribe the manner and form in which such reports shall be made; and to require from any air carrier specific answers to all questions upon which the Board may deem information to be necessary. Such reports shall be under oath whenever the Board so requires. The Board may also require any air carrier to file with it a true copy of each or any contract, agreement, understanding, or arrangement, between such air carrier and any other carrier or person, in relation to any traffic affected by the provisions of this Act.

#### DISCLOSURE OF STOCK OWNERSHIP

(b) Each air carrier shall submit annually, and at such other times as the Board shall require, a list showing the names of each of its stockholders or members holding more than 5 per centum of the entire capital stock or capital, as the case may be, of such air carrier, together with the name of any person for whose account, if other than the holder, such stock is held; and a report setting forth a description of the shares of stock, or other interest, held by such air carrier, or for its account, in persons other than itself.

#### DISCLOSURE OF STOCK OWNERSHIP BY OFFICER OR DIRECTOR

(c) Each officer and director of an air carrier shall annually and at such other times as the Board shall require transmit to the Board a report describing the shares of stock or other interests held by him in any air carrier, any person engaged in any phase of aeronautics, or any common carrier, and in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, air carriers, other persons engaged in any phase of aeronautics, or common carriers.

## FORM OF ACCOUNTS

(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, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Board: *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.

## INSPECTION OF ACCOUNTS AND PROPERTY

(e) The Board shall at all times have access to all lands, buildings, and equipment of any carrier and to all accounts, records, and memoranda, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers; and it may employ special agents or auditors who shall have authority under the orders of the Board to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda. The provisions of this section shall apply, to the extent found by the Board to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of the Interstate Commerce Act, as amended.

## CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

## ACTS PROHIBITED

SEC. 408. (a) It shall be unlawful unless approved by order of the Board as provided in this section—

(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

(2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any air carrier;

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

(4) For any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

#### POWER OF BOARD

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided*, That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided further*, That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of the Interstate Commerce Act, as amended, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition: *Provided further*, That, in any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition, and determines that no person disclosing a substantial interest then currently is requesting a hearing, the Board, after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General not later than the day following the date of such publication), may determine that the public interest does not require a hearing and by order approve or disapprove such transaction.

#### INTERESTS IN GROUND FACILITIES

(c) The provisions of this section and section 409 shall not apply with respect to the acquisition or holding by any air carrier, or any officer or director thereof, of (1) any interest in any ticket office, land-

ing area, hangar, or other ground facility reasonably incidental to the performance by such air carrier of any of its services, or (2) any stock or other interest or any office or directorship in any person whose principal business is the maintenance or operation of any such ticket office, landing area, hangar, or other ground facility.

#### JURISDICTION OF ACCOUNTS OF NONCARRIERS

(d) Whenever, after the effective date of this section, a person, not an air carrier, is authorized, pursuant to this section, to acquire control of an air carrier, such person thereafter shall, to the extent found by the Board to be reasonably necessary for the administration of this Act, be subject, in the same manner as if such person were an air carrier, to the provisions of this Act relating to accounts, records, and reports, and the inspection of facilities and records, including the penalties applicable in the case of violations thereof.

#### INVESTIGATION OF VIOLATIONS

(e) The Board is empowered, upon complaint or upon its own initiative, to investigate and, after notice and hearing, to determine whether any person is violating any provision of subsection (a) of this section. If the Board finds after such hearing that such person is violating any provision of such subsection, it shall by order require such person to take such action, consistent with the provisions of this Act, as may be necessary, in the opinion of the Board, to prevent further violation of such provision.

#### PROHIBITED INTERESTS

##### INTERLOCKING RELATIONSHIPS

SEC. 409. (a) It shall be unlawful, unless such relationship shall have been approved by order of the Board upon due showing, in the form and manner prescribed by the Board, that the public interest will not be adversely affected thereby—

(1) For any air carrier to have and retain an officer or director who is an officer, director, or member, or who as a stockholder holds a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(2) For any air carrier, knowingly and willfully, to have and retain an officer or director who has a representative or nominee who represents such officer or director as an officer, director, or member, or as a stockholder holding a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(3) For any person who is an officer or director of an air carrier to hold the position of officer, director, or member, or to be a stockholder holding a controlling interest, or to have a representative or nominee who represents such person as an officer, director, or member, or as a stockholder holding a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(4) For any air carrier to have and retain an officer or director who is an officer, director, or member, or who as a stockholder



holds a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

(5) For any air carrier, knowingly and willfully, to have and retain an officer or director who has a representative or nominee who represents such officer or director as an officer, director, or member, or as a stockholder holding a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

(6) For any person who is an officer or director of an air carrier to hold the position of officer, director, or member, or to be a stockholder holding a controlling interest, or to have a representative or nominee who represents such person as an officer, director, or member, or as a stockholder holding a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

#### PROFIT FROM TRANSFER OF SECURITIES

(b) It shall be unlawful for any officer or director of any air carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof.

#### LOANS AND FINANCIAL AID

SEC. 410. The Board is empowered to approve or disapprove, in whole or in part, any and all applications made after the effective date of this section for or in connection with any loan or other financial aid from the United States or any agency thereof to, or for the benefit of, any air carrier. No such loan or financial aid shall be made or given without such approval, and the terms and conditions upon which such loan or financial aid is provided shall be prescribed by the Board.

#### METHODS OF COMPETITION

SEC. 411. The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

SUPPLEMENTAL AIR CARRIERS

POOLING AND OTHER AGREEMENTS

FILING OF AGREEMENTS REQUIRED

SEC. 412. (a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

APPROVAL BY BOARD

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

FORM OF CONTROL

SEC. 413. For the purposes of this title, whenever reference is made to control, it is immaterial whether such control is direct or indirect.

LEGAL RESTRAINTS

SEC. 414. Any person affected by any order made under sections 408, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

INQUIRY INTO AIR CARRIER MANAGEMENT

SEC. 415. For the purpose of exercising and performing its powers and duties under this Act, the Board is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier,

and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information.

## CLASSIFICATION AND EXEMPTION OF CARRIERS

### CLASSIFICATION

SEC. 416. (a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the Board finds necessary in the public interest.

### EXEMPTIONS

(b) (1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this title or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

(2) The Board shall not exempt any air carrier from any provision of subsection (k) of section 401 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B), to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of such subsection if the Board finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the enforcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such air carrier from such paragraphs would not adversely affect the public interest: *Provided*, That nothing in this subsection shall be deemed to authorize the Board to exempt any air carrier from any requirement of this title, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or copilots.

## SPECIAL OPERATING AUTHORIZATIONS

### AUTHORITY OF BOARD TO ISSUE

SEC. 417. (a) *If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—*

*(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily*

*insufficient to meet the requirements of the public or the postal service; or*

*(2) that there is a temporary requirement for air transportation between two points, one or both of which is not regularly served by any air carrier; and*

*(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;*

*the Board may issue to such supplemental air carrier a special operating authorization to engage in air transportation between such points.*

TERMS OF AUTHORIZATION

*(b) A special operating authorization issued under this section—*

*(1) shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route;*

*(2) shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days; and*

*(3) shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).*

PROCEDURE

*(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved.*

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TITLE IX—PENALTIES

CIVIL PENALTIES

【SAFETY AND POSTAL OFFENSES】

SAFETY, ECONOMIC, AND POSTAL OFFENSES

SEC. 901. (a)(1) Any person who violates (A) any provision of [titles] *title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such [violation] violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate*

*offense: Provided,* That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, [and] or by the Board in the case of violations of [title VII] *titles IV or VII*, or any rule, regulation, or order issued thereunder, or *under section 1002(i)*, or any term, condition, or limitation of any permit or certificate issued under title IV, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

\* \* \* \* \*

CRIMINAL PENALTIES

GENERAL

SEC. 902. (a) Any person who knowingly and willfully violates any [provisions] *provision* of this Act (except titles III, V, VI, VII, and XII), or any order, rule, or regulation issued under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise [herein] provided *in this section*, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than \$500, and for any subsequent offense to a fine of not more than \$2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

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AGENCY REPORTS

The committee considered the following letters:

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
*Washington, D.C., June 16, 1961.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, House Office Building, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is in reply to your requests of June 8 and June 9, 1961, for reports on H.R. 7318 and H.R. 7512, bills to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

The Department of Commerce and the Civil Aeronautics Board in statements to your committee indicate that the supplemental air carriers perform a useful public service and help meet the Nation's air transportation needs. The Bureau of the Budget concurs generally in the statements of those agencies and recommends enactment

of legislation to authorize the Civil Aeronautics Board to issue limited certificates of public convenience and necessity for air services supplemental to those provided by the regular common carriers. Since H.R. 7318 was drafted by the Board to give it the authority it believes necessary for this purpose, we recommend it be enacted rather than H.R. 7512.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

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THE SECRETARY OF COMMERCE,  
*Washington, D.C., June 19, 1961.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of June 9, 1961, requesting the views of the Department on H.R. 7318 and H.R. 7512, bills to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

H.R. 7318 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under sections 401(d) (1) and (2) of the act, the new class to be known as supplemental air carriers; that such carriers may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers; that the Civil Aeronautics Board be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized; that the Board be authorized to grant blanket authorization without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. H.R. 7318 would also provide for grant of statutory operating rights to the existing holders of supplemental air carrier certificates, in the nature of grandfather rights.

H.R. 7512 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under section 401(d) (1) and (2) of the act, the new class to be known as supplemental air carriers; that such carriers may request a certificate of public convenience and necessity which limits the holder to performance of unlimited planeload charter operations, limited individually ticketed passenger or individually waybilled cargo operations, and the right of first refusal in the operation of all charter operations; that the Civil Aeronautics Board be authorized to grant a blanket authorization without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. H.R. 7512 would also provide for grant of statutory operating rights to the

existing holders of supplemental air carrier certificates, in the nature of grandfather rights.

On January 28, 1959, in the *Large Irregular Air Carrier Investigation*, CAB docket 5132, the Board issued temporary certificates of public convenience and necessity for supplemental air carrier operation in interstate air transportation. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services.

The issuance of such certificates was challenged in the courts by regularly authorized air carriers, i.e., air carriers certificated to render route-type service. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit set aside the Board action of January 28, 1959, *United Air Lines et al. v. Civil Aeronautics Board* (278 F.2d 446). The court found that the certificates issued for supplemental air service did not specify the terminal and intermediate points between which air transportation had been authorized, contained limitation as to the number of flights contrary to section 401(c) of the act, and were not based on standards of fitness for applicants for certificate required by section 401(d) of the act.

As a stopgap measure to avoid immediate cessation of 25 supplemental air carrier authorizations, the Congress enacted Public Law 86-661, approved July 14, 1960. Such legislation was designed to maintain the status quo of the supplemental air carriers for up to 20 months after enactment so as to permit further consideration to be given the entire matter of supplemental air transportation without interim cessation of the then-existing authority of the carriers involved.

This Department is of the opinion that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense. At the present time eight supplemental air carriers have executed civil reserve air fleet (CRAF) standby contracts which provide for the furnishing of air transportation on an international scale to the Department of Defense in the event of war or national emergency.

Of a total of 212 aircraft allocated by the Department's Defense Air Transportation Administration to the basic CRAF program, 40 have been allocated from supplemental air carrier inventories. In addition, the aircraft remaining in such air carrier inventories after CRAF requirements have been met (approximately 123 in number) are subject to DATA's allocation authority for purposes of DOD domestic wartime requirements, such as the Navy's quicktrans and the Air Force's logair operations, and for the needs of the civil economy under the war air service pattern program.

The Department also concludes that it would be unrealistic, as well as inherently unsound, for the continued existence of the supplemental air carriers to be entirely dependent in peacetime upon military business. Therefore, we agree that supplemental airlines should be eligible to operate their planes in peacetime in commercial air services.

The Department supports the purpose of these two similar bills but considers the provisions of H.R. 7318 as being more likely to achieve their desired aims. We recommend against the provision in H.R. 7512 that would give the supplemental carriers the right of first

refusal in the operation of all charter trips in interstate, overseas, and foreign air transportation. It is our view that such a provision would give the supplemental carriers an unwarranted competitive advantage over the regularly authorized air carriers and that it could cause undue burden on those persons desiring charter flights by limiting at the outset their choice of carrier.

Furthermore, the provisions in H.R. 7512 limiting the frequency of individually ticketed or individually waybilled cargo operations to 192 flights per year appears to be arbitrary. We are of the opinion that H.R. 7318 gives authority to the Board to furnish the necessary protection without setting a limitation that may be harmful to the supplemental carriers, the regularly certificated carriers and the traveling public.

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,  
*Under Secretary of Commerce.*

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CIVIL AERONAUTICS BOARD,  
*Washington, D.C., June 20, 1961.*

HON. JOHN BELL WILLIAMS,  
*Chairman, Subcommittee on Transportation and Aeronautics,  
Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN WILLIAMS: While I agree with my colleagues on the Civil Aeronautics Board that legislation by the Congress is required to authorize the Board to issue certificates of public convenience and necessity for supplemental air transportation, I differ as to the type of certificates which the Board should be empowered to issue. I would urge the Congress to enact legislation authorizing the Board to issue supplemental certificates limited to the operation of charter services only without regard to the other limitations in the act. This opinion is based upon my experience of over 10 years as a member of the Civil Aeronautics Board supported by statistics which indicate little need for supplemental air service other than charter operations.

As you and the members of your committee know, the need for this additional legislation has resulted from a reversal by the U.S. Court of Appeals for the District of Columbia Circuit (*United Air Lines, et al v. C.A.B.*, 278 F. 2d 446) remanding the decision of a majority of the Board in the *Large Irregular Carrier Investigation*, docket No. 5132. Further court proceedings on this matter have been stayed pending the enactment of further legislation or the expiration of Public Law 86-661 enacted by the Congress last year to preserve the status quo for 20 months from July 14, 1960. In the *Large Irregular Carrier* case, the Board awarded certificates of public convenience and necessity to 23 former large irregular carriers to engage in interstate air transportation limited to 10 round trip flights per month between any 2 points carrying individual ticketed passengers or cargo, but unlimited as to charter flights. Further proceedings were ordered with respect to eight additional carriers. The 10-trip authority, for example, permits a carrier to operate 10 round trips



monthly between New York and Los Angeles in addition to 10 round trips per month between any other 2 points in the United States. The authority to operate between any two cities in the United States simultaneously is limited only by the availability of equipment by each carrier. With this authority, the supplemental carriers could concentrate their operations in the heavy traffic markets on which the trunkline carriers depend for their financial success. Additional competition in route-type operations by a substantial number of supplemental carriers is certainly not required or necessary. The financial condition of the trunkline industry today as evidenced by the losses experienced by several of the carriers during the past year and the first quarter of 1961 shows that it cannot stand additional competition.

The certificated domestic air carrier route system links every major metropolitan area with each other and with more numerous smaller communities. The 11 trunkline carriers and the 13 subsidized local service carriers currently provide air service to 576 cities and towns in the continental United States. Thus the trade and vacation routes are more than adequately served by these route-type carriers which are required by law to render adequate service according to the needs of the communities.

The supplemental carriers enjoying the best financial condition today are for the most part those carriers which have through the years concentrated on developing the charter market rather than holding out to the individual ticketholder. For example, the Board's records show that for the year ending June 30, 1960, the supplemental carriers received operating revenues of \$50,417,000 for their civilian and military charter sales while grossing transport revenues of \$13,580,000 in operations other than charters. (These statistics do not include revenues of two carriers which are involved in enforcement proceedings for violations of their authority as large irregular carriers.) Of all the carriers operating supplemental services, 76 percent of the total noncharter revenues were received by only three carriers. Of these carriers, one is now bankrupt and another is operating only pending appeal of the Board decision denying it continuing authority. The third carrier although receiving 40 percent of its income from individual ticket operations, showed a net loss on all operations of \$577,000 in 1960, and \$1,350,000 in 1959.

A vast majority of the supplemental carriers, therefore, are not engaging in individual ticketing or waybill operations. In fact, 14 of these carriers engaged in no individual ticket or waybill operations during the 12 months preceding June 30, 1960. It is my conclusion, therefore, that since only a limited few carriers have used the individual ticket and waybill authority from 1955 to the present, little need exists for this type of service. If, at any time, an emergency should develop requiring the services of the supplemental carriers for purposes other than charters, the Board can invoke its authority under section 416(b) of the act to authorize such operations.

The Board has encouraged the supplemental carriers to develop the charter market by permitting these carriers to operate a charter exchange whereby a charter group is assured of the availability of an aircraft to suit its needs by negotiating with one central source which in turn has available the entire supplemental air carrier fleet. The Board disapproved a similar arrangement organized by the trunkline

carriers to protect the supplemental carriers from unwarranted competition in developing the charter market. It is my firm belief that the future of the supplemental air carrier industry lies in the further development of the charter market—and not in attempting to engage in route-type operations of any kind.

One additional point requires elaboration. One of the bills (H.R. 7318) under consideration proposes an amendment of section 401 of the Federal Aviation Act to authorize the Board to issue supplemental certificates for interstate, oversea, and foreign air transportation. It is urged that the amendment be limited to interstate operations only. Currently, the international routes to and from the United States are served by several U.S.-flag carriers who are competing with approximately 67 foreign air carriers. As a result of this competition, the market for the U.S.-flag carriers has decreased substantially each year for several years. In 1950 our flag carriers carried 74.7 percent of the market, but in 1960 carried only 54.7 percent of the total passenger traffic. Although the traffic in numbers of passengers has increased considerably during this period, unlimited competition by the supplemental carriers could very well cause the frequency and quality of our flag services to deteriorate. This in turn would seriously affect their financial condition.

The Board has certificated 10 all-purpose carriers to operate major international routes. Five of these carriers reported losses on their international operations for the years 1959 and 1960. The U.S. international all-cargo carriers are also experiencing severe financial difficulties as is an all-cargo carrier on an oversea route. The certification of an unlimited number of supplemental carriers in the international field may well pose a further threat to the financial condition of the existing carriers on these routes.

The large irregular carriers, predecessors to the supplemental air carriers, have had authority to operate cargo flights internationally, but few have sought to use this authority over the years. It is apparent, therefore, that little need exists for oversea or foreign supplemental air transportation of any kind and it is urged that such authority be deleted from the proposal.

Failure to include oversea and foreign supplemental air transportation in the proposed amendment does not mean that the supplemental carriers will be excluded from participation in either civilian or military international movements—as again the Board has ample authority under section 416(b) of the act to exempt air carriers for individual flights or for operations for a limited time for any national defense need or other emergency.

Respectfully submitted.

CHAN GURNEY.

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DEPARTMENT OF THE AIR FORCE,  
*Washington, July 29, 1961.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 7512, 87th Congress, a bill to amend the Federal Avia-

tion Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes. The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of the proposed legislation is to amend the Federal Aviation Act of 1958 to provide for a class of supplemental air carriers, and for other purposes. This proposed legislation is similar to H.R. 7318, 87th Congress, on which a separate report has been written.

This proposed legislation has been brought about by virtue of a decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *United Air Lines, et al. v. Civil Aeronautics Board* (278 F. 2d 446 (1960)). (See 364 U.S. 297, where petition for certiorari was granted.) In that case the court found that the Civil Aeronautics Board's prior actions in certificating supplemental air carrier operations were legally deficient in three separate areas. The effect of the court's holding was that the Board did not possess the legal power to grant certificates of public convenience and necessity to authorize supplemental air transportation. Thus, those carriers who held certificates to engage in supplemental air transportation did not then have legal operating authority. As a stopgap measure Congress enacted Public Law 86-661, approved July 14, 1960, which measure was designed to preserve the supplemental air carrier industry for a period of 20 months, and until the matter could be studied more fully. The proposed legislation is designed to be of a permanent nature and, in effect, to replace the temporary stopgap legislation which allows the supplemental air carrier industry to operate for only 20 months from July 1960. In effect, the Board has found that supplemental air carriers have performed a useful public service and that they have a definite place and role in meeting the Nation's air transportation requirements. The subject legislation, therefore, is designed to amend the Federal Aviation Act of 1958 in various respects in order that the Board can legally award certificates for supplemental air transportation to those carriers who would be eligible for such authority under the proposed legislation.

The amendments proposed in H.R. 7512 to the Federal Aviation Act of 1958 are all amendments of a technical nature designed to give the Board appropriate legal authority to issue certificates to carriers for supplemental air transportation. These proposed technical amendments include a so-called "grandfather" provision which would authorize the issuance of a certificate for supplemental air transportation to those carriers who were previously authorized to engage in such transportation (see line 5 and following on p. 3 of H.R. 7512).

The continued existence of the irregular air carrier fleet is of real value in terms of national defense and it is evident that the future ability of the irregular air carriers to service the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military. In this regard, the current (April 1, 1961) allocation of aircraft to the civil reserve air fleet (CRAF) program shows that there are 8 supplemental air carriers participating in this program which now includes 22 air carriers.

The Department of the Air Force, on behalf of the Department of Defense, has no objection to the enactment of H.R. 7512, but defers

to the views of the Civil Aeronautics Board concerning the technical details of the bill.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOSEPH S. IMIRIE,  
*Assistant Secretary of the Air Force.*

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OFFICE OF THE POSTMASTER GENERAL,  
*Washington, D.C., June 20, 1961.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: We reply to your request for reports on H.R. 7318 and H.R. 7512 proposing to authorize the Civil Aeronautics Board to issue certificates of public convenience and necessity to "supplemental air carriers."

Each of these bills would amend the Federal Aviation Act by authorizing the Civil Aeronautics Board to issue certificates of public convenience and necessity to "supplemental air carriers." The bills differ, however, in the specific type of service which could be authorized by the Board in the certificates granted to "supplemental air carriers." H.R. 7512 does not include authorization for the transportation of mail. H.R. 7318, on the other hand, would permit the Civil Aeronautics Board to grant "supplemental air carriers" authority to transport mail.

To date the supplemental air carrier operations authorized by the Civil Aeronautics Board have not included any grant of authority to transport mail. Nor has the Department ever supported any such grant of mail authority in view of the very limited special type of operation that is characteristic of a supplemental air carrier service. No use would be made of this type of limited operation for the transportation of mail except under very extraordinary circumstances.

We have no objection to the enactment of this legislation; however, the use of "supplemental air carriers" as provided for in H.R. 7318 would be feasible for mail transportation only under extraordinary circumstances since they would not be operating a daily point-to-point type of service.

We have been advised by the Bureau of the Budget that from the standpoint of the administration's program there is no objection to the presentation of the report to the committee.

Sincerely yours,

J. EDWARD DAY, *Postmaster General.*

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