

Working Group on Civil Aviation

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**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

Assistant Secretary

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

MEMORANDUM

December 8, 1993

SUBJECT: Final Draft - The Administration's
Civil Aviation Initiative

FROM: Patrick V. Murphy
Acting Assistant Secretary for
Policy and International Affairs

TO: All Members of NEC Working Group on Civil Aviation

Attached is the proposed final draft of our Civil Aviation Initiative. It will be distributed tomorrow by Bob Rubin to the NEC Principals, with a request that any comments be submitted to his office by next Monday, December 13. Please take the time to review the draft with your respective Principal. If you have any questions, please call Jim New on 366-4834 (FAX: 366-7483).

Attachment

- # -

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THE ADMINISTRATION'S

CIVIL AVIATION INITIATIVE



This draft is for the review of the Principals of the National Economic Council and the Members of the Working Group on Civil Aviation, and is subject to further revision. Contents of the draft should NOT be publicly disclosed.

DECEMBER 1993

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STATEMENT OF THE SECRETARY OF TRANSPORTATION

The U.S. aviation industry has made the United States and the rest of the world safer and more accessible to air travelers and shippers. Air transportation today is an \$80 billion a year business employing half a million people, and is the heart of the \$3 trillion global travel and tourism industry. Much of that industry's growth and development is the product of U.S. technology. Our airframe manufacturers, for example, invented the technology that leads the world, and they generate the largest trade surplus of any American industry -- \$31 billion last year alone.

During the past few years, however, conditions in the aviation industry have not been uniformly good. The industry has lost money, jobs and aircraft orders; some airlines continue to suffer financial deterioration; and everyone faces uncertainty over access to fast-growing international markets.

The actions in this Initiative will build on the achievements of American ingenuity and provide a needed lift to one of our most crucial industries. The Initiative has as its underpinning the recommendations of the 15-member National Commission to Ensure a Strong Competitive Airline Industry, along with certain recommendations of the Vice President's National Performance Review and the activities of several departments and agencies involved in aviation matters. The Initiative is a first installment of actions this Administration will be taking to achieve five aviation policy goals:

- . Revitalize Domestic Aviation
- . Bolster International Trade and Competition
- . Promote Airport Development and Growth
- . Enhance Safety, Equity and Environment
- . Improve the Connectivity of the National Transportation System

To revitalize domestic aviation we are taking several specific steps that will make the air transportation system safer and more efficient. The chief steps are a restructuring of the Federal Aviation Administration to improve the delivery of air traffic control services; accelerating the use of the Global Positioning System in civil aviation; and working with U.S. industry to sustain America's leadership in aerospace research and development. We are also re-dedicating the Government to aggressive enforcement of the statutory authority it has always possessed to promote and preserve competition. In the future, we will insist that mergers, acquisitions and sales of air carrier route authority conform to the competition and public-interest requirements of the antitrust laws and the Federal

Aviation Act. We will also carefully examine the impact of such transactions on airline workers. In addition, we will work to ensure that regulatory barriers do not hamper new ideas, new technologies, and new ways of doing business, and do not burden the industry with unnecessary compliance costs.

Actions we are taking to bolster international trade and competition reflect a vision of truly open aviation markets, where nations measure the success of their aviation policies by the stimulus that competitive air services provide to their economies and to all of their citizens. We will work to achieve a more liberal multinational aviation regime by developing and pursuing new negotiation strategies and by asking Congress to liberalize limitations on foreign ownership of U.S. carriers. We also will act to expand international aviation commerce and to protect the rights and interests of U.S. airlines and aerospace firms under international treaty obligations.

Beyond the actions set forth in this Initiative, during the coming year we will work closely with Congress to develop specific proposals in conjunction with FAA's legislative reauthorization to promote airport development and growth and to enhance safety, access to airports and airlines, and responsiveness to environmental concerns.

Furthermore, the Department of Transportation has begun a major re-examination of the inter-connectedness of our national transportation system. This work is examining the value, contributions, and benefits of each mode of transportation -- airports, highways, ports, waterways, rail, intercity bus lines, pipelines and local transit systems. It is also examining the effects of changes in our transportation policies, and the impact of those changes on our economy, environment and social fabric. The aviation industry, needless to say, is crucial to the operation and development our national transportation system.

The rapidity of change and the advancement of freedom around the world are creating new and exciting opportunities for economic enterprise. Our aviation policies must allow new partnerships to be forged among industry, labor and government if we are to capitalize on those opportunities, compete successfully, and reap the benefits of global commerce for American workers, consumers and businesses. This Initiative, and those that will follow over the coming months, will help us do so.

I want to thank the members of the National Economic Council for their support in developing this Civil Aviation Initiative, and the many staff from the various agencies involved in its preparation.

Federico Peña

STATEMENT OF THE CHAIR PRESIDENT'S COUNCIL OF ECONOMIC ADVISERS

The airline and aircraft manufacturing industries are vital to our nation -- and not merely for their large contributions to national output and employment. Each of us is immeasurably enriched when family and friends, a continent apart at breakfast, can be together at dinner, when business meetings can routinely involve residents of different cities, and when scarce medicines and crucial repair parts can be shipped overnight to where they are needed.

Although airline deregulation has been good for the airline and aircraft industries, in recent years these industries have encountered economic difficulties. The air carriers have recorded large losses during the past three years, and aerospace manufacturing has been hit hard by the downsizing of the defense sector following the end of the Cold War. When vital industries find themselves in financial distress, we must all be concerned.

We cannot have healthy aerospace industries without a strong economy. Airline profits are extremely sensitive to the business cycle. The most recent financial distress of the airline industry, for example, was triggered by the 1990-91 recession. In addition, industry losses were exacerbated by the over-optimistic expansion and excessive debt financing undertaken by the leading carriers during the 1980's. Losses in the airline industry in turn have adversely affected the profitability and prospects of the aircraft producers.

A strong economy will be the best medicine for what ails the aerospace complex. We believe that the recent budget reconciliation legislation, which reduces the deficit, along with other Administration initiatives, have put the economy on course for strong and sustainable growth. As the current recovery progresses, the major airlines are now reporting a return to profitability.

But a strong economy cannot alone cure these industries' ills. The Administration's Civil Aviation Initiative identifies additional steps we are taking to revitalize domestic aviation, encourage aerospace manufacturing and the development of new aviation technologies, and promote trade and competitiveness in international aviation.

Laura D'Andrea Tyson

PART 1. REVITALIZING DOMESTIC AVIATION

Actions To Make The Air Transportation System Safer And More Efficient

The Administration is acutely aware of the importance of operating the nation's air transportation system as safely and efficiently as possible. This entails efficient, high-quality air traffic control services, timely implementation of cost-saving technologies, continued support for the development and application of cutting-edge technology and products, and improved utilization and management of the airspace system. To these ends, we will:

Restructure ATC Services

In response to recommendations of both the National Performance Review and the National Airline Commission, a committee of Administration experts is developing a detailed plan to restructure FAA's Air Traffic Control (ATC) services as a government corporation. The Committee is evaluating the corporate model against reforms that are realistically achievable within FAA's existing organizational structure. Our goal is to make ATC more business-like and to overcome certain chronic impediments to good management, such as inflexible personnel rules and burdensome procurement regulations, that have frustrated efficient and effective delivery of ATC services. The committee will present its restructuring proposals, together with the draft legislation needed to implement the changes, to the Secretary of Transportation in April 1994. The Secretary will work with Congress to enact any required legislation.

The committee is comprised of senior officials from the Departments of Transportation and Defense, the Office of Management and Budget, the Council of Economic Advisers, the National Economic Council, the National Performance Review, and other agencies. The Committee is seeking a corporate structure that will streamline procurement, simplify the personnel process, provide funding stability, ensure continuity of leadership, and reduce the incidence of unnecessarily detailed management oversight. The committee is evaluating the implications of the corporate model for aviation safety, productivity, responsiveness to customer needs, national defense requirements, and other key issues. Suggestions and concerns regarding the delivery of FAA services are being solicited from the aviation community, Congressional representatives, industry leaders and other aviation experts.

**Accelerate GPS
and Related
Technologies**

The FAA Administrator has been charged with the task of accelerating the use of the Global Positioning System (GPS), a satellite-based navigation system. GPS offers enormous opportunities for enhancing civil aviation safety and efficiency. It enables us to integrate high-precision navigation with air traffic control. This will increase the capacity of our airspace system and reduce delays and the costs they impose on airlines, passengers and shippers.

Our accelerated schedule for the next 3 years calls for GPS to be available for navigation after take-off and for landing beginning in 1994, and to be available as a sole means for navigation over the oceans in 1995. Augmentation systems allowing broader and more robust GPS applications, such as use of GPS for certain types of precision approaches, are to be put on-line by 1996.

We are also working to ensure successful implementation for the long term. Because GPS was conceived, developed and fielded as a military system, its application to civil aviation presents significant technical and operational challenges. Recognizing the need for coordinated action, the Secretaries of Transportation and Defense earlier this year jointly established a DOT/DOD task force to undertake a thorough analysis of the policy and security questions regarding civil use of GPS, to define civil requirements for GPS and any barriers to their fulfillment, and to make recommendations for sustaining GPS on a long-term basis. The task force's recommendations on management jurisdiction between the Departments, GPS funding, international acceptance of GPS, and various technical matters concerning civil GPS applications will be reported to the Secretaries in December 1993.

In support of these actions to promote civil use of GPS, we will be modernizing the national airspace system to accommodate both civil and military needs by installing new equipment for automating ATC operations, accelerating standards on the operation and certification of GPS components, and working with industry to develop standards for future GPS and ATC enhancements. Furthermore, our plan for restructuring ATC services will include options for creating public-private consortia as a vehicle for expediting the development and implementation of ATC technologies.

**Sustain U.S.
Technological
Leadership and
Superiority
through
Partnership
with Industry**

A solid working partnership between industry and government will spur the development of technologies having the highest payoffs for our national aviation system and help to sustain America's preeminence in civil aviation research and development. Working with industry, we are committed to building a strong, advanced technology base for civil aviation that will guarantee continued expansion of benefits both domestically and internationally, while ensuring that U.S. industry maintains a strong competitive posture in the manufacture of aircraft and delivery of air services.

In support of these objectives we have increased NASA's aeronautics budget by 18 percent for fiscal year 1994, focusing on increased investment in civil aviation. Working with industry and FAA, NASA has developed research programs to enhance aviation competitiveness, system capacity, environmental compatibility and safety. The principal components are the Advanced Subsonic Technology (AST) program and the High Speed Research (HSR) program. AST provides basic research for the next-generation subsonic transport, and includes capacity and efficiency improvements together with NASA's contribution to GPS implementation. HSR is aimed at providing the research foundation for an industry-developed High Speed Civil Transport that is economically viable and environmentally compatible for the long-haul, over-water market. This fast-growing market is likely to make the High Speed Civil Transport the key to global competitiveness in aircraft manufacturing in the future. Upgraded and new aeronautical facilities also are receiving increased attention in response to the aging of our national facilities and the needs of industry and government. For example, new wind tunnels that do a better job of simulating flight conditions should improve the aircraft design process, enabling production of high-quality aircraft at lower cost with faster delivery to market.

In addition to these programs, we will take full advantage of the Defense Department's investment in "dual-use" aeronautical research, *i.e.*, research on systems and equipment intended for military use that may be applicable to civil aviation. For example, under the President's \$470 million Technology Reinvestment Project, federal grants have been awarded to private firms and institutions to support commercial development of products such as a new airport radar system, based on technology originally developed by the Navy, that can detect hazardous weather conditions while simultaneously monitoring air traffic. Furthermore, FAA, in addition to its ongoing support of GPS and ATC modernization, will work with industry in a cooperative research and development effort for new aircraft designs and manufacturing processes.

To guide our partnership with industry, the Administration's Inter-agency Aeronautics Working Group, co-sponsored by the Office of Science and Technology Policy and the National Economic Council, will (1) establish aeronautics research and development goals by February 1, 1994, and (2) complete an R&D action plan by February 1995.

**Evaluate the
High Density
Rule**

The Department of Transportation has begun a comprehensive examination of the High Density Rule to assess its viability as an efficient air traffic and delay management tool and to determine whether certain operating limitations imposed by the rule can be eliminated or modified to better utilize airport capacity. Put in place nearly 25 years ago as a "temporary" measure to deal with airport congestion, the High Density Rule today limits the number of airline operations at four major U.S. airports: Chicago O'Hare, New York's LaGuardia and JFK International, and Washington National. The Department's study is assessing capacity at these airports and the impact of the rule on airline competition, fares and service patterns. It also is evaluating the rule's economic, financial and environmental implications, including the process for allocating domestic and international slots and alternative traffic management techniques such as peak-period pricing. The study will be completed by November 1994.

Actions To Enhance The Aviation Industry's Financial Outlook

The most important action government can take to improve the industry's financial condition has already been taken. Enactment of the President's budget plan establishes the foundation for sustained economic growth and control of the federal deficit. A reinvigorated economy will generate more business for airlines and aerospace firms, boosting their financial prospects. The President's plan also provides relief from the Alternative Minimum Tax for many capital-intensive businesses, including airlines, and a temporary exemption from the 4.3 cents-per-gallon fuels tax for gasoline and jet fuels used in commercial aviation prior to October 1, 1995. For the airline industry, these provisions will provide financial benefits amounting to \$1.4 billion for fiscal years 1994-1998. In addition to these measures, we will take the following actions to address financial concerns and promote airline competition:

**Seek
Bankruptcy
Reform**

We support, and will work with Congress to secure the passage of, the provisions of Senate bill 540 that would amend the bankruptcy code to:

- o Limit to 60 days the time period during which a bankrupt air carrier can either assume or reject unexpired leases or executory contracts with an airport operator, under which the debtor has a right to the use or possession of an airport terminal, aircraft gate, or related facility. This change, while allowing time for a financially troubled airline to reorganize, recognizes the interests of the airline industry and the public in assuring efficient use of limited airport gates and related ground-support assets.
- o Codify recent court decisions to clarify that the lease provisions of the bankruptcy code cover parties with security interests, lessors of such equipment, and conditional lessors of such equipment. This change, which would cover maritime and railroad leases as well as aircraft equipment leases, would protect the right of a secured creditor to retake leased equipment 60 days after the filing of a bankruptcy petition. As a result, lessors' concerns over the impact of bankruptcy on their equipment would be allayed, and other carriers would be able to lease aircraft and related equipment on better terms.
- o Allow governmental units, such as the Pension Benefit Guaranty Corporation, that have a major financial stake in certain Chapter 11 reorganization cases to participate as members of creditors' committees. Creditors' committees play a key role in Chapter 11 proceedings by gathering financial information, conducting investigations, and participating in decisions on the debtor's fate. Under current law, government agencies and instrumentalities are effectively excluded from creditors' committees even though they are often among the largest creditors involved in a Chapter 11 proceeding. The proposed amendment would allow government entities -- federal, state or local -- to sit on creditors' committees in appropriate cases and exercise a stronger voice in the reorganization process.

In addition to supporting these statutory changes, we have begun a review of the economic impact of bankruptcy laws, giving particular emphasis to the effects of (1) introducing certain time limits on the filing of reorganization plans and (2) increasing the representation of the public interest in bankruptcy proceedings. These issues require detailed review because they transcend airline bankruptcy cases. Based on the results of our review, which is

being conducted under the auspices of the National Economic Council, we will work with Congress to effect appropriate changes to the bankruptcy laws.

**Closely
Monitor
Financial
Fitness**

Secretary Peña has directed Department of Transportation staff to monitor more closely and report to him regularly on the state of the airline industry and the condition of individual carriers. Given the dynamics of the industry, the Department is giving particular attention to financial factors, especially competition within the industry, ownership changes, and financial trends. Large transactions involving established carriers will be scrutinized to ensure that the carriers' financial health is not undermined by ill-conceived financing schemes.

Under section 401(r) of the Federal Aviation Act, the Secretary of Transportation can, after proper notice and a hearing, modify, suspend or revoke an airline's authority to operate if the Secretary determines the airline no longer meets the Department's fitness requirements. Typically, the Department has under review, and receives confidential data related to, fitness elements for as many as 30 carriers, including data on finance, operations, ownership and control, business plans, and citizenship. Moreover, the Secretary receives diverse perspectives on the airlines' financial and competitive status through continual exchanges, formal and informal, with airline executives, transportation academicians, aviation consultants, financial analysts, and Congressional leaders. These consultations, coupled with the Department's intensified fitness reviews, provide a strong incentive for airlines to comply with fitness requirements and to promptly correct deficiencies identified by the Department. New authority or mechanisms for ensuring financial fitness are not necessary at this time.

**Preclude
Diversion of
Airport
Revenues**

The Department of Transportation will continue to enforce prohibitions against the diversion of airport revenues for non-airport related purposes, and to scrutinize projects funded by passenger facility charges to ensure they satisfy eligibility criteria. However, the Department is contemplating statutory changes that would authorize the use of airport revenues for a broader array of transportation-related projects and activities. A final decision on this issue will be made in January 1994; any changes would be proposed in conjunction with FAA's upcoming legislative reauthorization.

Some airport sponsors would like to use airport revenues to pay for the costs of projects and services unrelated to airport use. Allowing revenues to be diverted in this manner, however, would be inconsistent with the legislative intent of the Airport Improvement Program (AIP) and Passenger Facility Charges (PFCs). AIP is intended to assist airports in meeting their capital needs and to ensure that capacity and safety improvements are made. Under current law, an airport that has received an AIP grant is prohibited from diverting airport revenues to non-airport purposes. Similarly, PFC revenues, which airports are authorized to collect by charging up to \$3 per enplaning passenger, are intended to provide capital for meeting airport-related development needs. Projects to be funded by PFCs must be approved by FAA to ensure they meet statutory criteria for eligibility.

The statutory changes under consideration by the Department would broaden the concept of "airport purposes" to allow revenues to be used for a wider range of transportation-related activities. This could include, for example, expenditures to improve ground access, support intermodal terminals, and defray the costs of state and regional transportation planning activities. It could also include support for other off-airport costs, such as noise abatement programs.

**Stay on
Course to a
Quieter Stage 3
Fleet**

FAA will continue to ensure carrier compliance with federal requirements for phasing out noisier Stage 2 aircraft by the year 2000, and to exercise review and approval authority over all local restrictions proposed by airport operators on the use of quieter Stage 3 aircraft. This course of action will ultimately reduce the population affected by significant levels of aircraft noise from 2.7 million to 400,000, while protecting carriers' investment in Stage 3 aircraft during the transition to an all Stage 3 fleet.

Fortunately, that transition is moving forward more rapidly than required. As of December 31, 1992, the fleet mix of Stage 3 aircraft was 59.3 percent overall and 56.3 percent for domestic aircraft. This is ahead of the minimum 55-percent interim goal set for December 31, 1994. In most cases, the transition to Stage 3 should achieve the noise mitigation objective of airports and their affected communities. On occasions when an airport operator concludes that additional noise relief is needed, FAA will urge the airport to work with the local airport users in reaching voluntary agreement on any additional measures.

**Promote
Competition
and New
Entrants**

Airline competition has lowered air fares, increased service, and encouraged innovation. To preserve and enhance these consumer benefits, the Departments of Justice and Transportation will continue their aggressive enforcement of the antitrust laws and administrative regulations promoting competition. In the recent past, for example, the government has vigorously attacked conduct facilitating price coordination and practices that thwarted pro-competitive entry by new carriers. In other instances, we have voiced objections privately, pursuing voluntary compliance as our first resort. We will remain vigilant in preventing marketing practices that may be used by airlines to maintain hub dominance, in challenging mergers and acquisitions that may substantially lessen competition, and in scrutinizing international joint ventures and route transfers that may jeopardize the benefits of robust industry competition.

The Federal Aviation Act specifies that the Department of Transportation should encourage entry into air transportation markets by new carriers. This has been and will continue to be the Department's policy. The Department will continue to help educate prospective airline entrepreneurs about certification requirements and procedures, and to provide substantial guidance and assistance to new entrant applicants in perfecting their applications. Moreover, the Department will seek to minimize barriers to new entry and to ensure that new firms are not prevented from entering the airline business, and will act to prevent anti-competitive pricing and marketing practices by carriers which have the market power to stifle competition.

Actions To Reduce The Regulatory Burden

The Administration desires both to reduce the regulatory burden imposed on the airline and aerospace sectors and to improve the cost-benefit analysis and reporting that underlie rulemaking decisions. We are particularly mindful of the costs and controversies associated with drug and alcohol testing in the aviation industry, as well as the need to assure the public of the industry's safe operation. The following actions will be taken:

**Reassess
Existing
Regulations**

The Deputy Secretary, Department of Transportation, will spearhead a systematic evaluation aimed at eliminating or amending existing rules and regulations to reduce the compliance burden on industry, consistent with safety, environmental protection, and security considerations. This evaluation, which has been launched and is being conducted in accordance with the President's Executive Order on Regulatory Planning and Review, will include implementation schedules and periodic progress reports to the industry and the

public. To avoid wasting resources and duplicating prior reviews, the Department will solicit specific suggestions from the industries involved and the public regarding regulatory areas where the regulatory burden exceeds benefits. FAA's Aviation Rulemaking Advisory Committee, a group of 61 organizations representing a cross-section of aviation interests, will play a key role in identifying regulations for reassessment.

**Improve the
Quality of Cost-
Benefit Data
and Reporting**

FAA, assisted by its Aviation Rulemaking Advisory Committee, will identify options and opportunities for receiving cost input data early during the regulatory process. Since its inception over 2 years ago, the Advisory Committee has steadily increased its participation in FAA's rulemaking program. Its role has matured to the point that the Committee is now fostering government-industry cooperation and facilitating the early exchange of data so that FAA can make informed decisions before proceeding with a rulemaking proposal. To develop additional ways of facilitating timely exchange of accurate cost data, FAA also has assigned additional resources to the economic analysis component of its regulatory program.

These ongoing efforts to obtain timely and accurate cost data are already paying dividends. In the case of rules mandated by Congress or initiated by the Administration, FAA prepares a preliminary cost-benefit analysis prior to issuing a rulemaking notice and briefs the appropriate officials on the results. Based on guidance received at the briefing, FAA takes whatever additional action is necessary, including but not limited to issuing the notice as prepared, modifying the proposal to mitigate the estimated cost burden, or terminating the project entirely.

With respect to existing rules, FAA will invite the aviation industry to submit data on the actual costs incurred to comply with provisions of the regulations. These cost data, married with data on benefits, will form the basis for an annual cost-benefit report to Congress.

**Sharpen Cost-
Benefit
Methodology**

By January 1994, the Office of Information and Regulatory Affairs within the Office of Management and Budget will establish an inter-agency working group to expand and improve regulatory cost-benefit analysis and to resolve significant cost-benefit disputes. Identified improvements in cost-benefit methodologies will be shared with all agencies, including FAA, for use in preparing Regulatory Impact Analyses.

**Complete
Outstanding
Drug and
Alcohol
Rulemakings**

The Department of Transportation, working within the statutory framework of the federal rulemaking process, will complete these proceedings within the next 60 days. With respect to drug testing, the Department issued an Advance Notice of Proposed Rulemaking to gather information on which to consider a change in the random drug-testing rate, which is currently set at 50 percent. This rate for the aviation industry, as for other transportation industries, was established by public rulemaking; any change to the rate must therefore be established in full compliance with rulemaking procedure. With respect to alcohol testing, the Department issued a Notice of Proposed Rulemaking which includes pre-employment and random alcohol testing. Both types of tests are among those mandated by the Omnibus Transportation Employee Testing Act of 1991. Based on the experience with both rulemakings, the Department will consider working with Congress to determine whether any legislative relief is warranted.

Actions To Foster Labor-Management Collaboration

The Administration is committed to accelerating the evolution of labor-management relations, throughout the economy, in the direction of collaboration and flexibility. This commitment has been evidenced by the involvement of the President and the Secretaries of Labor and Commerce in sponsoring a national Conference on the Workplace of the Future and by the creation of a new Office of the American Workplace within the Labor Department. Moreover, the work of the Dunlop Commission on the future of worker-management relations is now underway and will explore new initiatives in this area. As further manifestations of our commitment to collaborative labor-management relations, we will:

**Promote Job
Opportunities
and Employee
Ownership**

The Labor Department's Office of the American Workplace has begun a project to encourage the development and expansion of employee stock ownership and other "gainsharing" programs. The project is seeking to identify creative gainsharing programs through outreach with industry groups, associations, labor, and the financial community in 5 or 6 states. Ideas for further development will be explored and industry targets for expanded gainsharing programs will be selected. Results of this project will be available in October 1994 and will be shared with the airline, aerospace and other industries. In addition, in December 1993 the Department of Labor will begin an analysis of the impact of globalization on domestic high-skilled, high-wage jobs in the production, maintenance and other key sectors of the aviation industry. This analysis is aimed at identifying strategies for dealing effectively with the rapid changes

in labor demand that are occurring in these aviation sectors. Labor's report will be completed by the end of February 1994 and will include policy options for capitalizing on the U.S.'s competitive advantage for high-skill, high-wage jobs.

**Obtain
Information on
Potentially
Displaced
Workers**

When reviewing proposed mergers, acquisitions and sales of route authority, the Department of Transportation will carefully examine the impact on airline workers in conjunction with its fitness review process. Effective immediately, any carrier seeking approval from the Department for an international route transfer, or undergoing a major change subject to the Department's review, will be directed in the agency's standard evidence request to provide any plans it has developed for protecting potentially displaced workers.

PART 2. PROMOTING INTERNATIONAL AVIATION TRADE AND COMPETITIVENESS

Actions To Build A Liberal Multinational Aviation Framework

For several years U.S. air carriers have benefitted from air services agreements negotiated on a country-by-country basis. This bilateral approach has become increasingly ill-suited to the needs of an interdependent world, however: it is limiting commercial opportunities, distorting competition, and denying our communities the broader economic benefits of direct international air service. Given the growth of multinational blocs such as the European Union (EU) and the creation of "multinational" airlines through alliances and investments, the constraints of a bilateral system clearly demand that we develop strategies for building a modern, liberal, and multinational regime for international aviation. Such a regime would provide greater access to foreign airports for U.S. carriers, more travel options for passengers, and enhanced competition that lowers fares. For the near term we must focus on solidifying the rights that our carriers currently have and on seeking the most open and liberal arrangements that we can possibly attain. We should also begin to work toward a liberal multinational aviation regime. To achieve these goals we will act to:

Pursue Alternative Negotiation Strategies

The Administration's Interagency Committee on Aviation will evaluate the role of all potential negotiating alternatives -- bilateral, regional, multinational, global network of like-minded countries, etc. -- in moving toward a liberal international aviation regime, and will prepare a statement of policy for achieving liberalization objectives over the short, medium and long terms. The policy statement will include the goal of creating a liberal multinational regime for passenger service, and will be completed by June 1994. During the interim our approach to air service negotiations is being guided by the following four strategies, set forth in Secretary Peña's November 1993 address before the International Air Transport Association:

- o First, the United States will actively seek unrestricted, multi-lateral agreements with those groups of nations that are willing to offer comparable benefits for U.S. carriers and the U.S. economy.
- o Second, while pursuing multi-lateral accords, we will also seek to liberalize existing bilateral agreements. We will ensure that any such agreements actually stimulate more air travel, increase competition, and augment any other aviation rights already contained in existing bilaterals.

- o Third, we will vigorously defend all existing U.S. bilateral rights. We will act, through all available means, against any foreign competitors whose governments discriminate against or fail to honor the rights of U.S. airlines.
- o Fourth, we will explore the formation of a global coalition of like-minded, free market-oriented nations that recognize the benefits of expanded air travel to citizens and national economies. Our aim is to determine whether such a group of nations could create sufficient "critical mass" to offer a host of new air rights and services to their carriers and citizens in exchange for comparable benefits for the carriers and citizens of the United States.

The Departments of State and Transportation will take the lead in implementing these strategies in pursuit of liberal, sector-specific agreements over the near term. In particular, we may be able to strike sectoral air-cargo service agreements, either bilaterally or multi-nationally, as a step toward the goal of market liberalization. The EU recently accepted our proposal to establish working groups to explore the creation of a fully unrestricted North Atlantic air cargo market. We expect talks to begin in early 1994. An open air cargo agreement could be a major step toward the longer-term goal of a liberalized air passenger agreement with the EU.

As the Administration develops new approaches to negotiation, we will assess whether organizational changes are needed at the Departments of State and Transportation to assure that international negotiations continue to receive the appropriate level of attention and continuity. State is already taking steps to ensure that key staff remain in place for a longer period of time. At Transportation, Secretary Peña has reorganized responsibilities at the Assistant Secretary level to focus more time and attention on aviation matters.

**Liberalize
Limitations on
Foreign
Ownership of
U.S. Carriers**

We will ask Congress to liberalize current restrictions on foreign ownership of U.S. airlines, which limit such ownership to 25 percent of the voting interest. Reducing restrictions on U.S. air carriers' access to international capital could contribute to their growth and competitive effectiveness, promote competition and consumer benefits, preserve jobs for U.S. workers, and otherwise support the economic interests of the United States. We also recognize the potential value of foreign investment liberalization in promoting the development of a more liberal international aviation regime that can provide U.S. carriers with greater investment opportunities and increased access to foreign markets.

We are keenly aware that a proposal to liberalize foreign ownership must be carefully crafted to be consistent with U.S. economic and security interests and with our international treaty obligations. Air transport is a highly regulated and strategically important industry that is unique in requiring reciprocal bilateral arrangements for "trade" rights. In this structure, a higher foreign ownership component than permitted by current law could disadvantage U.S.-owned carriers by allowing a foreign airline to obtain greater access to the U.S. market without comparable opportunities for U.S. carriers. Access to, through, and beyond the U.S. market through investments greater than 25 percent of the voting interest should be permitted only when it will advance the national interest and contribute to the development of a liberal global regime for air services. In addition, any proposal to liberalize foreign ownership must take into account U.S. international treaty obligations and defense needs.

The Departments of State and Transportation will take the lead in fully evaluating these issues and preparing a legislative proposal. We envision that draft legislation would propose to amend the Federal Aviation Act's definition of "U.S. citizen" to maintain U.S. citizenship status for an air carrier notwithstanding foreign ownership of between 25 percent and 49 percent of voting stock, as long as there is in effect with the government of which the investor is a national an air services agreement which permits such ownership. There would also be a provision stating that in negotiating such air services agreements, the U.S. Government should agree to include expanded investment opportunities only for privately-owned and controlled foreign airlines and only in the context of a package that provides U.S. carriers with comparable opportunities, including liberal market access rights and liberal foreign investment opportunities.

**Safeguard
Defense Airlift
Capacity**

The availability of civil aircraft to meet emergency airlift requirements, as set forth in the National Airlift Policy, is vitally important and, along with other national defense and security needs, must be taken into account in decisions on cross-border investment and ownership. The Departments of Transportation and Defense will take the lead in ensuring that national defense and security are adequately considered in all such decisions. As an initial step, by January 1, 1994, the Defense Department will complete a review of airlift requirements, specifically to include Civil Reserve Air Fleet requirements by participating U.S. international air carriers. Transportation and Defense will then develop specific proposals to ensure availability of the needed commercial airline capacity, culminating in the

award of the fiscal year 1995 Civil Reserve Air Fleet contract by the target date of June 30, 1994.

Actions To Expand And Facilitate Aviation Commerce

In addition to building a liberal multinational framework, the Administration seeks to expand commercial opportunities for U.S. aircraft manufacturers in the global marketplace and to facilitate the flow of international aviation commerce. We are developing strategies for modernizing aviation systems in specific countries and regions, cultivating knowledge of the U.S. aviation system around the world, and targeting and promoting U.S. products abroad. For example, in conjunction with the Administration's new national export promotion policy, the Secretaries of State, Commerce and Transportation earlier this year headed missions to Saudi Arabia, Bahrain, the United Arab Emirates and other countries to promote sales of U.S. commercial aircraft, airport equipment and services, and other U.S.-produced goods and services. In addition to such activities, we will expand and facilitate international aviation commerce by working to:

Ratify the Montreal Protocols

We will urge the Senate to ratify Montreal Protocols 3 and 4 to the Warsaw Convention, subject to enactment of a statutory supplemental compensation plan on death and injury in international air travel. These actions will create a liability system for American citizens and permanent residents traveling on international flights, ensuring full and expeditious compensation of all damages, economic and non-economic, for death or injury. This system would cover all passengers purchasing tickets in the United States for international travel, as well as all U.S. citizens and permanent residents traveling internationally anywhere in the world, thus avoiding the quagmire and uncertainty of conflicting laws of hundreds of nations and local jurisdictions. The supplemental compensation plan will also cover acts of terrorism or war. In the case of Montreal Protocol 4, ratification will streamline cargo documentation requirements for shippers.

Ensure Sufficient Export Financing

We will continue to provide the necessary level of support to the Export-Import Bank (Eximbank) to ensure that competitive financing is available to the U.S. aerospace industry.

The need for competitive credit financing in the aerospace sector has increased since the late 1980's. Eximbank support for aircraft exports, for example, has risen from less than \$500 million in 1989 to a projected \$3.3 billion this year, accounting for about 22 percent

of overall Eximbank activity. In response to this increased demand, we have sought flexibility in the limitations imposed on Eximbank's budget, which take the form of both an annual authorization limit on the dollar volume of new loans, guarantees, and insurance, and a subsidy budget covering the funding and risk subsidies inherent in Eximbank's authorizations. The appropriation enacted for fiscal year 1994 contains no limit on total loan and insurance authorizations, thus affording Eximbank greater flexibility in using its subsidy budget. The appropriation also provides a subsidy budget of \$1 billion, including a one-time increase of \$300 million for Russia and the other Newly Independent States.

Meanwhile, Eximbank has been working to strengthen its financing operations. For example, through its exposure (or risk) fees and related risk-management policies, the bank has reduced the budgetary cost of supporting aircraft and other credit transactions. And by using asset-based financing structures, the bank has increased its assurance of repayment in many high-risk markets. In addition, each financing request is being carefully examined to ensure that it will in fact generate additional exports.

For fiscal year 1995 and beyond, U.S. support of Eximbank financing will be shaped by the anticipated demand for export financing, the President's recently enacted budget plan, and the results of a review of international affairs priorities being conducted under a Presidential Review Directive.

**Harmonize
International
Regulation**

Airlines, manufacturers and civil aviation authorities are saddled with unnecessary costs due to substantial variance among nations' aviation regulations. To reduce this cost burden, FAA will expedite its ongoing global effort to harmonize international regulation. Specifically, FAA will work with European nations to develop common, performance-based aviation safety standards, and to ensure that European Joint Aviation Requirements are harmonized with Federal Aviation Regulations. FAA will also continue to provide technical assistance to other nations on safety and airworthiness regulations, and to encourage the development of regional aviation authorities.

To support and complement these efforts, the Department of State and FAA are seeking opportunities to update existing bilateral airworthiness agreements with broader and more flexible aviation safety agreements. Airworthiness agreements currently provide for technical cooperation between FAA and the civil aviation authority of a foreign nation, and facilitate airworthiness certification of civil aeronautical products on a reciprocal basis. A broader and more

flexible safety agreement format, in addition to covering airworthiness certification, could encompass such areas as crew training facilities (e.g., simulators), aircraft maintenance, and aircraft noise standards, and could allow technical agreements to be implemented on a timelier basis.

**Facilitate
International
Cooperation**

Globalization of aircraft manufacturing necessitates an active role by the U.S. Government in facilitating international cooperation. Our objectives are to ensure that U.S. aerospace firms are not disadvantaged in global competition and to foster a climate in which U.S. companies can continue to participate as technology and marketing leaders. For example, to facilitate innovative and efficient production ventures, the President, on June 10, 1993, signed into law the National Cooperative Production Amendments of 1993. These amendments extend to joint production ventures certain statutory antitrust protections that already exist for joint research and development ventures.

In support of our objectives we will expand the distribution of information on bid opportunities and competitions to U.S. firms; monitor international competitions to ensure that U.S. aerospace manufacturers have the opportunity to participate in international programs on a fair and equitable basis; fully and expeditiously investigate complaints by U.S. industry regarding foreign trade barriers; and act to eliminate, or to counteract as necessary, impediments identified by industry, such as restrictions stemming from foreign or domestic trade policies.

**Evaluate
Product
Liability
Issues**

The Administration, as part of a comprehensive review of federal product liability laws, will consider whether to support a statute of repose for manufacturers of general aviation aircraft. The National Airline Commission concluded that a statute of repose limiting product liability to 15 years from the date of manufacture would help to regenerate domestic production of general aviation aircraft. Annual sales of piston engine aircraft, which averaged 13,000 per year during 1965-1982, have decreased to about 500 per year. The Commission noted that many factors underlie the decline in sales, but pointed to the added costs of liability insurance as forcing prices up, causing sharply increased costs for personal and short-range business flying and contributing to the loss of more than 100,000 jobs in general aviation aircraft manufacturing, sales, service and related industries.

Actions To Enforce International Treaty Obligations

The Administration will vigorously enforce existing trade agreements and U.S. trade laws affecting international aviation commerce to protect the rights and interests of U.S. airlines and aerospace firms. Specifically, we will:

**Closely Monitor
Airbus
Agreement**

The Office of the United States Trade Representative (USTR), along with other agencies, has been and will continue to be particularly vigilant in monitoring compliance by the Airbus partner governments with the terms and conditions of the 1992 U.S.-EU civil aircraft agreement. This agreement imposes a cap on government support for aircraft development and prohibits government support for aircraft production. Our monitoring activities include regular consultations with the EU to ensure full compliance with the bilateral agreement; having U.S. embassies in the Airbus partner countries track host government actions with respect to Airbus and report information relevant to the implementation of the bilateral aircraft agreement and compliance with obligations under the General Agreement on Tariffs and Trade (GATT); and exchanges of information with the EU, as required by the bilateral agreement, concerning government support to large civil aircraft producers.

**Tighten
Disciplines on
Government
Subsidies
under GATT**

USTR is seeking to tighten the disciplines on government support and subsidies for product development currently contained in the GATT aircraft agreement, and to expand the coverage of that agreement to other countries which produce civil aircraft and components. In the 1992 U.S.-EU Agreement Concerning the Application of the GATT Agreement on Trade in Civil Aircraft, both parties committed themselves to ensuring that disciplines similar to those contained in the bilateral agreement are incorporated in the 1979 GATT aircraft agreement at the earliest possible date. Both parties also agreed to expand the coverage of the disciplines provided by that agreement. Signatories of the GATT aircraft agreement accepted a U.S.-EU invitation to participate in multi-lateral negotiations to improve and expand the existing agreement. Non-signatory nations (e.g., Russia, China and Taiwan) also have been invited to participate in the negotiations. Our goal is to conclude these negotiations at the same time as the Uruguay Round of GATT negotiations are concluded, currently set for December 1993.

**Employ All
Available
Enforcement
Tools**

The U.S. Government will use all of the means at its disposal to defend the air service rights exercised by U.S. carriers under the terms of our bilateral aviation agreements. When disputes cannot be resolved expeditiously through negotiation or, when appropriate, through dispute resolution mechanisms, we will not hesitate to use other enforcement tools, including the procedures and remedies provided by the International Air Transportation Fair Competitive Practices Act of 1974 and the imposition of sanctions such as the suspension of privileges and services. The option of denouncing unsatisfactory or disadvantageous bilateral agreements will be considered in appropriate cases.

11-23

Airline Commission -- Civil Aviation Wkg Grp.

- Sec Peña eager to get Admin response out by early Dec.
- President Met with Airline Com ~~last~~ few weeks ago
 - got comments
 - went to Hill (Perch, Murphy) - got comments from

Changes

- added statements by Sec Peña + Dr. Tyson
- mentioned areas where Admin is already acting underway
 - GPS, Bankruptcy reform, High Priority,
- Added specific Dates
 - p. 4 (Air Traf Cont)
 - p. 6 (Civil Av)
 - p. 7 High Priority Rule
 - p. 8
 - p. 10, p. 11 p. 12

- Biggest change - Montreal Protocols

now supports approval by Senate

- added quotations by Sec Peña

Change in Montreal Protocol's issue

- asking Principals (NEC) to consider this reversion back to original position - recover position
- Politically controversial issue
- questions on Supplemental Compensation issue
- last year, GB & Brazil opposed - couldn't muster votes to approve
- Trial Lawyers, Consumer Groups also may oppose -- need to get feel for where they are on this.
- Need fresh Political Read on issue
- Supplemental compensation -- unlimited (no caps)
- Comments by CAB Tomorrow - to Jim NEW

Question - How high a profile should we give Cargos Talks in Jan next yr. - International Tension

p.10 - Question - is language on use of off-airport purposes accurate ^{monies for}

exec order 1203 (Bush) on this contradicts this language -- not overturned yet

- draft

DOT examining issue of Privatizing Airports

p. 15 - Questions: drop language that says ^{liberal} Multinational Trading regime is not ~~feasible~~ possible in near future
make language more positive

p. 11 - EAS Subsidies changes being proposed

p. 18 - Appropriations already made for EXIM bank - language talks about requests

Mike Schmidt - Please let me

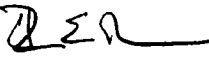
THE WHITE HOUSE
WASHINGTON

December 9, 1993

know by close of
business Tues. if
anything I need to
know to report to
Bob. DEC 10 1993
Thanks
CJR

MEMORANDUM FOR SECRETARY CHRISTOPHER
SECRETARY BENTSEN
SECRETARY ASPIN
ATTORNEY GENERAL RENO
SECRETARY BROWN
SECRETARY REICH
SECRETARY PEÑA
LEON PANETTA
LAURA TYSON
MICKEY KANTOR
CAROL RASCO
TONY LAKE
MACK MCLARTY
GEORGE STEPHANOPOULOS
DAVID GERGEN
HOWARD PASTER
BERNARD NUSSBAUM
BRUCE LINDSEY
JOHN PODESTA
JOHN GIBBONS
GREG SIMON
LEON FUERTH

| Red dot |

FROM: Robert E. Rubin 
Assistant to the President for Economic Policy

SUBJECT: Proposed Administration Initiative on Civil Aviation

An interagency group chaired by Secretary Peña and CEA Chair Tyson has developed the attached proposals for civil aviation. In October, an earlier version of these proposals was presented to you, to selected Members of Congress, and to members of the National Commission to Ensure a Strong, Competitive Airline Industry (the "Commission"). In response to reviewers' comments, two principal changes have been made:

- the Administration's position on the Montreal Protocols is now presented separately from its position on a statute of repose for general aviation aircraft manufacturers. The present document supports ratification of the Protocols contingent on Congressional enactment of a

document supports ratification of the Protocols contingent on Congressional enactment of a supplemental compensation plan. The statute of repose, on the other hand, will be considered in the context of the Administration's overall review of product liability issues.

- the document now lists specific deadlines and timetables for the various studies and Administrative actions called for by the proposals.

The other changes made to these proposals were largely editorial in nature. A summary of the Commission's main recommendations is at Tab A. The principal similarities and differences between the Administration proposals and the Commission report are noted in Tab B.

Please review the enclosed materials, and let me know by Wednesday, December 15, if you have any concerns about the proposals. Barring any unexpected controversy, I expect these proposals to be submitted to the President for his consideration sometime next week.

TAB A: MAJOR RECOMMENDATIONS OF THE AIRLINE COMMISSION

The Commission's final report argues that the U.S. must have strong airline and aerospace manufacturing industries if it is to compete successfully in the global economy. The report contains 61 specific policy recommendations grouped under the broad themes listed below. The major recommendations include:

1) PROMOTE EFFICIENCY AND TECHNOLOGICAL SUPERIORITY

- Establish a corporation to provide the FAA's air traffic control services.
- Move more quickly from a ground-based to a satellite based air traffic control radar.

2) INCREASE THE FINANCIAL STRENGTH OF AIRLINES

- Reduce airlines' tax burden: roll back aviation ticket taxes to 1990 levels.
- Reduce regulatory burden imposed on airlines.
- Establish a Presidential Board to advise the DOT Secretary on airlines' financial health.
- Prohibit the diversion of airport revenues.
- Reform bankruptcy laws

3) **PROMULGATE NEW WORKFORCE POLICIES** "that encourage a new, cooperative partnership between labor and management."

4) EXPAND AIRLINE ACCESS TO INTERNATIONAL MARKETS

- Seek to replace existing bilateral aviation agreements with multilateral agreements that increase U.S. access to foreign markets
- Allow increased foreign investment in U.S. carriers only to countries with whom we have a liberal, market oriented aviation agreement

5) PROMOTE AIRCRAFT MANUFACTURING

- Enact a statute of repose to limit the liability of general aviation aircraft manufacturers to 15 years.
- Aggressively enforce international agreements limiting government subsidies (Airbus).

TAB B: ADMINISTRATION PROPOSALS AND COMMISSION RECOMMENDATIONS

SIGNIFICANT COMMISSION RECOMMENDATIONS SUPPORTED BY THE ADMINISTRATION.

- *Develop legislation to restructure the FAA's air traffic control services as a government corporation.* The National Performance Review made a similar recommendation to address problems with FAA's budget, procurement and personnel policies.
- *Focus U.S. negotiating efforts on replacing existing bilateral aviation agreements with a regime of liberal multilateral agreements in which routes, fares, and flight frequencies are determined by markets rather than by governments.* Because U.S. airlines enjoy a cost advantage over many of their foreign rivals, they would benefit greatly from more liberal aviation agreements. Successfully negotiating such agreements will likely prove to be difficult. Indeed, the U.S. currently faces demands from some European and Asian governments to limit the access of U.S. carriers which, in the eyes of our trading partners, are "too efficient" and threaten the viability of their own carriers.
- *Increase domestic airlines' access to foreign capital by raising from 25 percent to 49 percent the amount of voting stock that can be held by foreign investors. Make greater foreign investment available only to countries that provided comparable investment opportunities and liberal aviation agreements.* Among other things, this would offer a reward to those countries that conclude liberal aviation agreements with the U.S.
- *Reaffirm DOT's prohibition on the diversion of revenues from airports receiving Airport Improvement Program (AIP) grants.* Given the fungibility of federal grants, the diversion of airport revenues to city coffers would *de facto* change AIP grants into general revenue sharing.
- *Support ratification of Montreal Protocols 3 and 4 contingent on the enactment of a supplemental compensation plan on death and injury in international travel.*

SIGNIFICANT COMMISSION RECOMMENDATIONS NOT ADOPTED BY THE ADMINISTRATION.

- *Reduce aviation excise taxes to 1990 levels.* Working Group believes that excise taxes should stay at their current levels, among other reasons, to preserve the long-accepted principle that aviation users should pay for aviation infrastructure. The Administration proposals note, however, the limited airline tax relief provided by the recent budget package through a reduction in the alternative minimum tax and a 2-year exemption for airlines from the transportation fuel tax.
- *Create a Presidential Advisory Board to oversee the financial health of airlines.* The Working Group viewed this recommendation as unnecessary, since the Secretary of Transportation already has wide latitude to oversee airline finances.
- *Support a statute of repose for manufacturers of general aviation aircraft.* This issue will be studied as part of a comprehensive Administration review of product liability law.

THE ADMINISTRATION'S

CIVIL AVIATION INITIATIVE



This draft is for the review of the Principals of the National Economic Council and the Members of the Working Group on Civil Aviation, and is subject to further revision. Contents of the draft should NOT be publicly disclosed.

DECEMBER 1993

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STATEMENT OF THE SECRETARY OF TRANSPORTATION

The U.S. aviation industry has made the United States and the rest of the world safer and more accessible to air travelers and shippers. Air transportation today is an \$80 billion a year business employing half a million people, and is the heart of the \$3 trillion global travel and tourism industry. Much of that industry's growth and development is the product of U.S. technology. Our airframe manufacturers, for example, invented the technology that leads the world, and they generate the largest trade surplus of any American industry -- \$31 billion last year alone.

During the past few years, however, conditions in the aviation industry have not been uniformly good. The industry has lost money, jobs and aircraft orders; some airlines continue to suffer financial deterioration; and everyone faces uncertainty over access to fast-growing international markets.

The actions in this Initiative will build on the achievements of American ingenuity and provide a needed lift to one of our most crucial industries. The Initiative has as its underpinning the recommendations of the 15-member National Commission to Ensure a Strong Competitive Airline Industry, along with certain recommendations of the Vice President's National Performance Review and the activities of several departments and agencies involved in aviation matters. The Initiative is a first installment of actions this Administration will be taking to achieve five aviation policy goals:

- . Revitalize Domestic Aviation
- . Bolster International Trade and Competition
- . Promote Airport Development and Growth
- . Enhance Safety, Equity and Environment
- . Improve the Connectivity of the National Transportation System

To revitalize domestic aviation we are taking several specific steps that will make the air transportation system safer and more efficient. The chief steps are a restructuring of the Federal Aviation Administration to improve the delivery of air traffic control services; accelerating the use of the Global Positioning System in civil aviation; and working with U.S. industry to sustain America's leadership in aerospace research and development. We are also re-dedicating the Government to aggressive enforcement of the statutory authority it has always possessed to promote and preserve competition. In the future, we will insist that mergers, acquisitions and sales of air carrier route authority conform to the competition and public-interest requirements of the antitrust laws and the Federal

Aviation Act. We will also carefully examine the impact of such transactions on airline workers. In addition, we will work to ensure that regulatory barriers do not hamper new ideas, new technologies, and new ways of doing business, and do not burden the industry with unnecessary compliance costs.

Actions we are taking to bolster international trade and competition reflect a vision of truly open aviation markets, where nations measure the success of their aviation policies by the stimulus that competitive air services provide to their economies and to all of their citizens. We will work to achieve a more liberal multinational aviation regime by developing and pursuing new negotiation strategies and by asking Congress to liberalize limitations on foreign ownership of U.S. carriers. We also will act to expand international aviation commerce and to protect the rights and interests of U.S. airlines and aerospace firms under international treaty obligations.

Beyond the actions set forth in this Initiative, during the coming year we will work closely with Congress to develop specific proposals in conjunction with FAA's legislative reauthorization to promote airport development and growth and to enhance safety, access to airports and airlines, and responsiveness to environmental concerns.

Furthermore, the Department of Transportation has begun a major re-examination of the inter-connectedness of our national transportation system. This work is examining the value, contributions, and benefits of each mode of transportation -- airports, highways, ports, waterways, rail, intercity bus lines, pipelines and local transit systems. It is also examining the effects of changes in our transportation policies, and the impact of those changes on our economy, environment and social fabric. The aviation industry, needless to say, is crucial to the operation and development our national transportation system.

The rapidity of change and the advancement of freedom around the world are creating new and exciting opportunities for economic enterprise. Our aviation policies must allow new partnerships to be forged among industry, labor and government if we are to capitalize on those opportunities, compete successfully, and reap the benefits of global commerce for American workers, consumers and businesses. This Initiative, and those that will follow over the coming months, will help us do so.

I want to thank the members of the National Economic Council for their support in developing this Civil Aviation Initiative, and the many staff from the various agencies involved in its preparation.

Federico Peña

STATEMENT OF THE CHAIR PRESIDENT'S COUNCIL OF ECONOMIC ADVISERS

The airline and aircraft manufacturing industries are vital to our nation -- and not merely for their large contributions to national output and employment. Each of us is immeasurably enriched when family and friends, a continent apart at breakfast, can be together at dinner, when business meetings can routinely involve residents of different cities, and when scarce medicines and crucial repair parts can be shipped overnight to where they are needed.

Although airline deregulation has been good for the airline and aircraft industries, in recent years these industries have encountered economic difficulties. The air carriers have recorded large losses during the past three years, and aerospace manufacturing has been hit hard by the downsizing of the defense sector following the end of the Cold War. When vital industries find themselves in financial distress, we must all be concerned.

We cannot have healthy aerospace industries without a strong economy. Airline profits are extremely sensitive to the business cycle. The most recent financial distress of the airline industry, for example, was triggered by the 1990-91 recession. In addition, industry losses were exacerbated by the over-optimistic expansion and excessive debt financing undertaken by the leading carriers during the 1980's. Losses in the airline industry in turn have adversely affected the profitability and prospects of the aircraft producers.

A strong economy will be the best medicine for what ails the aerospace complex. We believe that the recent budget reconciliation legislation, which reduces the deficit, along with other Administration initiatives, have put the economy on course for strong and sustainable growth. As the current recovery progresses, the major airlines are now reporting a return to profitability.

But a strong economy cannot alone cure these industries' ills. The Administration's Civil Aviation Initiative identifies additional steps we are taking to revitalize domestic aviation, encourage aerospace manufacturing and the development of new aviation technologies, and promote trade and competitiveness in international aviation.

Laura D'Andrea Tyson

PART 1. REVITALIZING DOMESTIC AVIATION

Actions To Make The Air Transportation System Safer And More Efficient

The Administration is acutely aware of the importance of operating the nation's air transportation system as safely and efficiently as possible. This entails efficient, high-quality air traffic control services, timely implementation of cost-saving technologies, continued support for the development and application of cutting-edge technology and products, and improved utilization and management of the airspace system. To these ends, we will:

Restructure ATC Services

In response to recommendations of both the National Performance Review and the National Airline Commission, a committee of Administration experts is developing a detailed plan to restructure FAA's Air Traffic Control (ATC) services as a government corporation. The Committee is evaluating the corporate model against reforms that are realistically achievable within FAA's existing organizational structure. Our goal is to make ATC more business-like and to overcome certain chronic impediments to good management, such as inflexible personnel rules and burdensome procurement regulations, that have frustrated efficient and effective delivery of ATC services. The committee will present its restructuring proposals, together with the draft legislation needed to implement the changes, to the Secretary of Transportation in April 1994. The Secretary will work with Congress to enact any required legislation.

The committee is comprised of senior officials from the Departments of Transportation and Defense, the Office of Management and Budget, the Council of Economic Advisers, the National Economic Council, the National Performance Review, and other agencies. The Committee is seeking a corporate structure that will streamline procurement, simplify the personnel process, provide funding stability, ensure continuity of leadership, and reduce the incidence of unnecessarily detailed management oversight. The committee is evaluating the implications of the corporate model for aviation safety, productivity, responsiveness to customer needs, national defense requirements, and other key issues. Suggestions and concerns regarding the delivery of FAA services are being solicited from the aviation community, Congressional representatives, industry leaders and other aviation experts.

**Accelerate GPS
and Related
Technologies**

The FAA Administrator has been charged with the task of accelerating the use of the Global Positioning System (GPS), a satellite-based navigation system. GPS offers enormous opportunities for enhancing civil aviation safety and efficiency. It enables us to integrate high-precision navigation with air traffic control. This will increase the capacity of our airspace system and reduce delays and the costs they impose on airlines, passengers and shippers.

Our accelerated schedule for the next 3 years calls for GPS to be available for navigation after take-off and for landing beginning in 1994, and to be available as a sole means for navigation over the oceans in 1995. Augmentation systems allowing broader and more robust GPS applications, such as use of GPS for certain types of precision approaches, are to be put on-line by 1996.

We are also working to ensure successful implementation for the long term. Because GPS was conceived, developed and fielded as a military system, its application to civil aviation presents significant technical and operational challenges. Recognizing the need for coordinated action, the Secretaries of Transportation and Defense earlier this year jointly established a DOT/DOD task force to undertake a thorough analysis of the policy and security questions regarding civil use of GPS, to define civil requirements for GPS and any barriers to their fulfillment, and to make recommendations for sustaining GPS on a long-term basis. The task force's recommendations on management jurisdiction between the Departments, GPS funding, international acceptance of GPS, and various technical matters concerning civil GPS applications will be reported to the Secretaries in December 1993.

In support of these actions to promote civil use of GPS, we will be modernizing the national airspace system to accommodate both civil and military needs by installing new equipment for automating ATC operations, accelerating standards on the operation and certification of GPS components, and working with industry to develop standards for future GPS and ATC enhancements. Furthermore, our plan for restructuring ATC services will include options for creating public-private consortia as a vehicle for expediting the development and implementation of ATC technologies.

**Sustain U.S.
Technological
Leadership and
Superiority
through
Partnership
with Industry**

A solid working partnership between industry and government will spur the development of technologies having the highest payoffs for our national aviation system and help to sustain America's preeminence in civil aviation research and development. Working with industry, we are committed to building a strong, advanced technology base for civil aviation that will guarantee continued expansion of benefits both domestically and internationally, while ensuring that U.S. industry maintains a strong competitive posture in the manufacture of aircraft and delivery of air services.

In support of these objectives we have increased NASA's aeronautics budget by 18 percent for fiscal year 1994, focusing on increased investment in civil aviation. Working with industry and FAA, NASA has developed research programs to enhance aviation competitiveness, system capacity, environmental compatibility and safety. The principal components are the Advanced Subsonic Technology (AST) program and the High Speed Research (HSR) program. AST provides basic research for the next-generation subsonic transport, and includes capacity and efficiency improvements together with NASA's contribution to GPS implementation. HSR is aimed at providing the research foundation for an industry-developed High Speed Civil Transport that is economically viable and environmentally compatible for the long-haul, over-water market. This fast-growing market is likely to make the High Speed Civil Transport the key to global competitiveness in aircraft manufacturing in the future. Upgraded and new aeronautical facilities also are receiving increased attention in response to the aging of our national facilities and the needs of industry and government. For example, new wind tunnels that do a better job of simulating flight conditions should improve the aircraft design process, enabling production of high-quality aircraft at lower cost with faster delivery to market.

In addition to these programs, we will take full advantage of the Defense Department's investment in "dual-use" aeronautical research, *i.e.*, research on systems and equipment intended for military use that may be applicable to civil aviation. For example, under the President's \$470 million Technology Reinvestment Project, federal grants have been awarded to private firms and institutions to support commercial development of products such as a new airport radar system, based on technology originally developed by the Navy, that can detect hazardous weather conditions while simultaneously monitoring air traffic. Furthermore, FAA, in addition to its ongoing support of GPS and ATC modernization, will work with industry in a cooperative research and development effort for new aircraft designs and manufacturing processes.

To guide our partnership with industry, the Administration's Inter-agency Aeronautics Working Group, co-sponsored by the Office of Science and Technology Policy and the National Economic Council, will (1) establish aeronautics research and development goals by February 1, 1994, and (2) complete an R&D action plan by February 1995.

**Evaluate the
High Density
Rule**

The Department of Transportation has begun a comprehensive examination of the High Density Rule to assess its viability as an efficient air traffic and delay management tool and to determine whether certain operating limitations imposed by the rule can be eliminated or modified to better utilize airport capacity. Put in place nearly 25 years ago as a "temporary" measure to deal with airport congestion, the High Density Rule today limits the number of airline operations at four major U.S. airports: Chicago O'Hare, New York's LaGuardia and JFK International, and Washington National. The Department's study is assessing capacity at these airports and the impact of the rule on airline competition, fares and service patterns. It also is evaluating the rule's economic, financial and environmental implications, including the process for allocating domestic and international slots and alternative traffic management techniques such as peak-period pricing. The study will be completed by November 1994.

Actions To Enhance The Aviation Industry's Financial Outlook

The most important action government can take to improve the industry's financial condition has already been taken. Enactment of the President's budget plan establishes the foundation for sustained economic growth and control of the federal deficit. A reinvigorated economy will generate more business for airlines and aerospace firms, boosting their financial prospects. The President's plan also provides relief from the Alternative Minimum Tax for many capital-intensive businesses, including airlines, and a temporary exemption from the 4.3 cents-per-gallon fuels tax for gasoline and jet fuels used in commercial aviation prior to October 1, 1995. For the airline industry, these provisions will provide financial benefits amounting to \$1.4 billion for fiscal years 1994-1998. In addition to these measures, we will take the following actions to address financial concerns and promote airline competition:

**Seek
Bankruptcy
Reform**

We support, and will work with Congress to secure the passage of, the provisions of Senate bill 540 that would amend the bankruptcy code to:

- o Limit to 60 days the time period during which a bankrupt air carrier can either assume or reject unexpired leases or executory contracts with an airport operator, under which the debtor has a right to the use or possession of an airport terminal, aircraft gate, or related facility. This change, while allowing time for a financially troubled airline to reorganize, recognizes the interests of the airline industry and the public in assuring efficient use of limited airport gates and related ground-support assets.
- o Codify recent court decisions to clarify that the lease provisions of the bankruptcy code cover parties with security interests, lessors of such equipment, and conditional lessors of such equipment. This change, which would cover maritime and railroad leases as well as aircraft equipment leases, would protect the right of a secured creditor to retake leased equipment 60 days after the filing of a bankruptcy petition. As a result, lessors' concerns over the impact of bankruptcy on their equipment would be allayed, and other carriers would be able to lease aircraft and related equipment on better terms.
- o Allow governmental units, such as the Pension Benefit Guaranty Corporation, that have a major financial stake in certain Chapter 11 reorganization cases to participate as members of creditors' committees. Creditors' committees play a key role in Chapter 11 proceedings by gathering financial information, conducting investigations, and participating in decisions on the debtor's fate. Under current law, government agencies and instrumentalities are effectively excluded from creditors' committees even though they are often among the largest creditors involved in a Chapter 11 proceeding. The proposed amendment would allow government entities -- federal, state or local -- to sit on creditors' committees in appropriate cases and exercise a stronger voice in the reorganization process.

In addition to supporting these statutory changes, we have begun a review of the economic impact of bankruptcy laws, giving particular emphasis to the effects of (1) introducing certain time limits on the filing of reorganization plans and (2) increasing the representation of the public interest in bankruptcy proceedings. These issues require detailed review because they transcend airline bankruptcy cases. Based on the results of our review, which is

being conducted under the auspices of the National Economic Council, we will work with Congress to effect appropriate changes to the bankruptcy laws.

**Closely
Monitor
Financial
Fitness**

Secretary Peña has directed Department of Transportation staff to monitor more closely and report to him regularly on the state of the airline industry and the condition of individual carriers. Given the dynamics of the industry, the Department is giving particular attention to financial factors, especially competition within the industry, ownership changes, and financial trends. Large transactions involving established carriers will be scrutinized to ensure that the carriers' financial health is not undermined by ill-conceived financing schemes.

Under section 401(r) of the Federal Aviation Act, the Secretary of Transportation can, after proper notice and a hearing, modify, suspend or revoke an airline's authority to operate if the Secretary determines the airline no longer meets the Department's fitness requirements. Typically, the Department has under review, and receives confidential data related to, fitness elements for as many as 30 carriers, including data on finance, operations, ownership and control, business plans, and citizenship. Moreover, the Secretary receives diverse perspectives on the airlines' financial and competitive status through continual exchanges, formal and informal, with airline executives, transportation academicians, aviation consultants, financial analysts, and Congressional leaders. These consultations, coupled with the Department's intensified fitness reviews, provide a strong incentive for airlines to comply with fitness requirements and to promptly correct deficiencies identified by the Department. New authority or mechanisms for ensuring financial fitness are not necessary at this time.

**Preclude
Diversion of
Airport
Revenues**

The Department of Transportation will continue to enforce prohibitions against the diversion of airport revenues for non-airport related purposes, and to scrutinize projects funded by passenger facility charges to ensure they satisfy eligibility criteria. However, the Department is contemplating statutory changes that would authorize the use of airport revenues for a broader array of transportation-related projects and activities. A final decision on this issue will be made in January 1994; any changes would be proposed in conjunction with FAA's upcoming legislative reauthorization.

Some airport sponsors would like to use airport revenues to pay for the costs of projects and services unrelated to airport use. Allowing revenues to be diverted in this manner, however, would be inconsistent with the legislative intent of the Airport Improvement Program (AIP) and Passenger Facility Charges (PFCs). AIP is intended to assist airports in meeting their capital needs and to ensure that capacity and safety improvements are made. Under current law, an airport that has received an AIP grant is prohibited from diverting airport revenues to non-airport purposes. Similarly, PFC revenues, which airports are authorized to collect by charging up to \$3 per enplaning passenger, are intended to provide capital for meeting airport-related development needs. Projects to be funded by PFCs must be approved by FAA to ensure they meet statutory criteria for eligibility.

The statutory changes under consideration by the Department would broaden the concept of "airport purposes" to allow revenues to be used for a wider range of transportation-related activities. This could include, for example, expenditures to improve ground access, support intermodal terminals, and defray the costs of state and regional transportation planning activities. It could also include support for other off-airport costs, such as noise abatement programs.

**Stay on
Course to a
Quieter Stage 3
Fleet**

FAA will continue to ensure carrier compliance with federal requirements for phasing out noisier Stage 2 aircraft by the year 2000, and to exercise review and approval authority over all local restrictions proposed by airport operators on the use of quieter Stage 3 aircraft. This course of action will ultimately reduce the population affected by significant levels of aircraft noise from 2.7 million to 400,000, while protecting carriers' investment in Stage 3 aircraft during the transition to an all Stage 3 fleet.

Fortunately, that transition is moving forward more rapidly than required. As of December 31, 1992, the fleet mix of Stage 3 aircraft was 59.3 percent overall and 56.3 percent for domestic aircraft. This is ahead of the minimum 55-percent interim goal set for December 31, 1994. In most cases, the transition to Stage 3 should achieve the noise mitigation objective of airports and their affected communities. On occasions when an airport operator concludes that additional noise relief is needed, FAA will urge the airport to work with the local airport users in reaching voluntary agreement on any additional measures.

**Promote
Competition
and New
Entrants**

Airline competition has lowered air fares, increased service, and encouraged innovation. To preserve and enhance these consumer benefits, the Departments of Justice and Transportation will continue their aggressive enforcement of the antitrust laws and administrative regulations promoting competition. In the recent past, for example, the government has vigorously attacked conduct facilitating price coordination and practices that thwarted pro-competitive entry by new carriers. In other instances, we have voiced objections privately, pursuing voluntary compliance as our first resort. We will remain vigilant in preventing marketing practices that may be used by airlines to maintain hub dominance, in challenging mergers and acquisitions that may substantially lessen competition, and in scrutinizing international joint ventures and route transfers that may jeopardize the benefits of robust industry competition.

The Federal Aviation Act specifies that the Department of Transportation should encourage entry into air transportation markets by new carriers. This has been and will continue to be the Department's policy. The Department will continue to help educate prospective airline entrepreneurs about certification requirements and procedures, and to provide substantial guidance and assistance to new entrant applicants in perfecting their applications. Moreover, the Department will seek to minimize barriers to new entry and to ensure that new firms are not prevented from entering the airline business, and will act to prevent anti-competitive pricing and marketing practices by carriers which have the market power to stifle competition.

Actions To Reduce The Regulatory Burden

The Administration desires both to reduce the regulatory burden imposed on the airline and aerospace sectors and to improve the cost-benefit analysis and reporting that underlie rulemaking decisions. We are particularly mindful of the costs and controversies associated with drug and alcohol testing in the aviation industry, as well as the need to assure the public of the industry's safe operation. The following actions will be taken:

**Reassess
Existing
Regulations**

The Deputy Secretary, Department of Transportation, will spearhead a systematic evaluation aimed at eliminating or amending existing rules and regulations to reduce the compliance burden on industry, consistent with safety, environmental protection, and security considerations. This evaluation, which has been launched and is being conducted in accordance with the President's Executive Order on Regulatory Planning and Review, will include implementation schedules and periodic progress reports to the industry and the

public. To avoid wasting resources and duplicating prior reviews, the Department will solicit specific suggestions from the industries involved and the public regarding regulatory areas where the regulatory burden exceeds benefits. FAA's Aviation Rulemaking Advisory Committee, a group of 61 organizations representing a cross-section of aviation interests, will play a key role in identifying regulations for reassessment.

***Improve the
Quality of Cost-
Benefit Data
and Reporting***

FAA, assisted by its Aviation Rulemaking Advisory Committee, will identify options and opportunities for receiving cost input data early during the regulatory process. Since its inception over 2 years ago, the Advisory Committee has steadily increased its participation in FAA's rulemaking program. Its role has matured to the point that the Committee is now fostering government-industry cooperation and facilitating the early exchange of data so that FAA can make informed decisions before proceeding with a rulemaking proposal. To develop additional ways of facilitating timely exchange of accurate cost data, FAA also has assigned additional resources to the economic analysis component of its regulatory program.

These ongoing efforts to obtain timely and accurate cost data are already paying dividends. In the case of rules mandated by Congress or initiated by the Administration, FAA prepares a preliminary cost-benefit analysis prior to issuing a rulemaking notice and briefs the appropriate officials on the results. Based on guidance received at the briefing, FAA takes whatever additional action is necessary, including but not limited to issuing the notice as prepared, modifying the proposal to mitigate the estimated cost burden, or terminating the project entirely.

With respect to existing rules, FAA will invite the aviation industry to submit data on the actual costs incurred to comply with provisions of the regulations. These cost data, married with data on benefits, will form the basis for an annual cost-benefit report to Congress.

***Sharpen Cost-
Benefit
Methodology***

By January 1994, the Office of Information and Regulatory Affairs within the Office of Management and Budget will establish an inter-agency working group to expand and improve regulatory cost-benefit analysis and to resolve significant cost-benefit disputes. Identified improvements in cost-benefit methodologies will be shared with all agencies, including FAA, for use in preparing Regulatory Impact Analyses.

**Complete
Outstanding
Drug and
Alcohol
Rulemakings**

The Department of Transportation, working within the statutory framework of the federal rulemaking process, will complete these proceedings within the next 60 days. With respect to drug testing, the Department issued an Advance Notice of Proposed Rulemaking to gather information on which to consider a change in the random drug-testing rate, which is currently set at 50 percent. This rate for the aviation industry, as for other transportation industries, was established by public rulemaking; any change to the rate must therefore be established in full compliance with rulemaking procedure. With respect to alcohol testing, the Department issued a Notice of Proposed Rulemaking which includes pre-employment and random alcohol testing. Both types of tests are among those mandated by the Omnibus Transportation Employee Testing Act of 1991. Based on the experience with both rulemakings, the Department will consider working with Congress to determine whether any legislative relief is warranted.

Actions To Foster Labor-Management Collaboration

The Administration is committed to accelerating the evolution of labor-management relations, throughout the economy, in the direction of collaboration and flexibility. This commitment has been evidenced by the involvement of the President and the Secretaries of Labor and Commerce in sponsoring a national Conference on the Workplace of the Future and by the creation of a new Office of the American Workplace within the Labor Department. Moreover, the work of the Dunlop Commission on the future of worker-management relations is now underway and will explore new initiatives in this area. As further manifestations of our commitment to collaborative labor-management relations, we will:

**Promote Job
Opportunities
and Employee
Ownership**

The Labor Department's Office of the American Workplace has begun a project to encourage the development and expansion of employee stock ownership and other "gainsharing" programs. The project is seeking to identify creative gainsharing programs through outreach with industry groups, associations, labor, and the financial community in 5 or 6 states. Ideas for further development will be explored and industry targets for expanded gainsharing programs will be selected. Results of this project will be available in October 1994 and will be shared with the airline, aerospace and other industries. In addition, in December 1993 the Department of Labor will begin an analysis of the impact of globalization on domestic high-skilled, high-wage jobs in the production, maintenance and other key sectors of the aviation industry. This analysis is aimed at identifying strategies for dealing effectively with the rapid changes

in labor demand that are occurring in these aviation sectors. Labor's report will be completed by the end of February 1994 and will include policy options for capitalizing on the U.S.'s competitive advantage for high-skill, high-wage jobs.

**Obtain
Information on
Potentially
Displaced
Workers**

When reviewing proposed mergers, acquisitions and sales of route authority, the Department of Transportation will carefully examine the impact on airline workers in conjunction with its fitness review process. Effective immediately, any carrier seeking approval from the Department for an international route transfer, or undergoing a major change subject to the Department's review, will be directed in the agency's standard evidence request to provide any plans it has developed for protecting potentially displaced workers.

PART 2. PROMOTING INTERNATIONAL AVIATION TRADE AND COMPETITIVENESS

Actions To Build A Liberal Multinational Aviation Framework

For several years U.S. air carriers have benefitted from air services agreements negotiated on a country-by-country basis. This bilateral approach has become increasingly ill-suited to the needs of an interdependent world, however: it is limiting commercial opportunities, distorting competition, and denying our communities the broader economic benefits of direct international air service. Given the growth of multinational blocs such as the European Union (EU) and the creation of "multinational" airlines through alliances and investments, the constraints of a bilateral system clearly demand that we develop strategies for building a modern, liberal, and multinational regime for international aviation. Such a regime would provide greater access to foreign airports for U.S. carriers, more travel options for passengers, and enhanced competition that lowers fares. For the near term we must focus on solidifying the rights that our carriers currently have and on seeking the most open and liberal arrangements that we can possibly attain. We should also begin to work toward a liberal multinational aviation regime. To achieve these goals we will act to:

Pursue Alternative Negotiation Strategies

The Administration's Interagency Committee on Aviation will evaluate the role of all potential negotiating alternatives -- bilateral, regional, multinational, global network of like-minded countries, etc. -- in moving toward a liberal international aviation regime, and will prepare a statement of policy for achieving liberalization objectives over the short, medium and long terms. The policy statement will include the goal of creating a liberal multinational regime for passenger service, and will be completed by June 1994. During the interim our approach to air service negotiations is being guided by the following four strategies, set forth in Secretary Peña's November 1993 address before the International Air Transport Association:

- o First, the United States will actively seek unrestricted, multi-lateral agreements with those groups of nations that are willing to offer comparable benefits for U.S. carriers and the U.S. economy.
- o Second, while pursuing multi-lateral accords, we will also seek to liberalize existing bilateral agreements. We will ensure that any such agreements actually stimulate more air travel, increase competition, and augment any other aviation rights already contained in existing bilaterals.

- o Third, we will vigorously defend all existing U.S. bilateral rights. We will act, through all available means, against any foreign competitors whose governments discriminate against or fail to honor the rights of U.S. airlines.
- o Fourth, we will explore the formation of a global coalition of like-minded, free market-oriented nations that recognize the benefits of expanded air travel to citizens and national economies. Our aim is to determine whether such a group of nations could create sufficient "critical mass" to offer a host of new air rights and services to their carriers and citizens in exchange for comparable benefits for the carriers and citizens of the United States.

The Departments of State and Transportation will take the lead in implementing these strategies in pursuit of liberal, sector-specific agreements over the near term. In particular, we may be able to strike sectoral air-cargo service agreements, either bilaterally or multi-nationally, as a step toward the goal of market liberalization. The EU recently accepted our proposal to establish working groups to explore the creation of a fully unrestricted North Atlantic air cargo market. We expect talks to begin in early 1994. An open air cargo agreement could be a major step toward the longer-term goal of a liberalized air passenger agreement with the EU.

As the Administration develops new approaches to negotiation, we will assess whether organizational changes are needed at the Departments of State and Transportation to assure that international negotiations continue to receive the appropriate level of attention and continuity. State is already taking steps to ensure that key staff remain in place for a longer period of time. At Transportation, Secretary Peña has reorganized responsibilities at the Assistant Secretary level to focus more time and attention on aviation matters.

**Liberalize
Limitations on
Foreign
Ownership of
U.S. Carriers**

We will ask Congress to liberalize current restrictions on foreign ownership of U.S. airlines, which limit such ownership to 25 percent of the voting interest. Reducing restrictions on U.S. air carriers' access to international capital could contribute to their growth and competitive effectiveness, promote competition and consumer benefits, preserve jobs for U.S. workers, and otherwise support the economic interests of the United States. We also recognize the potential value of foreign investment liberalization in promoting the development of a more liberal international aviation regime that can provide U.S. carriers with greater investment opportunities and increased access to foreign markets.

We are keenly aware that a proposal to liberalize foreign ownership must be carefully crafted to be consistent with U.S. economic and security interests and with our international treaty obligations. Air transport is a highly regulated and strategically important industry that is unique in requiring reciprocal bilateral arrangements for "trade" rights. In this structure, a higher foreign ownership component than permitted by current law could disadvantage U.S.-owned carriers by allowing a foreign airline to obtain greater access to the U.S. market without comparable opportunities for U.S. carriers. Access to, through, and beyond the U.S. market through investments greater than 25 percent of the voting interest should be permitted only when it will advance the national interest and contribute to the development of a liberal global regime for air services. In addition, any proposal to liberalize foreign ownership must take into account U.S. international treaty obligations and defense needs.

The Departments of State and Transportation will take the lead in fully evaluating these issues and preparing a legislative proposal. We envision that draft legislation would propose to amend the Federal Aviation Act's definition of "U.S. citizen" to maintain U.S. citizenship status for an air carrier notwithstanding foreign ownership of between 25 percent and 49 percent of voting stock, as long as there is in effect with the government of which the investor is a national an air services agreement which permits such ownership. There would also be a provision stating that in negotiating such air services agreements, the U.S. Government should agree to include expanded investment opportunities only for privately-owned and controlled foreign airlines and only in the context of a package that provides U.S. carriers with comparable opportunities, including liberal market access rights and liberal foreign investment opportunities.

**Safeguard
Defense Airlift
Capacity**

The availability of civil aircraft to meet emergency airlift requirements, as set forth in the National Airlift Policy, is vitally important and, along with other national defense and security needs, must be taken into account in decisions on cross-border investment and ownership. The Departments of Transportation and Defense will take the lead in ensuring that national defense and security are adequately considered in all such decisions. As an initial step, by January 1, 1994, the Defense Department will complete a review of airlift requirements, specifically to include Civil Reserve Air Fleet requirements by participating U.S. international air carriers. Transportation and Defense will then develop specific proposals to ensure availability of the needed commercial airline capacity, culminating in the

award of the fiscal year 1995 Civil Reserve Air Fleet contract by the target date of June 30, 1994.

Actions To Expand And Facilitate Aviation Commerce

In addition to building a liberal multinational framework, the Administration seeks to expand commercial opportunities for U.S. aircraft manufacturers in the global marketplace and to facilitate the flow of international aviation commerce. We are developing strategies for modernizing aviation systems in specific countries and regions, cultivating knowledge of the U.S. aviation system around the world, and targeting and promoting U.S. products abroad. For example, in conjunction with the Administration's new national export promotion policy, the Secretaries of State, Commerce and Transportation earlier this year headed missions to Saudi Arabia, Bahrain, the United Arab Emirates and other countries to promote sales of U.S. commercial aircraft, airport equipment and services, and other U.S.-produced goods and services. In addition to such activities, we will expand and facilitate international aviation commerce by working to:

Ratify the Montreal Protocols

We will urge the Senate to ratify Montreal Protocols 3 and 4 to the Warsaw Convention, subject to enactment of a statutory supplemental compensation plan on death and injury in international air travel. These actions will create a liability system for American citizens and permanent residents traveling on international flights, ensuring full and expeditious compensation of all damages, economic and non-economic, for death or injury. This system would cover all passengers purchasing tickets in the United States for international travel, as well as all U.S. citizens and permanent residents traveling internationally anywhere in the world, thus avoiding the quagmire and uncertainty of conflicting laws of hundreds of nations and local jurisdictions. The supplemental compensation plan will also cover acts of terrorism or war. In the case of Montreal Protocol 4, ratification will streamline cargo documentation requirements for shippers.

Ensure Sufficient Export Financing

We will continue to provide the necessary level of support to the Export-Import Bank (Eximbank) to ensure that competitive financing is available to the U.S. aerospace industry.

The need for competitive credit financing in the aerospace sector has increased since the late 1980's. Eximbank support for aircraft exports, for example, has risen from less than \$500 million in 1989 to a projected \$3.3 billion this year, accounting for about 22 percent

of overall Eximbank activity. In response to this increased demand, we have sought flexibility in the limitations imposed on Eximbank's budget, which take the form of both an annual authorization limit on the dollar volume of new loans, guarantees, and insurance, and a subsidy budget covering the funding and risk subsidies inherent in Eximbank's authorizations. The appropriation enacted for fiscal year 1994 contains no limit on total loan and insurance authorizations, thus affording Eximbank greater flexibility in using its subsidy budget. The appropriation also provides a subsidy budget of \$1 billion, including a one-time increase of \$300 million for Russia and the other Newly Independent States.

Meanwhile, Eximbank has been working to strengthen its financing operations. For example, through its exposure (or risk) fees and related risk-management policies, the bank has reduced the budgetary cost of supporting aircraft and other credit transactions. And by using asset-based financing structures, the bank has increased its assurance of repayment in many high-risk markets. In addition, each financing request is being carefully examined to ensure that it will in fact generate additional exports.

For fiscal year 1995 and beyond, U.S. support of Eximbank financing will be shaped by the anticipated demand for export financing, the President's recently enacted budget plan, and the results of a review of international affairs priorities being conducted under a Presidential Review Directive.

**Harmonize
International
Regulation**

Airlines, manufacturers and civil aviation authorities are saddled with unnecessary costs due to substantial variance among nations' aviation regulations. To reduce this cost burden, FAA will expedite its ongoing global effort to harmonize international regulation. Specifically, FAA will work with European nations to develop common, performance-based aviation safety standards, and to ensure that European Joint Aviation Requirements are harmonized with Federal Aviation Regulations. FAA will also continue to provide technical assistance to other nations on safety and airworthiness regulations, and to encourage the development of regional aviation authorities.

To support and complement these efforts, the Department of State and FAA are seeking opportunities to update existing bilateral airworthiness agreements with broader and more flexible aviation safety agreements. Airworthiness agreements currently provide for technical cooperation between FAA and the civil aviation authority of a foreign nation, and facilitate airworthiness certification of civil aeronautical products on a reciprocal basis. A broader and more

flexible safety agreement format, in addition to covering airworthiness certification, could encompass such areas as crew training facilities (e.g., simulators), aircraft maintenance, and aircraft noise standards, and could allow technical agreements to be implemented on a timelier basis.

**Facilitate
International
Cooperation**

Globalization of aircraft manufacturing necessitates an active role by the U.S. Government in facilitating international cooperation. Our objectives are to ensure that U.S. aerospace firms are not disadvantaged in global competition and to foster a climate in which U.S. companies can continue to participate as technology and marketing leaders. For example, to facilitate innovative and efficient production ventures, the President, on June 10, 1993, signed into law the National Cooperative Production Amendments of 1993. These amendments extend to joint production ventures certain statutory antitrust protections that already exist for joint research and development ventures.

In support of our objectives we will expand the distribution of information on bid opportunities and competitions to U.S. firms; monitor international competitions to ensure that U.S. aerospace manufacturers have the opportunity to participate in international programs on a fair and equitable basis; fully and expeditiously investigate complaints by U.S. industry regarding foreign trade barriers; and act to eliminate, or to counteract as necessary, impediments identified by industry, such as restrictions stemming from foreign or domestic trade policies.

**Evaluate
Product
Liability
Issues**

The Administration, as part of a comprehensive review of federal product liability laws, will consider whether to support a statute of repose for manufacturers of general aviation aircraft. The National Airline Commission concluded that a statute of repose limiting product liability to 15 years from the date of manufacture would help to regenerate domestic production of general aviation aircraft. Annual sales of piston engine aircraft, which averaged 13,000 per year during 1965-1982, have decreased to about 500 per year. The Commission noted that many factors underlie the decline in sales, but pointed to the added costs of liability insurance as forcing prices up, causing sharply increased costs for personal and short-range business flying and contributing to the loss of more than 100,000 jobs in general aviation aircraft manufacturing, sales, service and related industries.

Actions To Enforce International Treaty Obligations

The Administration will vigorously enforce existing trade agreements and U.S. trade laws affecting international aviation commerce to protect the rights and interests of U.S. airlines and aerospace firms. Specifically, we will:

**Closely Monitor
Airbus
Agreement**

The Office of the United States Trade Representative (USTR), along with other agencies, has been and will continue to be particularly vigilant in monitoring compliance by the Airbus partner governments with the terms and conditions of the 1992 U.S.-EU civil aircraft agreement. This agreement imposes a cap on government support for aircraft development and prohibits government support for aircraft production. Our monitoring activities include regular consultations with the EU to ensure full compliance with the bilateral agreement; having U.S. embassies in the Airbus partner countries track host government actions with respect to Airbus and report information relevant to the implementation of the bilateral aircraft agreement and compliance with obligations under the General Agreement on Tariffs and Trade (GATT); and exchanges of information with the EU, as required by the bilateral agreement, concerning government support to large civil aircraft producers.

**Tighten
Disciplines on
Government
Subsidies
under GATT**

USTR is seeking to tighten the disciplines on government support and subsidies for product development currently contained in the GATT aircraft agreement, and to expand the coverage of that agreement to other countries which produce civil aircraft and components. In the 1992 U.S.-EU Agreement Concerning the Application of the GATT Agreement on Trade in Civil Aircraft, both parties committed themselves to ensuring that disciplines similar to those contained in the bilateral agreement are incorporated in the 1979 GATT aircraft agreement at the earliest possible date. Both parties also agreed to expand the coverage of the disciplines provided by that agreement. Signatories of the GATT aircraft agreement accepted a U.S.-EU invitation to participate in multi-lateral negotiations to improve and expand the existing agreement. Non-signatory nations (e.g., Russia, China and Taiwan) also have been invited to participate in the negotiations. Our goal is to conclude these negotiations at the same time as the Uruguay Round of GATT negotiations are concluded, currently set for December 1993.

**Employ All
Available
Enforcement
Tools**

The U.S. Government will use all of the means at its disposal to defend the air service rights exercised by U.S. carriers under the terms of our bilateral aviation agreements. When disputes cannot be resolved expeditiously through negotiation or, when appropriate, through dispute resolution mechanisms, we will not hesitate to use other enforcement tools, including the procedures and remedies provided by the International Air Transportation Fair Competitive Practices Act of 1974 and the imposition of sanctions such as the suspension of privileges and services. The option of denouncing unsatisfactory or disadvantageous bilateral agreements will be considered in appropriate cases.



Department of Transportation

Office of the Secretary
400 Seventh Street, S.W.
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(including cover)

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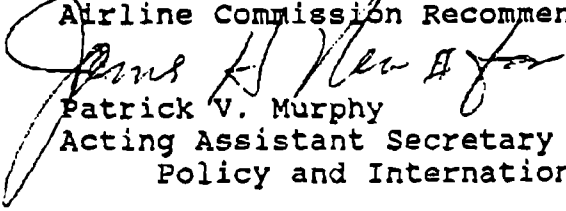
Assistant Secretary

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

MEMORANDUM

August 9, 1993

SUBJECT: Report on Administration's Response to
Airline Commission Recommendations

FROM: 
Patrick V. Murphy
Acting Assistant Secretary for
Policy and International Affairs, DOT

TO: All NEC Working Group Members/Teams

Following up on our August 5 meeting, attached are:

1. A proposed Table of Contents for the subject report.
2. Guidelines for preparing write-ups on the Administration's position on individual Commission recommendations.

Write-ups should be prepared by the respective Working Group teams, as before. In order to assemble, format and package an overall report draft for review by next Monday, we must receive all write-ups by the close of business on Thursday, August 12. You have 3 options for submitting write-ups:

o Hard copy by Fax

This is may be the easiest option if your individual write-ups are generally limited to 1 page (see "Guidelines," attachment 2). If you choose this option, please fax your material to Jim New on 366-7483.

o On diskette

If you have extensive material you wish to include as an appendix in the report (see "Guidelines" on this), it will be easier for us if you provide your write-ups on diskette (5.25" or 3.5" is OK). If you choose this option, it will help immensely if your files are formatted in ASCII text (sometimes referred to as "DOS text file"). Most word processing software allows you to save files in ASCII. Diskettes should be delivered to:

Jim New, P-60
Room 9215A, Nassif Bldg.
400 7th Street, S.W.
Washington, D.C. 20590

2

o By Modem

As an alternative to sending a diskette, you can transmit your files by modem. Again, please format your files in ASCII if possible. To use this option you will have to call John Miller on 366-4834 to arrange for a transmission protocol and time.

It is our plan to lead off each of the 3 "Themes" (see "Contents", attachment 1) with a 1-page summary highlighting the nature and number of Commission recommendations under the applicable theme, the distribution of Administration responses, and key issues covered by the relevant write-ups. DOT will take the first shot at preparing the 3 intros, based on the write-ups you submit.

We are working with White House staff on the President's statement, participation, and the how/when for releasing a final report, and will keep you apprised of progress on that front. Finally, we will arrange to distribute the packaged draft by close of business next Monday for your review.

Should you have any questions, please do not hesitate to contact Jim New on 366-4868.

2 Attachments

- # -

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QUICK REFERENCE: COMMISSION RECOMMENDATIONS AND ADMINISTRATION POSITIONS	x
[NOTE: DOT will prepare this.]	

GUIDELINES FOR PREPARING WRITE-UPS: You supply side-caps/material that is bolded.

Commission Recommendation

State the Commission recommendation as presently known.

DOT will take care of any changes in the Commission's final wording. Normally, a separate write-up should be prepared for each recommendation. **Exception:** More than one recommendation should be covered in a single write-up when all of the following apply:

Each recommendation falls under the same "Theme" and "Issue" (see "Contents" for list of Themes and Issues);

The Administration's position on each recommendation is the same; and

The explanation of the Administration's Position (see below) is the same or essentially the same for each recommendation.

For example, there are two recommendations under the Issue of the Tax Policy for which our position is "Immediately Accept" because both were covered in the budget reconciliation that passed last week. Since the explanation of our position applies to both recommendations, they should be listed together in a single write-up.

Administration Position

Immediately Accept.

Accept Premise - Additional Work Needed.

Under Review - Full Response in 30 Days.

Reject.

[Enter one of these, as applicable, on 2nd line after side-cap]

Beginning here, explain position.

If "Immediately Accept," state how recommendation(s) will be implemented. If "Accept Premise," clearly state what portion of the recommendation we are accepting and why, and describe what actions will be taken. Likewise, if "Under Review," describe why and what actions will be taken. If "Reject," fully explain the reasons.

Try to limit each write-up to 1 page. If you absolutely need more than 2 pages, consider preparing an additional, separate and more detailed attachment that could be included in the report as an appendix.

DATE: September 20, 1993
TO: Carol Rasco
FROM: Mike Schmidt
RE: Update on the Airline Commission process

A late-breaking update on the Airline Commission issue: The President will be meeting with Governor Baliles and the 15 voting Commission members on September 29 to listen to their recommendations on the state of the airline industry. You will be invited to attend this "Principals only" meeting, along with Bob Rubin, Laura Tyson, and Secretary Pena.

As you already know, the Commission presented its report to the President in mid-August. At that time, the Administration made no formal response. However, the Working Group on Civil Aviation, headed by Laura Tyson and Secretary Pena (and of which I am a member), has been working since July on an Administration response to the report, and will have a formal document ready for release in the next week or two. It is entirely up to the President as to when and how he wants to release this Administration response.

I will send you a draft of the Administration response FYI as soon as it is near completion.

National Commission To Ensure A Strong Competitive Airline Industry

633 Indiana Avenue, N.W., Washington, D.C. 20531
(202) 504-2983 fax (202) 504-2974

September 8, 1993

CHAIRMAN

Gerald L. Baliles

MEMBERS

Bette B. Anderson

J. Randolph Babbitt

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Representative Maria Cantwell

Representative Richard Gephardt

Representative Newt Gingrich

Representative Bud Shuster

Laura D'Andrea Tyson

Ms. Carol Rasco
Assistant to the President for
Domestic Affairs
The White House
Washington, DC 20500

Dear Carol:

Now that the Airline Commission is winding down, I can catch up on some letters. I've been meaning to write ever since I saw the Post article. I think it's terrific that Washington is now learning what those of us in the state government crowd have always known about your contributions and abilities.

I will be returning to Hunton & Williams in two weeks, when the Commission mandate expires. I hope we can get together for a cup of coffee later this year, perhaps after Congress winds down.

In the meantime, keep up the good work and best of luck on health care.

Regards,


Gregory Principato
Executive Director

*I've attached a copy of
the report. What do you
think?*

Schmidt
Has it been released?
What shall I say if anything in response to his note at bottom?
CH

WK Group on Civil Aviation 8-5-83

Recc

49

- Reject immediately, because we don't want to limit our foreign policy.
- Safety is not the only issue involved in the use of international sanctions.

#26 - accept premise, but we have done all we can do -- already in budget reconciliation.

Q) #21 - Bankruptcy laws overall need to be reviewed -- not just airline industry. NAC working group has already been proposed by Altman at Treasury.

Legislative proposal this fall -- we need to move fast to get a position on this

#45 - Big issue, issues of ^{potential} MFR violations, etc.
- Commission has not addressed the control issue -- with 48% ownership, significant control there.

#3, 4, 5 - FAA reorg. -- FAA has concerns over this issue, feeling that Commission didn't take time to review enough -- but we want to be as supportive as possible

without being boxed into corner. NPK is taking this up, FAA is too.

- concerns raised are right concerns, not some private entity is right answer
- give FAA 120 days for review, based on carefully done research
- no one has looked at all of these concerns -- Commission didn't have time to do properly.

#18 - reject -- Sec of Transportation already has this authority and can use it.

~~#32~~ #32 - Use ~~Sec~~ Commission as opportunity to set broad policy -- LA case is time-sensitive

Tax Relief (#26-30)

- if current budget passes, considerable tax relief for airlines
 - AMT relief
 - Gas tax exemption thru 1995

- airlines should take what they got, not and won't likely out of commerce

#40-42

#41 - more to Further review, work with
labor people
 \ ^{budget} offset issue

#13 - accept premise that drug testing rate
should be studied

What Next?

- Penn wants a work product from us at the same time Commission releases report
- Want a formal Ceremony to have President accept report



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

Assistant Secretary

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

JUL 26 1993

MEMORANDUM

SUBJECT: August 5 Meeting of Interagency Working Group on Civil Aviation

FROM: Patrick V. Murphy
Acting Assistant Secretary for
Policy and International Affairs

TO: All Working Group Members

The next meeting of the Interagency Working Group on Civil Aviation will be held on Thursday, August 5 at 10:00 am in the Old Executive Office Building, Room 476. The purpose of the meeting is to discuss the Administration's response to the recommendations of the Airline Commission. A copy of the final draft findings and recommendations revised to reflect actions taken by the Commission on Monday, July 19 is attached.

In order to facilitate this discussion, each of the four working teams is asked to prepare a one-page paper for each of the recommendations that fall within the following areas:

<u>Domestic Team</u>	<u>Finance Team</u>
Cost of Regulation	Taxes & User Fees
Labor Management	Financial Strength
Small Communities	Bankruptcy
New Entrants	
<u>International Team</u>	<u>System Team</u>
International Trade	Air Traffic Control
- Airlines	for the Future
- Aerospace	Noise
	General Aviation

A suggested format (Attachment 2) has been prepared so we all will be reasonably consistent in our approach.

As in the past, please call Sandy Mancini, 202-456-2801, with the name and date of birth of the representative from your agency who will attend the meeting.

#

2 Attachments

National Commission To Ensure A Strong Competitive Airline Industry

633 Indiana Avenue, N.W., Washington, D.C. 20531

(202) 504-2983 fax (202) 504-2974

MEMORANDUM

★ ★ ★ ★ ★

CHAIRMAN

Gerald L. Baliles

★ ★ ★ ★ ★

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Representative Robert Borski

Representative Maria Cantwell

Representative Richard Gephardt

Representative Newt Gingrich

Representative Bud Shuster

D'Andrea Tyson

TO: Commissioners

FROM: Gerald L. Baliles, Chairman 

DATE: July 21, 1993

RE: Revised Findings and Recommendations

The following is a set of the final findings and recommendations revised to reflect actions taken by the Commission at our meeting on Monday, July 19. They have been carefully checked against the transcript of proceedings of our meeting on Monday.

Thanks again for your participation and perseverance! We will be back in touch again soon.

WORKING DRAFT

What follows are outlines of various issues studied by the Commission. Each issue is divided into categories:

- (1) Major Findings;
- (2) Major Recommendations; and
- (3) Other Recommendations.

They reflect changes made during the Commission meeting of July 19, 1993.

WORKING DRAFT

Outline of Issue Taxes and User Fees

Major Findings:

- The federal government imposes a large and disproportionate tax burden on the airline industry that impedes its return to financial health
- Airlines--which historically have made low profits and now suffer large losses--can no longer be viewed as revenue generating machines for the government
- Domestic airline users pay more than their fair share of FAA's budget through user taxes
- When applied to airlines, some general taxes have unintended, harmful effects, contrary to sound public policy

Major Recommendation:

Relieve the airline industry of its unfair tax and user fee burden

- Roll back the ticket tax and the cargo waybill tax to their pre-1990 levels of 8% and 5%, respectively
- Reduce the FAA budget allocation from the Trust Fund from 75% to 70% in recognition of the overpayment by airline users and the public benefits of aviation
- Exempt airlines from the proposed transportation fuel tax
- Reform the Alternative Minimum Tax so that airlines losing large amounts of money are not required to also pay millions of dollars in income tax

Other Recommendations:

- Full deductibility for airline employee per diem payments
- Funds should be spent on improving facilitation of passengers and cargo arriving in

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the U.S. in rough approximation to the amounts collected in Customs, INS and Agriculture inspection fees.

- Rigorous enforcement of AIP grant assurance language barring diversion of airport revenues to non-airport purposes.
- Continued close scrutiny of PFC applications and approval of only those projects which meet the PFC statute's criteria
- Strategic Petroleum Reserve--When jet fuel prices rise more than ____% in any ____ period, then the U.S. government shall release crude oil from the Reserve to the extent necessary to reduce such prices to the level of a ____% increase, provided that such action is not inimical to the national defense or security.

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Outline of Issue Cost of Regulation

Major Findings:

- Federal regulations impose a massive cumulative cost burden on airlines which has never been quantified by the government
- Major rules since 1984 have added \$3.5-7.5 billion to past or future airline costs, based on an aggregation of FAA's original estimates of costs for specific rules
- Congress, DOT, and FAA all contribute to this cost burden. Congressional or DOT mandates can pre-ordain the outcome of cost/benefit analysis
- Given the extremely high level of safety in the airline industry which can make it increasingly expensive to achieve even incremental safety improvements, federal regulators must do a better job of ensuring that additional requirements meet rigorous cost/benefit tests
- Industry often warns of high costs, while FAA believes it is not provided with accurate data on costs early enough to make an informed judgment before proposing a rule.

Major Recommendations:

- Subject FAA regulations to an annual regulatory cost budget—except for emergency regulations needed to eliminate a direct and immediate threat to the traveling public
- Congress and DOT should be informed of the annual costs their own proposals would impose on the industry
- Congress, DOT, and FAA should clearly define legislative/regulatory proposals to address problems effectively and efficiently
- Establish an ongoing, independent mechanism to provide objective outside guidance and expertise to FAA on cost/benefit analysis methodology and to review cost/benefit disputes
- The random drug testing rate should be established immediately at 25%, which is the

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rate used for FAA's own safety-related personnel, such as air traffic controllers. FAA should also initiate a review to determine if the rate can be lowered from 25% without compromising the deterrent effect or the reliability of the statistical sampling

- New pre-employment alcohol testing rules do not need to be adopted, and any random alcohol testing of airline employees should be at no more than a 10% rate

Other Recommendations:

- FAA should seek cost impact data from industry early, and industry should provide requested data so the agency can make an informed decision on proceeding with a proposal or not
- (A list of specific rules to be eliminated/amended or proposals which should not be adopted will be provided)

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Outline of Issue Air Traffic Control for the Future

Major Findings:

- Current Air Traffic Control (ATC) equipment is out of date, overworked, and incapable of providing a full range of services and efficiencies that will save airlines billions of dollars per year
- A satellite-based communication, navigation and control system is achievable and will improve the safety and efficiency of our air transportation system
- By FAA's own estimates, air traffic delays cost airlines \$3 billion per year and consumers \$7 billion per year domestically
- Full implementation of global positioning system (GPS) and air traffic control modernization will save the industry \$5 billion annually through delay reduction, more direct routing, and other savings
- The 1982 ATC modernization plan was supposed to cost \$12.6 billion and take 10 years. It is not yet implemented. Most major elements are 3-5 years late. The revised plan will now cost \$32 billion
- Institutional, not technological, issues are the cause of delays to system modernization
- A number of specific, short-term measures can improve system capacity immediately if implemented by FAA
- Several FAA programs face potentially significant funding cuts in FY94 and FY95 under various Congressional and Administration proposals

Major Recommendations:

- Change the U.S. air traffic control system to a satellite-based navigation system, integrated with a modernized ATC system by _____ (date to be provided).

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- **FAA and industry should pursue efforts to accelerate the implementation of the GPS and air traffic control modernization through such means as a public-private consortium, designed to develop and implement improved technology expeditiously.**
- **FAA should review the rule that limits operations at "high density" airports with the aim of either removing these artificial limits or raising them to the highest practicable level consistent with safety requirements. (National Airport's legislated limits would not be affected)**
- **Congress should fully fund system capacity elements--Facilities and Equipment; Airports; Research, Engineering and Development, and FAA Operations while these activities remain within the federal budget process**

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Outline of Issue Restructuring the Federal Aviation Administration

Major Findings:

- No major industry's minute-by-minute operating efficiency is directly controlled and limited by the daily operating efficiency of the federal government--except the airlines
- The outmoded air traffic control system costs airlines billions of dollars in delays annually and badly needs to be modernized
- Under federal budget, procurement, and personnel rules, this modernization has suffered fits and starts and cost overruns, despite efforts by dedicated and talented FAA officials.
- There is a fundamental inconsistency between the processes of government and the operating requirements of a 24-hour-a-day, high tech, capital intensive industry
- The federal budget process cannot be relied on to provide adequate funding for FAA's operations or capital programs
- User demand and the user fee revenue stream must drive ATC operations/modernization
- A traditional governmental agency cannot use bond financing to utilize a revenue stream to provide a rational funding mechanism for massive capital projects

Major Recommendations:

- Create an independent federal corporate entity within DOT to manage and fund air traffic control and related functions, e.g., system development, procurement, and maintenance. Policy control of the ATC system and safety oversight should stay with the federal government.
- Establish a panel of FAA and industry experts which will report in 90 days on the specific structure and the method of implementation and which will draft legislative

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proposals for creation of the corporate entity.

- The following principles should be embodied in the federal corporate entity's implementing act:
 - Ability of the corporate entity to create and use a predictable, stable source of revenues for operations, maintenance, and capital investment
 - Ability of the corporate entity to issue long-term bonds for capital purchases
 - Removal of current expenditures and revenues from the federal budget in equal amounts for a fiscally neutral effect
 - Sufficient management flexibility and compensation to attract and retain high-caliber leadership and staff
 - Flexibility to create systems for procurement, personnel, and budget consistent with best practices in the private sector
 - Flexibility in making an orderly transfer of operating functions to the new entity
 - Continued provision of ATC service to the Defense Department meeting national security requirements

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Outline of Issue Improving Financial Strength

Major Findings:

- Financially, airlines have been poor performers, even before deregulation. Only once in the last 25 years has the industry achieved an average profit margin typical of U.S. industry.
- The airline industry is now more heavily leveraged than ever. None of the largest combination airlines carries an investment grade rating from S&P. This is unprecedented.
- A stronger economy may help, but may not solve the problem quickly. Within this decade, the industry plans to spend as much as \$90 to \$150 billion for new fleet and other equipment. It is not at all clear under what terms this capital will be available.
- To return to health, individual airlines and the industry must restructure. This process is already underway. Airlines are scaling back hubs, curtailing orders, lowering costs and increasing employee productivity. Even these actions may not be sufficient.

Major Recommendations:

- A Presidentially-appointed airline financial advisory committee should be created in order to further the financial health of the airline industry; to review the financial condition of individual airlines composing such industry; and, to advise the Secretary of Transportation when an airline's financial condition poses risks to the public or the industry. The committee should be bi-partisan and include senior members from finance, industry and labor.
- DOT should monitor and review the financial health of the airlines. If necessary, the Secretary could review a company's business, capital or financial plans with the advisory committee's assistance. DOT should continue to review in advance major changes in an airline's ownership and control (e.g., leveraged buy-outs). If there are concerns, the Secretary would raise them directly with the airline's management or board.

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- If an airline repeatedly fails to heed warnings or concerns of the Secretary, DOT can exercise its existing authority. New DOT regulatory authority is not recommended.

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Outline of Issue Bankruptcy

Major Findings:

- The Commission recognizes that the financial problems facing the airline industry have been caused by a number of factors and that bankrupt carriers have been one of those factors.
- The Commission has not found compelling evidence that airlines prefer bankruptcy. While Chapter 11 protection does provide some cost advantages, such as suspension of debt payments, it can also lead to substantial loss of traffic, thereby reducing revenues. In addition, it imposes substantial costs for professional fees, and requires considerable time and attention by top management.
- Airlines under the protection of Chapter 11 may lack the resources to utilize most effectively limited entry international route authority awarded by the Department of Transportation. This can reduce public benefits that a stronger carrier could generate for the U.S. economy, American workers and the traveling public.
- Airline bankruptcies take too long
- Scarce airport gates have been tied up in bankruptcy proceedings for extensive periods of time, while they are unused or underutilized, to the detriment of the traveling public and surrounding communities which suffer a loss in air service
- Governmental bodies, such as the Pension Benefit Guaranty Corporation (PBGC), and airports, are prohibited from serving on creditors' committees which play a substantial role in developing reorganization plans
 - This prohibition is based on the fact that governmental entities' tax claims receive priority in bankruptcy, and they do not represent typical creditors. This rationale does not apply to PBGC, whose claims are based on unfunded pension liability, or airports, whose claims are based on a commercial landlord-tenant relationship

Major Recommendations:

- Require Bankruptcy Judges to make findings subject to judicial review for granting

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an extension of the current 120-day limit and impose an absolute limit of one year on the exclusive right of a bankrupt carrier to file a re-organization plan.

- Limit the time period for bankrupt airlines to assume or reject their leases for scarce airport gates. These public assets should not be tied up and underutilized for extensive periods of time to the detriment of surrounding communities and the traveling public.
- Allow governmental bodies such as the Pension Benefit Guaranty Corporation and airports, whose claims are not based on tax liability, to sit on creditors' committees.
- Clarify provisions in the bankruptcy code with respect to aircraft leases. Lessor concern about potential impacts of bankruptcy on their leases should be allayed, thus allowing other airlines to obtain better lease terms for aircraft.
- Make the Secretary of Transportation a statutory party to airline bankruptcy proceedings.

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Outline of Issue Stage 3 Noise Compliance

Major Findings:

- It is important to phase out the Stage 2 fleet and provide noise relief to millions of people who live near airports. Noise problems are one of the most significant restraints on airport capacity increases.
- The industry needs new aircraft, as well as modifications to Stage 2 aircraft, to meet the Stage 3 deadline which is being phased in by 1999.
- In order to maintain current fleet aircraft levels, 1,831 aircraft will have to be hush-kitted, re-engined, or replaced by 1999, in the absence of a "15 percent waiver" by the FAA.
- The net cost of fleet conversion attributable to the noise rule is estimated by the FAA to be \$4.5 billion.

Major Recommendations:

- Maintain the existing provisions of the 1990 Noise Act which protect the carriers' investment in Stage 3 aircraft by prohibiting enactment of local noise restrictions on Stage 3 aircraft without FAA approval.
- The federal government should not enact any provision to mandate the replacement, retirement, or modification of Stage 3 aircraft for noise purposes.

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Outline of Issues Labor-Management Relations

Major Findings:

- Labor-management relations in the airline industry have too often been characterized by confrontation.
- Without the active and enthusiastic participation of its workforce, no airline can hope to prosper.
- Airlines should be willing to discuss issues as well as share authority and responsibility with their workers before they reach the verge of bankruptcy, when there is a role for labor to play in improving the financial health of the company.

Major Recommendations:

- The airlines and the federal government should make a top priority the adoption of policies that encourage a new, cooperative partnership between labor and management.
- Amend ERISA and the tax code to allow a company to offer its own debt securities to employees as part of a qualified plan.
- Amend provisions of IRC Section 415 that limit qualified stock plans to 25% of an employee's income in certain cases.
- Defer recognition of capital gains on shares sold to employees in public companies if certain conditions are met.

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Outline of Issue Supporting General Aviation Manufacture

Major Findings:

- The general aviation manufacturing sector has been unable to regain the strong sales it enjoyed in the 1960s and 1970s.
- The financial woes of the airline industry have caused capital markets to tighten significantly in airline and aircraft financing.
- Foreign manufacturers of small aircraft and general aviation aircraft are subsidized by their governments, making it difficult for domestic manufacturers to compete internationally.
- The threat of products liability litigation has driven up the cost of doing business and undercut international competitiveness of U.S. manufacturers by placing a hidden tax on manufacturers, their suppliers, and customers.

Major Recommendation:

- Enact a "statute of repose" to eliminate the liability of small aircraft manufacturers for "design defects" after the product life of the aircraft or 15 years, whichever is less.

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Outline of Issue Assuring Service to Small Communities

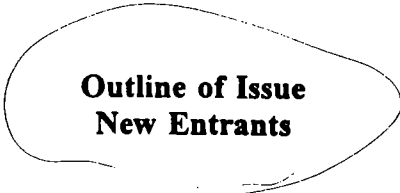
Major Findings:

- Airline service to small communities in the country is essential for their economic development and growth.
- The nation benefits from small communities being connected to the national transportation system.
- Airlines' hub and spoke networks have increased the quality and availability of service to small communities and have provided access to the national air transportation system.
- Many smaller cities, once served with large jets, are seeing service replaced by smaller, turboprop aircraft and some cities vigorously oppose this change.
- Of 500 communities guaranteed service under Section 419 of the Federal Aviation Act, 129 now require subsidy support.

Major Recommendations:

- Develop policies which encourage service to small communities.
- Maintain the federal Essential Air Service subsidy program at sufficient levels to serve its legislated purpose.

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Outline of Issue New Entrants

Major Findings:

- After a great influx of new entry in the early years following deregulation, virtually all of those airlines either failed, merged, or were acquired by other airlines by the mid-1980's. For several years the industry experienced very little successful new entry.
- Recently there has been a renewed flow of applications to DOT for certificate authority and an influx into the industry of new carriers.
- New entry and threat of new entry may be important to ensure competition.
- New entrant carriers which originate after interim Stage 3 phase-in deadlines will not be subject to any Stage 3 requirements until the next interim deadline.

Major Recommendations:

- DOT should continue to be receptive to certifying new applicants that can meet the rigorous scrutiny of the Department under its fitness standards.
- New carriers should have to meet the same requirements for fitness, operations, and maintenance, including Stage 3 fleet requirements, as existing carriers.

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Outline of Issue International Trade Policies Airlines

Major Findings:

- U.S. airlines face significant restrictions in international markets that hamper competition and efficiency and are damaging to the U.S. economy as a whole.
- The bilateral aviation agreement system is no longer conceptually sound nor sufficiently growth-oriented in the global trade environment. U.S. aviation interests will increasingly erode under the bilateral system.
- Current U.S. principles of international aviation competition as enunciated in the Federal Aviation Act are sufficient guidance for U.S. negotiators.
- Many U.S. airlines will require large amounts of equity capital in the next few years and that equity capital may be available from foreign investors/airlines seeking a means to gain access to U.S. markets. Current restrictions on foreign investment may affect the financial health and profitability of some U.S. airlines.
- U.S. airlines are burdened with an antiquated global damages liability system.
- The availability of civil aircraft to meet emergency airlift requirements is vital to the national security.

Major Recommendations:

- Focus U.S. negotiating efforts on creating a multi-national operating environment for airlines free of discrimination and restrictions.
- Negotiate multi-national agreements encompassing liberal provisions for passenger and cargo services; charters; cross-border investment and ownership; cabotage; fifth/sixth freedom traffic rights; fair market access and doing business opportunities; system capacity; government subsidies; and, customs and immigration facilities.

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- Amend the Federal Aviation Act to allow the U.S. to negotiate bilateral agreements that permit up to 49% foreign investment in U.S. airlines providing those bilateral agreements are liberal and contain equivalent opportunities for U.S. airlines; the foreign investor is not government owned; there are reciprocal investment rights for U.S. airlines; and, the allowed investment will advance the national interest and the development of a global liberal regime for air services.
- Enforce current bilateral aviation rights through all means, including renunciation and suspension of privileges and services when violations occur.
- Elevate the stature of international air service negotiations and appoint an Ambassador-at-Large to lead them.

Other Recommendations:

- Amend the Warsaw Convention by ratifying Montreal Protocols 3 and 4 and approving a supplemental compensation plan.
- Protect national security and defense interests by assuring that cross-border investment and ownership do not adversely affect the availability of aircraft for the Civil Reserve Air Fleet program.
- Conclude interim agreements liberalizing air cargo and charter services if those agreements support the over-all objective of multi-national liberalization.
- Avoid unilateral sanctions against air services unless passenger safety concerns are involved. This would not preclude sanctions for violations of a bilateral agreement.

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Outline of Issues International Trade Policies Aerospace Manufacturers

Major Findings:

- A strong and competitive aerospace manufacturing sector is vital to the national interests because of its contribution to technology development, maintenance of a high-skill labor force and a positive balance of trade.
- National policies consistent with international obligations should promote the retention and expansion of aerospace industry jobs.
- U.S. aerospace manufacturers are being competitively disadvantaged in international and domestic markets by trade distorting subsidies, government-mandated offsets, other purchasing and sourcing incentives and unfair trade practices.
- U.S. aerospace manufacturers products are highly competitive in the international environment.
- Export-Import Bank funding and lending authority is inadequate for the future.
- A plethora of sometimes conflicting standards and rules exist in international markets that are costly to aircraft and component parts manufacturers.

Major Recommendations:

- Strengthen and expand the coverage of international agreements that contain disciplines on government subsidies and government involvement in aircraft manufacturing projects.
- Enforce international trade obligations and U.S. trade laws and seek to eliminate subsidies, offsets, purchasing and sourcing incentives and other unfair international trading practices.
- The Department of Commerce, with the Secretary maintaining full discretion, should use the maximum means available under the General Agreement on Tariffs and Trade

WORKING DRAFT

to counteract illegal subsidies.

- Adopt explicit goals and devise policies to encourage domestic and international cooperation among airframe, component and engine manufacturers' in order to increase their ability to attract sufficient investment capital to support new product development, manufacture and marketing of new products.
- Increase Export-Import Bank funding levels and lending authority for large and small aircraft to the extent necessary to provide parity in financing for U.S. manufacturers compared with their foreign competitors.
- Increase efforts to harmonize standards for the manufacture and initial certification of aircraft and encourage further cooperation among certification and inspection agencies.
- Avoid placing unilateral sanctions on manufacturers' export of aerospace products unless those sanctions are necessary to protect the national security.

SUGGESTED FORMAT

AIRLINE COMMISSION RECOMMENDATIONS

ISSUE: Taxes and user fees (for example)

RECOMMENDATION (S): Roll back the ticket tax and the cargo
waybill tax to their pre-1990 levels of 8%
and 5%, respectively.

ADMINISTRATION POSITION:

- Immediately accept--cite steps that will be taken
- Accept premise, but more work needed--state agency that
should have the lead
- Further review needed will respond in 30 days--state
agency that should have the lead
- Reject immediately--state specific reasons



Department of Transportation

Office of the Secretary
400 Seventh Street, S.W.
Washington, DC 20590

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U.S. Department of
Transportation

Office of the Secretary
of Transportation

Assistant Secretary

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

MEMORANDUM

SUBJECT: Airline Commission Recommendations:

Domestic Team Issues

FROM:

Patrick V. Murphy
Patrick V. Murphy
Acting Assistant Secretary for
Policy and International Affairs

TO:

All Working Group Members:

Attached is the Domestic Team's proposed Administration's position for each recommendation relating to regulatory cost, new entrants, labor-management relations, and assuring service to small communities. Each of you should also receive a similar package from other Teams. For the Thursday NEC meeting, we want to focus on areas where you may disagree with the proposed position rather than having the Teams discuss each recommendation.

Attachment

Distribution

CEA	Joseph Stiglitz, Expert Economist, Council of Economic Advisors
COMMERCE	Jonathan C. Menes, Acting Assistant Secretary for Trade Development, Department of Commerce
DOD	Bob Moore, Assistant Deputy Undersecretary for Defense
DPC	Michael T. Schmidt, Senior Policy Analyst, Office of Domestic Policy, Old Executive Office Building
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JUSTICE	Mark C. Schechter, Chief, Transportation, Energy and Agriculture, Antitrust Division, Department of Justice
LABOR	John D. Donohue, Assistant Secretary for Policy
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NEC	Michael Deich, Special Assistant to the President for Economic Policy, National Economic Council
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for Economic and Business Affairs, Department of
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TREASURY Alicia H. Munnell, Assistant Secretary for Economic
Policy, Department of Treasury

USTR Donald M. Phillips, Assistant U.S. Trade
Representative for Industry, U.S. Trade
Representative

#

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: Regulatory Cost Burden

Commission Recommendation #8

FAA should subject regulations to an annual regulatory cost budget -- except for emergency safety regulations needed to address a direct and immediate threat to the traveling public.

Administration Position

Reject Immediately.

The Administration believes that a mechanism to prioritize rulemakings is worthwhile, but is concerned that a regulatory cost budget may distort the rulemaking process and ultimately result in a diminution in aviation safety. Effective utilization of industry resources to enhance system safety should be a consideration in the regulatory process, but not the driving force. Aviation rulemaking must consider not only costs, but also benefits derived. In this regard, the Administration is reviewing and revising the regulatory review process.

Developing an appropriate regulatory cost budget presents several significant challenges, such as:

- o Selecting the type of regulatory cost budget, *e.g.* (1) cumulative cap, (2) annual limit on present value of costs for final regulations issued for a given year, or (3) annual limit on aggregate costs incurred by industry from all existing regulations throughout the compliance period.
- o Determining the appropriate level of the regulatory cost budget (by whom?) to address actual safety needs and negotiating agreement among all parties to abide by established parameters.
- o Setting priorities within the budget: How would FAA handle congressionally mandated rulemaking items, particularly if the sum exceeded the regulatory cost budget? Would recommendations by FAA, NTSB, and the industry be subordinated to Congressionally mandated rulemakings? How should petitions for rulemaking from industry itself be integrated into the structure of priorities? Would exemptions from the budget limit be allowed and, if so, on what basis?
- o Determination of regulatory costs: Costs of a rulemaking are usually unknown until the specific requirements have been hammered out. Would FAA be required to withhold rulemakings from one year to the next if the regulatory budget had been exceeded?
- o Rulemakings may often affect only segments of the industry, *e.g.*, one type of aircraft or newly certificated carriers versus the existing fleet. Would the distribution of burden be set equally across sectors or across airlines?

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: Regulatory Cost Burden

Commission Recommendation #9

Congress and DOT should be informed of the annual costs their own proposals would impose on the industry.

Administration Position

Accept Premise, but More Work Needed.

The Administration believes this recommendation has merit, but that more work is needed on how it could be implemented. FAA will take the lead on the matter.

FAA could formulate and submit an annual report to the Secretary and Congress summarizing the present value of costs and benefits of rules issued, including cost savings, for the relevant fiscal year. In addition, FAA will invite the aviation industry to submit data on the actual costs incurred to comply with provisions of the regulations, and will incorporate such data in reports to DOT and Congress.

Furthermore, in addition to placing copies in the relevant rulemaking docket for public review and comment, FAA could also transmit to the Congress a copy of the FAA-generated regulatory evaluation (cost/benefit analysis) of each proposed regulation that is specifically mandated by the Congress.

The intent of this recommendation may also include the case where the Congress is considering a legislative mandate for a regulation and would like to be told before enactment of the costs of the legislation. Consultation among all interested parties would be required to arrive at an approximate answer to the question (in the absence of any regulatory specifics), and FAA could work with those parties to develop annual cost figures, as requested.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: Regulatory Cost Burden

Commission Recommendation #10

Congress, DOT and FAA should more clearly define legislative and regulatory proposals to address problems effectively and efficiently.

Administration Position

Immediately Accept.

FAA currently uses the Aviation Rulemaking Advisory Committee to involve industry and public interest groups in formulating rulemakings that will effectively and efficiently address problems. Utilization of the Advisory Committee has improved the rulemaking process, and FAA would welcome specific suggestions for further improvements. FAA will meet with representatives of Congressional committees to determine how legislative directives could be altered to more clearly define and address problems effectively and efficiently.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: Regulatory Cost Burden

Commission Recommendation #11

Establish an ongoing and independent mechanism to provide objective outside guidance and expertise to FAA to assist in cost/benefit analysis methods and to review cost/benefit disputes.

Administration Position

Accept Premise, but More Work Needed.

The Administration believes this recommendation has merit, particularly with regard to ways to obtain guidance and expertise on cost/benefit methodology. ORIA, for example, could lead an interagency working to expand and improve regulatory cost/benefit analysis.

✓ doesn't
ORAB already have

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: Regulatory Cost Burden

Commission Recommendation #12

FAA should seek cost impact data from industry early, and industry should provide requested data so the agency can make an informed decision on proceeding with a proposal.

Administration Position

Immediately Accept.

FAA will take the lead on in examining implementation strategies, drawing upon the Aviation Rulemaking Advisory Committee, which is expected to foster FAA/industry cooperation and thereby facilitate the exchange of data.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: Regulatory Cost Burden

Commission Recommendation #13

The random drug testing rate should be established immediately at 25%, which is the rate used for FAA's own safety-related staff, including air traffic controllers. FAA should also complete a review within 12 months to reduce the rate to the lowest rate it determines possible without reducing the deterrent effect or the statistical reliability of sampling.

Administration Position

Accept Premise, but More Work Needed.

The Administration believes the recommendation has merit, but any action must await the completion of an ongoing rulemaking. DOT has already issued an Advance Notice of Proposed Rulemaking to gather information on which to base a change in the random testing rate. The next step, a Notice of Proposed Rulemaking (NPRM), will follow very shortly.

Although it was a step taken only after considerable forethought, the mechanics of changing the random test rate for FAA employees was a relatively simple internal matter. The random test rate for the aviation industry, as for other transportation industries, was established via public rulemaking. It is essential that the rulemaking to change the random test rate adhere to the provisions of the Administrative Procedures Act in order for the action to stand up in court.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: Regulatory Cost Burden

Commission Recommendation #14

New pre-employment alcohol testing rules do not need to be adopted, and any random alcohol testing of airline employees should be at no more than a 10% rate.

Administration Position

Accept Premise, but More Work Needed.

The Administration acknowledges that the value of pre-employment alcohol testing may be marginal, but the Omnibus Transportation Employee Testing Act of 1991 explicitly includes pre-employment alcohol testing among the tests it mandates. This recommendation of the Commission, however, may be the basis for a reconsideration of the issue by Congress.

The Department included pre-employment testing in the Notice of Proposed Rulemaking issued to implement the act and has no legal basis for excluding pre-employment testing from the final rule that will be issued shortly.

There is no statutory requirement for any specific random testing rate for alcohol. As part of its current rulemaking to implement the act, FAA must consider what level is necessary to assure appropriate deterrence and detection. A 10% rate is within the range contained in the agency's notice of proposed rulemaking.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: Regulatory Cost Burden

Commission Recommendation #15 [Added 08/02/93]

DOT and FAA should undertake an intensive short-range regulatory review effort in close coordination with industry and interested parties to eliminate or amend existing regulations consistent with safety and security requirements.

Administration Position

Immediately Accept.

As a first step, announce that the Deputy Secretary of DOT will spearhead the recommended review, which will include systematic evaluation of existing rules under the forthcoming White House regulatory review process, an implementation schedule, and periodic progress reports to industry and the public. Although safety and security must be paramount, there may be rules that are no longer needed or can be revised to provide for more cost-effective approaches to resolving the problem at issue.

To avoid wasting resources and duplicating a prior review, FAA and the Office of the Secretary will ask the industry for suggestions on regulatory areas where regulatory burdens exceed benefits. It is anticipated that the Aviation Rulemaking Advisory Committee would be a useful vehicle in this regard.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: New Entrants

Commission Recommendation #35

DOT should continue to be receptive to certificating new applicants that can meet the rigorous scrutiny of the Department under its fitness standards.

Administration Position

Immediately Accept.

The Federal Aviation Act specifies that the Department should encourage entry into air transportation markets by new carriers. This has been and will continue to be the Department's policy.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: New Entrants

Commission Recommendation #36

New carriers should be required to meet the same requirements for fitness, operations and maintenance, including Stage 3 fleet requirements, as existing carriers.

Administration Position

Reject Immediately.

In another area relating to aircraft noise, the Commission makes the following recommendation:

"Maintain the existing provision of the 1990 Noise Act which protect the carriers' investment in Stage 3 aircraft...."

Any change to the Stage 3 requirement for new entrants would appear to violate this Commission charge for noise-related issues. Moreover, the current rule provides minor relief from the requirements imposed on established carriers so as not to raise a barrier to new entry. The requirements for new entrants and established carriers converge by 1998.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: **Role of the Workforce (Labor-Management Relations)**

Commission Recommendation #37 [Added 08/02/93]

Policies which promote the retention and expansion of aviation industry jobs should be developed to the extent they are consistent with our international obligations.

Administration Position

Immediately Accept.

DOT will take the lead in developing options on how best to carry out this recommendation. The Secretary has already brought together and met with carrier labor and management to explore potential labor/management issues. The Department could also sponsor a one-day symposium on creation of aviation industry job opportunities.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: **Role of the Workforce (Labor-Management Relations)**

Commission Recommendation #38 [Added 08/02/93]

The Department of Transportation should require acquiring carriers to advise DOT of their plans to protect potentially displaced workers.

Administration Position

Immediately Accept.

In the future, any carrier seeking approval for an international route transfer will be asked to advise DOT of its plans to protect potentially displaced workers.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: **Role of the Workforce (Labor-Management Relations)**

Commission Recommendation #39

The airlines and the federal government should make a top priority the adoption of policies that encourage a new, cooperative partnership between labor and management.

Administration Position

Immediately Accept.

- o The Administration is deeply committed to accelerating the evolution of labor-management relations, throughout the economy, in the direction of collaboration and flexibility.
- o This commitment has been evidenced most recently by the involvement of the President and the Secretaries of Labor and Commerce in sponsoring a national Conference on the Workplace of the Future, and by the creation of a new Office of the American Workplace within the Labor Department.
- o The airline industry offers clear opportunities for improving efficiency and flexibility through new-style workplace practices. (Southwest Airlines, for instance, is an exemplar of worker involvement and collaboration.)
- o At the same time, the Administration recognizes that workplace transformations take time, and collaboration cannot by itself rescue firms from a financial crisis. Worker involvement and other workplace reforms must not be seen as last-ditch expedients to be tried only when all else has failed, but as systemic improvements to shore up the long-term productive potential of all firms.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: **Assuring Service to Small Communities**

Commission Recommendation #60

Develop policies which encourage service to small communities.

Administration Position

Accept Premise, but More Work Needed.

The Administration generally believes that small communities have fared well under deregulation. The Essential Air Service program has provided a safety net for the relatively few communities that were threatened with the loss of service. DOT will endeavor to avoid policies which might reverse the gains of small communities in the years ahead.

**PROPOSED ADMINISTRATION POSITION ON
AIRLINE COMMISSION RECOMMENDATION**

ISSUE: **Assuring Service to Small Communities**

Commission Recommendation #61

Maintain the federal Essential Air Service subsidy program at sufficient levels to serve its legislated purpose.

Administration Position

Accept Premise, but More Work Needed.

The Administration supports continuation of the EAS program, but due to budgetary pressures, will continue to assess whether the low passenger levels at some non-isolated communities justify a continuation of federal subsidy support. DOT is responsible for this assessment.

This recommendation will also need to be considered within the broader context of Commission recommendations on funding requirements.

**DOMESTIC AVIATION ISSUE:
REGULATORY COST RELIEF/REFORM
Team Leader: DOT**

Likely Commission Recommendation

The Federal Government should reduce the regulatory cost burden on the airline industry by terminating or revising regulations, postponing pending regulations, declaring a moratorium on new regulations, and/or other appropriate means. (Note: It is not anticipated that the Commission will recommend specific rules and regulations for modification.)

Options for Response

1. [Pledge the Administration to reducing the industry's regulatory costs over 3 years by 1 million dollars.] Announce that the Deputy Secretary of DOT will spearhead the effort, to include a systematic evaluation of existing and/or proposed rules under the forthcoming White House regulatory review process, an implementation schedule, and periodic progress reports to the industry.
2. Declare a moratorium on new rules pending the outcome of the regulatory review.

Proposed Administration Position

Adopt both options. Committing the Administration to a substantial cost-reduction effort would be an appropriate response to what we anticipate will be a chief Commission recommendation. Achieving sizable regulatory cost savings appears doable; the National Aviation Associations Coalition and others have identified numerous rules and regulations for elimination or reduction. It is unrealistic to expect all of those rules to be changed, but the potential for major savings exists. The advent of a new White House review process provides a convenient opportunity to conduct a systematic assessment at a high level, underscoring the Administration's commitment to regulatory reform. A moratorium on new rules should be preceded by contacts with key Members of Congress to enlist their support.

DOMESTIC AVIATION ISSUES TEAM
SUGGESTED TOPICS TO BE ADDRESSED IN AIRLINE COMMISSION REPORT

Domestic Competition and Antitrust Enforcement. Although the airline industry is generally competitive as a whole, there is a continuing need for pro-competitive antitrust oversight:

- o Market power does exist in a number of city-pair markets.
- o Marketing practices that distort competition by inhibiting new entry are of concern.
- o Antitrust laws against anti-competitive agreements and mergers must be vigorously enforced.

The Commission should be cautious about characterizing the industry in a way that would undermine the continuing efforts of DOJ and DOT to protect and promote competition.

New Airlines. The Commission report should emphasize that new entry into the airline industry is an important source of competition and should be encouraged.

The High Density Airport Rule (Slots). ^{4 airports 3 O'Hare, La Guardia, National, JFK} The slot rule has been in place for 25 years. While the methods of allocating slots have been revised over time, there has never been a comprehensive study of the need for the slot rule. The Commission should recommend that such a study be undertaken, including access for both domestic and international service, need for slots, alternative methods of allocation, small community needs, new entrant needs, competitive impacts, and peak-period pricing.

 Essential Air Service to Small Communities. This issue has not received much attention in the Commission hearings. Since the EAS program will be addressed in the current budget debate in Congress, it may not be necessary for the Commission to address it separately. Nevertheless, there are efforts to eliminate this \$38.6 million annual program. If the Commission has a view, it should be stated. *Pen - alternative to EAS.*

CARRIER FITNESS

Question: Should DOT's fitness process be used as an "early warning" system to forestall financially weakened carriers from entering Chapter 11 bankruptcy?

The Airline Commission has discussed (and may ultimately recommend) that the Department use its fitness review process to help prevent financially troubled carriers from resorting to bankruptcy protection. This would involve the application of rigorous financial standards for targeting troubled carriers as well as specific actions (as yet undefined) against the carriers targeted. Using fitness in this fashion would add a significant new dimension to the existing process, since it would require that the Secretary and Department to make judgments about a carrier's ultimate financial disposition that are presently left to the marketplace and/or bankruptcy court.

Current Fitness Process

Under the Federal Aviation Act, anyone proposing to conduct air transportation operations as a certificated or commuter air carrier must be a U.S. citizen and must be found "fit, willing and able" to conduct the services proposed. The Department uses a three-part test to determine the fitness of a prospective carrier:

- o First, it examines the managerial competence of the carrier's key personnel to determine whether they have sufficient business and aviation experience to operate an airline. DOT also examines whether the management team as a whole possesses the background and experience necessary for the kind of operations proposed.
- o Second, the Department reviews an applicant's operating and financial plans to determine whether the carrier has a reasonable understanding of the costs of starting its operations and a plausible plan for raising the necessary capital. A new entrant must demonstrate that it has access to sufficient funds to cover, at a minimum, a reasonable estimate of all of its pre-operating/start-up expenses, plus a working capital reserve equal to the operating costs that would be incurred in 3 normal months under the operations proposed.
- o Third, the Department determines whether an applicant and its key personnel have a history of safety violations or consumer fraud activities that would pose a risk to the traveling public, or a history indicating that the carrier is unlikely to comply with government laws, rules and directives.

In addition to passing an initial fitness review, a carrier must remain fit. Currently, the Department gives bankrupt and other financially weakened carriers closer oversight under the standards described above. A carrier found to lack continuing fitness is subject to loss of its certificate. A "show cause" or full evidentiary hearing would be necessary in such an action. Also, if an operating carrier ceases operations for a period of time, however brief, it must undergo a Department fitness review before restarting operations.

It is important to recognize that the existing fitness process is primarily intended to protect consumers, not to limit competition or control industry capacity. Bankrupt carriers have been able to meet consumer concerns through such devices as creating escrow accounts for passengers' benefit. Travel agents and credit card companies also provide a layer of protection.

Implications of an Early Warning System

Using fitness as an early warning device would require well-defined financial standards, based on such factors as cash-flow liquidity, debt/equity ratios, and working capital sufficiency. Developing such standards through the rulemaking process is certainly plausible, although no major carrier today save for Southwest would meet them. More troublesome is defining specific actions to be taken against those carriers not meeting the standards. Jawboning of carrier management and/or owners by the Secretary and other DOT officials could be an initial step, with the level/frequency dictated by the carrier's standing *vis-a-vis* the standards. Subsequent actions could involve government-mandated measures to preserve cash, reduce debt, shed assets, or whatever else is deemed necessary to keep the carrier solvent. At some point the Secretary would be faced with the decision of whether to pull the carrier's certificate, perhaps resulting in substantial job losses, community disruption, diminished service, etc., rather than allow the carrier to seek bankruptcy protection.

AIRCRAFT NOISE

Question: Should the government-mandated schedule for conversion from Stage 2 (noisier) to Stage 3 (quieter) aircraft be delayed in order to reduce the airline industry's financial burden? What are the likely consequences of any delay?

The Airline Commission has discussed the possibility of postponing the conversion to Stage 3 aircraft, although it is not clear whether it will recommend this action. One alternative to delaying the current schedule—federal loan guarantees or subsidies to help defray conversion costs—appears to have been discounted by the Commission in light of the industry's excessive debt load.

The government-mandated conversion schedule is a key element of a national noise policy that strikes a balance between the interests of the traveling public and the airline industry, on one hand, and the interests of local communities subjected to aircraft noise, on the other. Postponing or delaying the conversion schedule is likely to upset this balance. Although local authorities are not precluded from imposing airport access restrictions under the national policy, the Department has successfully dissuaded them from doing so in most cases, partly on the basis of the Stage 3 conversion schedule. Without the leverage provided by the current schedule, carriers could conceivably be faced with different access restrictions at airports around the country, greatly complicating their operations. Any proposal to ease the conversion schedule can be expected to generate strong opposition from noise-exposed communities throughout the country, as well as from air carriers that have invested heavily in converting their fleets to Stage 3.

Conversion Schedule and Requirements

The Airport Noise and Capacity Act of 1990 (ANCA) established a national aviation noise policy. The law prohibits the operation of Stage 2 aircraft to or from an airport in the contiguous United States after December 31, 1999, with a provision for waivers for a limited number of Stage 2 aircraft if certain conditions are met. Regardless of waivers, however, no Stage 2 aircraft can be operated to or from airports in the contiguous United States after December 31, 2003. In September 1991, FAA established by regulation interim compliance dates to ensure progress toward the 1999 goal. The regulation allows each airline to comply with the new noise standards by either removing a certain percentage of Stage 2 aircraft from its fleet (the phaseout option), or by attaining a prescribed proportion of Stage 3 aircraft in its fleet (the fleet-mix option). Under the phaseout option, an operator must reduce, from a baseline, the number of Stage 2 aircraft in its fleet by 25 percent by December 31, 1994; 50 percent by December 31, 1996; and 75 percent by December 31, 1998. If the fleet-mix option is chosen, an airline must have its fleet consist of not less than 55 percent Stage 3 aircraft by December 31, 1994; not less than 65 percent Stage 3 aircraft by December 31, 1996; and not less than 75 percent Stage 3 aircraft by December 31, 1998.

The regulation provides for limited waivers from interim as well as from the final compliance requirements. With regard to interim compliance dates, an operator must generally file a request for a waiver that shows it would be in the public interest and that meeting the compliance date would be financially burdensome, physically impossible, technologically infeasible, or would adversely affect competition or service to small communities. Waiver requests for relief from the final compliance dates are limited to U.S. air carriers and must be supported in the same manner as interim requests. In addition, the applicant's fleet must comprise at least 85 percent Stage 3 aircraft by July 1, 1999.

All large jet aircraft now being manufactured meet Stage 3 requirements. Many of the Stage 2 aircraft can be modified to meet Stage 3 noise levels by installing noise abatement retrofit equipment (hushkits) or new Stage 3 engines. Cost estimates for hushkitting range from \$1.5 million to more than \$3 million per aircraft, while re-engining estimates range from \$8 million to \$10 million per aircraft. The estimated cost to comply with the ANCA and FAA's implementing rule ranges from \$880 million to \$5.7 billion (in un-discounted 1991 dollars).

Most large passenger air carriers are retaining their Stage 2 aircraft while already approaching or exceeding the 55 percent fleet-mix requirement mandated for December 31, 1994. Several large cargo operators are well-positioned to meet that date, and it appears that most major U.S. airlines will have little difficulty complying with the first target date, at least on a fleet-mix basis. Results from the second annual part 91

compliance reports indicate that the passenger and cargo carriers providing the great majority of operations will achieve full interim compliance without the need for financial incentives. Of the major carriers, all but TWA and Northwest Airlines are currently projected to comply with the first interim milestone on December 31, 1994. While some may argue that the industry cannot afford to comply with the rule at this time, neither the Air Transport Association (which is on record as committed to the rule) nor any individual operator has made this argument to FAA.

Local Access Restrictions

At the local level, airport proprietors have taken an active role in noise mitigation because of the need to respond to the concerns of the communities they serve and the possible liability for damages that might be awarded to property owners due to noise (1962 Supreme Court decision: *Griggs v. Allegheny County*). While there are a number of other approaches to reduce noise impacts – including improvements in airport design, noise abatement operating procedures, land acquisition and zoning, and soundproofing – some airport proprietors have adopted, proposed, or are considering instituting airport use restrictions. The Port Authority of New York and New Jersey, for example, is considering implementing a Stage 2 phaseout schedule that is more stringent than that established by the federal government.

Under ANCA, to impose an airport use restriction, an airport proprietor is required to give 180-day public notice prior to instituting any restrictions on Stage 2 airplanes, document the rationale for the measures to be taken, and provide a detailed cost-benefit analysis of the proposed rule to enable assessment of unfair or undue burdens on carriers or commerce. Airport proprietors are also limited in their right to impose new Stage 3 restrictions. In addition to submitting the details and rationale of their proposed restrictions to FAA, they must obtain FAA's approval.

Local restrictions can impose a cost on the airlines by (1) requiring airlines to accelerate their purchases of Stage 3 aircraft, (2) reducing a carrier's flexibility to schedule its aircraft, and (3) spurring other airport proprietors to institute similar restrictions. Restrictions at a single airport may not trigger statutory prohibitions—i.e., unjustly discriminate against any airport user, impede the federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce. However, in the aggregate, the proliferation of airport use restrictions by individual airport proprietors could be onerous to the air carrier industry and detrimental to the national transportation system. For this reason, the industry has insisted that the federal government take an active role in preventing local authorities from imposing access restrictions.

FINANCIAL ISSUES: TAXATION

Likely Commission Recommendations

The Airline Commission is likely to recommend the following:

1) provide relief from the corporate alternative minimum tax (AMT), 2) reduce the air passenger ticket tax from 10 percent to 8 percent and the freight waybill tax from 6.25 percent to 5 percent, and 3) expand tax incentives for employee stock ownership plans (ESOPs).

Options for Response

The Commission will likely support the AMT relief provided in the House or Senate budget reconciliation bills, rather than recommend the additional AMT relief supported by the industry. The Administration should support this recommendation. (The House bill is the same as the Administration's FY94 budget proposal. Given revenue constraints, the Administration would be satisfied with the Senate proposal.) The reconciliation bills would reduce liabilities from the air transportation industry by \$320 million and \$144 million for FY94-98 for the House and Senate bills, respectively.

The need for additional tax relief for the airline industry is questionable for the following reasons: 1) The tax system is not the source of the airline industry's financial problems, and tax relief will not solve them; 2) To the extent that tax relief finances additional capacity, it may have a detrimental effect on the industry; 3) To the extent that tax relief is used to reduce fares, the positive effect on the industry's bottom line will be mitigated; 4) The consensus of experts on the aviation industry is that the industry will return to profitability within a few years.

The principal advantage of the proposed reduction in the ticket and waybill taxes is that the proposed form of tax relief is narrowly targeted to taxes collected by air carriers. However, the argument that these taxes burden air carriers is questionable. The purpose of the aviation taxes is to charge users of the aviation system for infrastructure investment and for a portion of the services that the Federal government provides to aviation. Reducing these taxes would increase the subsidy to users from other taxpayers. Finally, the ticket tax is likely to be borne primarily by passengers in the long-run. Thus, passengers are also likely to be the primary beneficiaries of the proposed ticket tax reduction.

Laura.
Fact check

The proposed tax reduction would reduce revenues by \$4-\$5 billion for FY94-98. Since no revenue offset is expected to be recommended by the Commission, the proposal would violate the PAYGO provisions of the Budget Enforcement Act of 1990.

The proposed changes in ESOPs would 1) expand the class of securities held in an ESOP to include employer-issued debt, 2) increase the current law allocation limits that apply to employees in the ESOP, and 3) expand the tax-free rollover rules to cover sales of stock to an ESOP of a publicly-held corporation. The Commission also may be considering further

-2-

limitations under which these proposals would apply only where the employees' wages are subject to collective bargaining and the ESOP owns at least 30 percent of the company.

The proposals would potentially affect a broad class of employers outside of the airline industry for which no additional ESOP incentives would be justified. The proposals are not consistent with the underlying tax policy rationale for providing tax-favorable treatment to ESOPs and other retirement savings plans. In particular, allowing an ESOP to hold debt securities represents a significant departure from the view that ESOPs should serve as a vehicle for increasing employees' ownership stake in their employer. Similarly, expanding the tax-free rollover treatment to sales of publicly-traded stock broadens the incentive beyond its original purpose, which was to encourage sales to an ESOP by owners of businesses for which there is no readily available market.

Proposed Administration Position

- Provide AMT relief: Support, probably the Senate version.
- Reduce air passenger ticket and waybill taxes: Oppose
- Expand ESOP incentives: Oppose

July 15, 1993

IWG INTERNATIONAL ISSUES TEAM
HARMONIZATION OF AVIATION REGULATIONS (Commission Issue 10)

1. LIKELY COMMISSION RECOMMENDATIONS

The Commission's options list includes seeking common international safety and security regulations. A recommendation would be helpful to ongoing harmonization efforts.

2. OPTIONS FOR RESPONSE

Common Safety and Security Standards

Harmonization of international aviation regulations is an achievable and worthwhile goal. Ongoing efforts & possibilities:

- ✈ *Harmonization of US and European Performance-Based Standards:* Accelerating FAA's work with Europe's Joint Aviation Authorities (JAA) to harmonize the Joint Aviation Requirements (JARs) with US certification standards would improve our global competitiveness.
- ✈ *Replace Bilateral Airworthiness Agreements:* The BAA format for reciprocal aircraft certification programs is no longer adequate. A new type of agreement, the *Bilateral Aviation Security Agreement (BASA)*, could cover such areas as maintenance, flight simulators, and noise standards along with certification procedures.
- ✈ *Technical Assistance:* Expanding our ability to provide technical assistance in developing other countries' aviation safety infrastructure would benefit passengers and support US aircraft manufacturers.
- ✈ *Oversight:* Adequate overseas staffing is needed both to fulfill certification and surveillance duties and to provide guidance on development of aviation systems, standards, and technologies.
- ✈ *Regional Authorities:* To reduce regulatory burdens, FAA is encouraging the development of regional civil aviation authorities (e.g., European Joint Aviation Authorities).
- ✈ *Security:* Harmonization of security standards and/or the authority to recognize foreign security inspections on a reciprocal basis would benefit US airlines and taxpayers. The 1990 Aviation Security Act would have to be amended.

3. POSSIBLE POSITION

We should encourage and support Commission recommendations to harmonize standards for manufacturing, certification, operations, and security.

IWG INTERNATIONAL ISSUES TEAM
MULTILATERAL APPROACHES (Commission Issue 3)

1. LIKELY COMMISSION RECOMMENDATIONS

We expect the Commission to recommend some type of multilateral negotiating effort aimed at deregulating international aviation.

2. OPTIONS FOR RESPONSE

The options below are based on two assumptions. First, a liberal multilateral aviation regime is a long-term goal. Second, international deregulation is not an achievable short-term goal since key aviation partners do not share our interest.

Short-term: Continue to seek the most open and liberal arrangements we can possibly achieve through the bilateral system. Options:

- *Maintain current approach.*
- *Develop enhanced bilateral strategy (e.g., bigger carrots and sticks, such as a threat to renounce unsatisfactory agreements and criteria for doing so).*

Medium- to Long-term: The Commission has looked at regional, sectoral, and "like-minded" ("minilateral") approaches to achieving a multilateral international aviation regime.

- *Regional:* Conceptually an attractive concept, regional liberalization may be the least achievable in practice. Possible areas include Central America, the European Community, and the Asia-Pacific countries.
- *Sectoral:* Liberalization of all-cargo traffic is one possibility. We might explore this idea again with the EC. Are there other regions or groupings we could approach?
- *Like-Minded:* Could we make progress through a series of liberal/open-skies agreements with like-minded countries? Several countries (e.g., Switzerland and Singapore) are interested, and the proposed "Alcazar" merger of four European carriers may give us another opportunity. Rep. Oberstar has advocated a similar "network" approach.

3. POSSIBLE POSITION

If the Commission provides no specific guidance on achieving a multilateral structure, we could consider a two-track approach: (a) for the short-term, strengthen our bilateral negotiating strategy; and (b) begin the development of intermediate- to long-term strategy based on sectoral or "minilateral" approaches.

1. *US Call for Global or EC open-skies forum.*
2. *Adopt Crandall comparability criterion -- limit access to comparable "size of market."*

COMMISSION RECOMMENDATIONS AND ADMINISTRATION ACTIONS

FAA STRUCTURE IMPROVEMENTS:

- Likely Commission Recommendations: Draft legislation to reinvent the FAA that would establish a corporation to house the FAA operating functions. The corporation would, under DoT/FAA policy direction, manage and fund the ATC and appropriately related FAA divisions. Policy making, the regulatory function, enforcement, and airport grants would remain within DoT. The formation of the corporation would be budget neutral. The corporation would be provided with the authority to leverage user revenues for capital improvements, including the issuance of long-term bonds. The corporation would have the management flexibility and compensation that can attract and retain quality leadership. The systems for procurement, personnel management, and budgeting will be consistent with the operation of an advanced technology organization. Air traffic control services would continue to be provided to the DoD through a common military-civil system. The corporation would continue to be responsive to the policy and safety oversight of Congress.

- Evaluation:

- Pros:

- a. Would provide a comprehensive solution to the budgeting, procurement, personnel recruitment, and continuity of leadership problems experienced by FAA.

- b. Reduce the level of micromangement by DoT, OMB, Congress, and other government agencies.

- c. Provide continuity in leadership throughout the senior levels of the air traffic control operating system.

- d. Access to the talents and expertise of the corporate world would be facilitated.

- e. Experience has shown that the corporate model can work more efficiently if properly structured and provided with adequate sources of revenues.

- f. Pricing of services should more closely reflect utilization under a cost-based system.

- g. A dedicated revenue stream should facilitate rapid incorporation of new technology in the ATC operating system.

- Cons:

a. Legislation that can garner the support necessary for passage will be difficult to develop and may not be timely enough to obtain the results envisioned by the commission.

b. DoD/FAA coordination and relationship could be jeopardized. The DoD/FAA partnership is important to national security, air safety and the efficient flow of air traffic. A new corporation may not give adequate priority to national security requirements such as special use airspace, assistance with air defense, and control of air space in wartime.

c. The corporation could be less responsive to the safety and service concerns of the traveling public when economic issues are involved.

d. Safety of air travel could decrease if the corporation focuses primarily on reducing airline operating costs.

e. Separating FAA operating and policy making functions could create a dysfunctional national air space system.

f. The corporation could be dominated by the concerns of the few mega-carriers.

g. Given the concerns with safety, oversight will continue to be a concern and could be as difficult as those currently faced by FAA.

h. The transition to a corporate structure could be lengthy and difficult, negating many of the advantages cited by the commission.

• Options for Response:

1 - Concur with recommendation and proceed to establish a task force to design a new structure for performing ATC operations and to draft legislation. Options include:

- Federal Reserve Model
- Government Corporation
- Public Corporation

- personnel reform
- acquisition reform
funding continuity
leadership "

Supers: 4B.

2 - Concur with modified organization:

* -- Separate, independent ATC operating agency.

-- Separate ATC operating agency under FAA Administrator or Secretary of Transportation.

3 - Designate FAA as a prototype agency for reinventing government and establish a high-level government/user/ Congressional task force to address structural impediments to FAA

operational effectiveness. Concur with establishment of a public/private consortium to design and implement the future satellite-based air navigation system.

- Non concur with organizational change and initiate action to correct inefficiencies in the existing FAA structure and problems with procurement, personnel, and budget systems.

- Non concur in proposed changes.

- Proposed Administration Position:

ACCELERATE SATELLITE NAVIGATION:

- Likely Commission Recommendations: Reduce industry operating costs and increase the efficiency of the Air Traffic Control (ATC) system by forming a public/private partnership to design the future satellite-based ATC network, establish certification standards, and accelerate implementation. Create a public/private consortium to accomplish this task, including revising the national airspace Capital Investment Plan, that would function independent of day-to-day ATC operations.

- Evaluation:

- Pros:

- a. Would create an organization with a single focus on developing and implementing new technology in the ATC system. This strategy has been shown to be effective in the space program, Strategic Defense Initiative, etc.

- b. Recognizes the need to expedite the fielding of new technology, precluding premature obsolescence.

- c. Provides a new "vehicle" for a fresh reevaluation of existing ATC systems commitments.

- d. If successful, would reduce operating cost for the airlines through more efficient routing and fewer delays. The cost of congestion is growing rapidly.

- e. Would place a high priority on fielding a satellite based ATC system.

- f. With sufficient authorities, could overcome existing bureaucratic inefficiencies and fragmentation of responsibilities for the ATC system in FAA.

- g. Could reduce Government investment requirements through cost sharing with private sector.

- h. Fosters U.S. leadership in international GNSS

implementation.

- Cons:

a. The DoD investment in a modernized ATC system may be jeopardized by establishment of a corporation. National security may not receive the same priority consideration it receives from FAA today.

b. May complicate international ATC negotiations and agreements.

c. Change over could potentially be disruptive for sometime to important on-going programs and budgets.

d. This proposal may not be responsive to the requirements of other modes of transportation for GPS capabilities.

• Options for Response:

- Concur with commission recommendation.

- Establish a separate ATC improvement organization under FAA/DoT such as ARPA.

-- Would be less disruptive.

-- Maintains national security interest.

-- DoD personnel currently assigned to FAA could transfer directly to the new organization.

- non concur and FAA undertake internal organizational changes to make the ATC modernization program more responsive to management and customers.

• Proposed Administration Position:

- Establish Government/industry task force to develop a plan for implementing the commission's recommendations and appropriate legislation that would:

-- Determine the optimum organization for managing the modernization of the national air space system.

-- Include DoT (FAA)/DoD/industry as full partners in the organization.

-- Require that national security considerations be given priority in systems development.

- Review with industry and accelerate where feasible the

schedule for fielding a satellite-based ATC system.

- To provide the necessary infrastructure to support a satellite based ATC, DoT and DoD should proceed with installation of the modular Advanced Automated System. This digital system will provide the computing power and the level of automation necessary to handle increased air traffic densities.

- DoT expedite the development and promulgation of standards and certification procedures for application of GPS in the domestic ATC system. This would provide GPS en route and ILS Category 1 equivalent services for all traffic. Application of GPS to public air transportation is not practical until standards and certification procedures are in place.

- Accelerate R&D for application of GPS beyond Category 1 approach minimums.

- Achieve agreement on international standards for air navigation and precision approach necessary for worldwide implementation of GPS.

- Continue to provide GPS access at no cost.

THE WHITE HOUSE
WASHINGTON

July 14, 1993

MEMORANDUM FOR WORKING GROUP ON CIVIL AVIATION

FROM: Rich DalBello (OSTP)  and John Goodman (NEC) 
Working Group on Space and Aeronautics

SUBJECT: Aircraft Issues Likely to be Raised by Airline Commission

Aircraft manufacturers have testified that their most important concern is the renewed profitability of their customers in the U.S. airline industry. Our understanding is that the Airline Commission shares this view. While the Commission's report will not make any major recommendations regarding the aircraft industry, it is likely to raise three related issues: trade, joint R&D and marketing, and product liability for small aircraft.

1. Trade. The aircraft industry—including airframe and jet engine manufacturers—competes in a global market. The Commission is likely to express concern about the effects of foreign government support in R&D, manufacturing, financing, and marketing. The Administration is actively engaged in these issues. First, within GATT, we are seeking to establish multilateral disciplines regarding government support and subsidies for aircraft manufacturers. The working group on Space and Aeronautics will be discussing the relationship between such efforts and the Administration's R&D priorities in aerospace. Second, the Administration is working to prevent the use of export credits in home markets (e.g., European export credits for Airbus sales in the U.S. or U.S. export credits for Boeing/McDonnell Douglas in Airbus countries).

2. Joint R&D/Marketing. The Commission may express some concern about limits the ability of U.S. aircraft companies to engage in joint R&D or marketing. The National Cooperative Research and Production Act has already removed antitrust impediments to joint ventures in the United States for these purposes. It is unclear what further actions would be desired by the industry.

3. Product Liability for Small Aircraft. Small aircraft are no longer manufactured in the United States, in large measure because of the risks associated with product liability. The Commission may propose some limits on product liability. The Administration should consider this issue in the context of its policy toward product liability.

Given the general nature of these concerns and the remaining available time, it does not appear necessary to raise any further issues for the Airline Commission to consider. The Working Group on Space and Aerospace—which will hold its first meeting shortly—will be examining U.S. policy affecting the aircraft industry—the Administration's R&D priorities, the coordination of the R&D activities, the links between various policies affecting the industry (eg. trade, R&D support, export financing).



July 15, 1993

MEMORANDUM

TO: Interagency Working Group on Civil Aviation

THROUGH: John D. Donahue
Assistant Secretary for Policy
U.S. Department of Labor

FROM: Stephen Finan
Office of Policy

SUBJECT: Employee Stock Ownership Plans (ESOPs)

Conceptually, an employee stock ownership plan (ESOP) is intended to create a cooperative partnership between management and employees. Employees, by having a significant stake in the equity of a firm, theoretically will be more receptive to, or actively supportive of, technological innovation, compensation demands and a host of other areas which are often contentious in "traditional" business environments.

Legally, an ESOP is a special type of pension plan designed to invest primarily in securities of the employer. For example, other types of pension plans are required to maintain a diversified portfolio of investments and are generally prohibited from holding more than ten percent of its assets in the employer's securities. In contrast, ESOPs may hold all its assets in an employer securities. There are other special tax qualification standards and incentives designed to encourage ESOP formation.

The risks for employees in an ESOP are significant:

- Because the assets of an ESOP are largely or entirely in the stock of one company, an individual's retirement benefits under an ESOP are heavily dependent upon the sponsoring employer's financial health over an extended period. The individual does not have the security that comes from portfolio diversification.

Given this degree of risk, there are essentially three considerations an employee would consider if confronted with an ESOP option:

- What is the long-term financial viability of the firm (and industry)? A worker joining an ESOP may reasonably have expectations that extend for as much as 60 years (i.e., work and retirement). In an increasingly competitive global economy, the worker has to weigh the chances of a firm remaining profitable over such an extended period of time.
- What is the primary motivation for establishing an ESOP--is it financial or managerial? In theory, an ESOP represents an "alternative" approach to labor-management relations. "Success" probably requires a commitment by all participants to making the endeavor work, and indeed, there are many examples of successful ESOPs (Avis Rental Cars being one of the more notable successes). In the 1980's, however, ESOPs experienced a degree of popularity that was driven primarily by financial considerations. In some cases, management, fearing a hostile takeover, established ESOPs as a means of gaining control of a significant block of stock, thereby thwarting a takeover; the long-term viability of such efforts is unclear. (The TWA pilots proposed establishing an ESOP about two years ago, but they were unable to find sufficient investors to back their investment.)
- For an established firm considering converting to an ESOP, what is the history of labor-management relations? Eastern Airlines tried to convert to an ESOP, but the strong adversarial relationship between the unions and management in the preceding years made the conversion difficult (there were other, more serious factors which contributed to Eastern's demise).

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Domestic Competition Issues
Travel Agent Commission Overrides

Travel agents are the airlines' primary distribution outlet, accounting for as much as 80% of airline ticket sales. The airlines individually compensate travel agents for their sales efforts by paying them a commission for each ticket sold equal to about 10 percent of the ticket price. In addition, many airlines have developed incentive commission programs to provide special rewards and incentives to travel agents to sell their services. One fairly common type of incentive commission, an "override commission," is structured to give the agency added commissions on all its sales for a carrier only after its sales on that carrier exceed a stipulated percentage (usually equal to the carrier's percentage share of total traffic in a market area) of the agency's total sales.

Such arrangements may create largely hidden incentives for a travel agent to steer business to specific airlines, irrespective of the relative price or service attributes of those carriers. The concern, to the extent that such diversion is occurring, is that the consumer is relying on the travel agent to find the best service at the lowest fare, but the travel agency is being compensated by an airline in a manner that may create an incentive to do otherwise.

From a competitive standpoint, the concern is that commission overrides may distort competition. The unwarranted diversion of passengers away from potential entrants or small rivals can reduce their load factors and render their entry or expansion unprofitable. Override programs based on market share are structured such that travel agents in a concentrated airline market may be unable to make sales in excess of the market share of other than the dominant airlines. Potential entrants and small rivals thus may be unable to enlist in a competing override program travel agents that are participating in the override programs of dominant carriers. Override commissions thereby can inhibit entry or expansion in concentrated airline markets, which may enable the dominant firms to exercise market power to the detriment of consumers.

Product Liability for the U.S. General Aviation Industry

ISSUE

Product liability insurance costs for the aircraft industry have increased to prohibitive levels in recent years, especially in the general aviation sector.

BACKGROUND

In recent years product liability has become one of the most significant factors influencing the general aviation industry in the United States. The General Aviation Manufacturers Association (GAMA) reports that paid product liability claims and out-of-pocket defense expenses for the entire industry rose from \$24 million to \$210 million from the period 1976-1986. Correspondingly, production of general aviation aircraft has fallen from a peak of over 17,000 aircraft in 1978 to below 900 in 1992, and employment in this period was cut in half.

GAMA has estimated that product liability for general aviation aircraft has risen from approximately \$2,000 per aircraft manufactured in 1972 to \$70,000 in 1985. Today's estimates are as high as \$100,000. These trends have forced most manufacturers of general aviation aircraft to become wholly or partially self-insured. They also led Cessna to close their doors in 1986 for the majority of their product lines, and forced Piper Aircraft into bankruptcy.

The following three points are also pertinent to the product liability issue.

- o In most jurisdictions there is no statute of repose on general aviation products. Given that some aircraft have a service life of up to 40 years this has placed an enormous liability burden on manufacturers. Furthermore, general aviation manufacturers' insurance costs for a particular policy year are a factor of the size of the product lines built up over the life of the company, not the number of units sold during that year. This does not, therefore, allow a manufacturer to incorporate these costs into the price of the aircraft.
- o According to the National Transportation Safety Board (NTSB), the federal agency responsible for investigating all general aviation accidents, 93% of aircraft accidents are caused by pilot error, poor maintenance, or bad weather.
- o Strict product liability in general aviation has introduced great long term uncertainty in the industry. Manufacturers are reluctant to introduce new technologies or to commit to new products. This has driven off investors, and threatens to kill the entire general aviation manufacturing base in the U.S.

Legislative Initiatives

Every year since 1986 Sen. Nancy Kassebaum (R-Kansas) has introduced legislation to change product liability as it regards general aviation aircraft. This legislation has yet to be enacted into law. The 1993 bill number is S. 67.

Representatives Glickman and Hansen are expected to introduce legislation this year which would establish a 15 year statute of repose for product liability for general aviation aircraft. There are reportedly 170 co-sponsors to date for this bill.

Department of Commerce Position

While Secretary Brown is aware of the concerns of the general aviation industry regarding product liability, he has yet to establish a position on this issue.

107,000 employees
\$406 budget

U. S. DEPARTMENT OF TRANSPORTATION

Established by the Department of Transportation Act of 1966 to assure the coordinated, effective administration of transportation programs of the Federal Government and to develop national transportation policies and programs.

I. MAJOR AREAS OF THE DEPARTMENT OF TRANSPORTATION

A. United States Coast Guard

- o Maritime safety--search and rescue, maritime aids to navigation, marine inspection and mariner licensing, and maintenance and operation of bridges.
- o Environmental protection--oil spill clean-up, and vessel and waterfront facility inspections.
- o Law enforcement--drug interdiction, immigration, fisheries enforcement, and environmental protection.
- o National security--defense readiness for maritime defense zone and polar icebreaking.

B. Federal Aviation Administration

- o Safety regulation--encompassing manufacture, operation and maintenance of aircraft, rating and certification of airmen, and certification of airports.
- o Airspace and air traffic management--operating and maintaining the air traffic system.
- o Air navigation facilities--operation and quality assurance of Federal visual and electronics aids to air navigation.
- o Airport programs--administering a grant program for development of public use airports, and establishing standards for airport design and safety.
- o Aircraft registration--maintaining a system for aircraft registration including documentation of aircraft engines, propellers and spare parts.

- o Maritime training--runs the U.S. Merchant Marine Academy and financially supports six State maritime academies.

G. National Highway Traffic Safety Administration

- o Rulemaking--establishes Federal standards for motor vehicle safety, automotive fuel economy, theft and bumpers, and administers consumer information programs on vehicles and equipment.
- o Highway safety--administers State and community safety grants to reduce drunk/drugged driving and to increase compliance with traffic laws, and grants for safety belt and motor vehicle helmet use.

H. St. Lawrence Seaway Development Corporation

- o Operate and maintain the St. Lawrence Seaway in cooperation with Canada.

II. OTHER

A. Intermodalism

- o Coordinates Federal intermodal transportation policy and provides for improved productivity from the Nation's transportation resources.

B. Commercial Space Transportation

- o Develops and manages a regulatory program and licensing process for commercial launch vehicles and associated services.

C. Research and Special Programs

- o Hazardous materials transportation--develops and enforces standards for the manufacture of packagings, preparation of shipments and operations of carriers for hazardous materials.
- o Pipeline safety--develops and enforces pipeline safety regulations, conducts inspections of interstate pipelines, and trains State inspectors for assuming authority over intrastate pipelines.
- o Emergency transportation--serves as the crisis manager for preparedness and response to transportation emergencies worldwide.

U. S. DEPARTMENT OF TRANSPORTATION

PRIORITIES

- I. Transportation Investment to Reinvigorate the Economy
 - Two key indicators: airlines and maritime reform
- II. Develop New Technology
 - IVHS
 - GPS
 - Technology Reinvestment Project and ARPA
 - High-Speed Rail and Mag-Lev
 - New Materials
 - The New Car
- III. Improve the Environment
 - Clean Air Act and State of California
 - Coast Guard and RSPA
- IV. Intermodalism
- V. Safety - Relation to Health Care Reform

HOT ISSUES

- 1. Reconciliation Bill and "Transportation Tax"
- 2. Bilateral Aviation Agreements: UK, Japan, France, Canada, Saudi Arabia
- 3. GM Trucks
- 4. Airline Commission Report (in August)
- 5. Mississippi River
- 6. High-Speed Rail *> hope for funding in the next yr.*
- 7. Chinese Immigrants and Drug Interdiction
- 8. Drug Testing Regulation - FAA
- 9. NAFTA
- 10. National Security Issues