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DEPARTMENT OF THE TREASURY

WASHINGTON

ASSISTANT SECRETARY

August 4, 1993

## MEMORANDUM FOR MEMBERS - WORKING GROUP ON CIVIL AVIATION

FROM: Alicia H. Munnell *AM*  
Assistant Secretary  
for Economic Policy

SUBJECT: Airline Commission Recommendations; Financial  
Issues Team

Attached are the Financial Issues Team's proposed Administration positions for the Commission's financial recommendations.

Attachment

DISTRIBUTION:

Joseph Stiglitz, CEA  
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Bob Moore, DOD  
Michael Schmidt, DPC  
Mark Schechter, DOJ  
Thomas Glynn, DOL  
Wesley Harris, NASA  
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Christopher Edley, OMB  
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Donald Phillips, USTR  
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David Tornquist, OMB  
Jim Craun, DOT  
Jim New, DOT  
Jonathan Baker, CEA

## AIRLINE COMMISSION RECOMMENDATION

**ISSUE:** Taxes and User Fees

**RECOMMENDATIONS:**

- o Roll back the ticket tax and the cargo waybill tax to their pre-1990 levels of 8% and 5%, respectively.
- o 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.

**ADMINISTRATION POSITION:**

Reject at present time

- o *Payments from general revenue (beyond the government's fair user charge) should be based on a review of the 1969 decision to finance the air traffic control system by user fees. (OMB does not support a review).*
- o Ticket and waybill taxes are borne primarily by passengers and shippers in long run, not by carriers.
- o These taxes are user fees that support capital improvements and services provided by the FAA.
- o A roll back of these taxes would reduce federal revenues by \$4-5 billion in the budget period FY 94-98 and PAY-GO process requires offsetting revenue increases or mandatory spending cuts. No offset was suggested by the Commission.
- o FAA budget is 75 percent supported by user fees paid into the Trust Fund and 25 percent by the General Fund which covers the costs attributable to public sector users of the system. Increasing the General Fund's share of FAA's costs would shift costs to the general taxpayer, but would not increase the total funds available to be appropriated for FAA programs.
- o In each year since 1990, more money has been spent out of the Trust Fund than was paid in by aviation users.

August 4, 1993

**AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:** Taxes and User Fees

**RECOMMENDATIONS:**

- o Exempt airlines from any proposed transportation fuel tax.

**ADMINISTRATION POSITION:**

Accept temporary exemption.

- o Under the budget reconciliation bill, aviation fuels are exempt from the motor fuels tax (4.3 cents per gallon) through 9/30/95.

**August 4, 1993**

**AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:** Taxes and User Fees

**RECOMMENDATIONS:**

- o Reform the Alternative Minimum Tax so that airlines losing money are not required to pay income tax.

**ADMINISTRATION POSITION:**

Accept premise that AMT relief should be provided.

- o The Administration supports the AMT relief provided under the budget reconciliation bill. The reconciliation bill will provide income tax relief for all firms subject to the AMT.
- o The purpose of the AMT is to ensure that corporations with economic income pay income tax. Thus, some corporations that have no taxable income because of tax preferences, such as accelerated depreciation, are required to pay AMT. The reconciliation bill will reduce, but not eliminate, the AMT by reducing the tax preference attributable to accelerated depreciation.

August 4, 1993

**AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:** Taxes and User Fees

**RECOMMENDATIONS:**

- o Full deductibility for airline employee per diem payments.

**ADMINISTRATION POSITION:**

Reject Immediately

- o The Administration supports the budget reconciliation bill, which would reduce the present deduction for business meals and entertainment expenses from 80 percent to 50 percent.
- o Full deductibility for airline employee per diem expenses is not justified because these expenses inherently involve a personal consumption component. Special treatment for airline personnel also is unjustified, because travel is an essential component of other occupations.

August 4, 1993

**AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:** Taxes and User Fees

**RECOMMENDATIONS:**

- o Expenditure of funds on improving facilitation of passengers and cargo arriving in the U.S. should be in rough approximation to the amounts collected in Customs, INS and Agriculture inspection fees.

**ADMINISTRATION POSITION:**

Accept

- o This recommendation reflects current Administration policy. The INS has a proposal to increase their fee by \$1 to permit greater spending to improve passenger and cargo inspection services. (Recommendation is probably based on earlier Agriculture fee levels which were too high. They were set at \$2 per passenger originally for administrative simplicity.) Since these fees were only available through appropriations to cover costs incurred, about \$30 million more was collected than spent. Fees have since been lowered to better align them with program costs and eliminate surplus collections.

August 4, 1993

## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Taxes and User Fees

## RECOMMENDATIONS:

- o Rigorous enforcement of AIP (Airport Improvement Program) grant assurance language barring diversion of airport revenues to non-airport purposes.

## ADMINISTRATION POSITION:

Support premise

Further review needed by Department of Transportation--will respond in 30 days.

- o Because of the growing interest by cities to use airport revenues for general purposes, the Department is reviewing the legal and policy implications of such an approach.
- o Airports that receive federal improvement grants should not be allowed to divert airport revenues to non-airport use. If necessary the Administration should seek legislation to prevent such diversion.
  - Permitting diversion of airport revenues for non-airport purposes would likely increase costs to airport users and the cost of air travel or decrease service.
- o Certain municipalities may prefer exemption from the AIP in return for the authority to use airport revenues for general government purposes.

August 4, 1993

## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Taxes and User Fees

### RECOMMENDATIONS:

- o Continued close scrutiny of PFC (Passenger Facility Charge) applications and approval of only those projects which meet the PFC statute's criteria.

### ADMINISTRATION POSITION:

#### Immediately accept

- o The FAA will continue to exercise its review and approval of PFC applications, based upon the PFC status and its implementing regulation (Part 158) according to the PFC process now in place:
  - Upon receiving a PFC application from an airport, the FAA will review the application and:
    - make a determination that the application is substantially complete (i.e., the application includes all information required by regulation to permit the FAA to make its decision); and then
    - publish a notice in the Federal Register that the application is completed and provide a 30 day comment period.
  - The FAA's decision on a PFC application will be made after the Federal Register review and within 120 days of the date the application is first submitted to the FAA. FAA's criteria for review of a PFC application is defined by the PFC statute:
    - eligible projects are those airport development and planning projects eligible under the Airport Improvement Program (AIP) and noise compatibility measures eligible for federal assistance. In addition to AIP standards, construction of gates and certain related facilities are PFC eligible.

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- furthermore, to be eligible, an airport must provide justification that a PFC project;
- preserves or enhances safety, security, or capacity of the national air transportation system;
- reduce noise or mitigates noise impacts resulting from an airport; or
- furnishes opportunities for enhanced competition between and among air carriers.

August 4, 1993

## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Taxes and User Fees

## RECOMMENDATIONS:

- o When jet fuel prices rise substantially due to war or other national emergency the President should consider releasing crude oil from the (Strategic Petroleum) reserve as a means of addressing the adverse impact of those prices on the airlines and our economy.

## ADMINISTRATION POSITION:

Reject as written, but ask DOE to review policy on uses of the SPR.

- o Purpose of Strategic Petroleum Reserve (SPR) has been to deal with supply interruption, not with speculation.
- o Price movements that result from anticipated changes in supply can be beneficial in stabilizing a market. DOE should be asked to review the policy on uses of the SPR to determine whether there are circumstances other than supply interruption in which it should be used to stabilize energy markets.
- o Regarding jet fuel prices:
  - Release from SPR would affect all energy prices and could not be restricted to jet fuel.
  - The jet fuel price spike during the Gulf War was due to increase consumption and stockpiling of jet fuel by U.S. and allied armed forces, speculation and refining constraints.
  - USG energy policy should not be driven by any one class of users, e.g. airlines.
  - The lag in filling the SPR makes it more difficult to justify its use for non-supply interruption purposes. (Current fill rate is 18,000 bbl. per day; fill is around 600 million bbls.; Administration fill target is 750 million bbl. and Congressional target is 1 billion bbl.)

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**AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:** Taxes/Labor-Management Relations

**RECOMMENDATIONS:**

- o Amend ERISA and the tax code to allow a company to offer its own debt securities to employees as part of a qualified plan.
- o Amend provisions of IRS Section 415 that limit qualified stock plans to 25 percent of an employee's income in certain cases.
- o Defer recognition of capital gains on shares sold to employees in public companies if certain conditions are met.

**ADMINISTRATION POSITION:**

Reject immediately

- o The proposals would potentially affect a broad class of employers outside of the airline industry for which no additional ESOP incentives would be justified.
- o The proposals are not consistent with the underlying tax policy rationale for providing tax-favorable treatment to ESOPs and other retirement savings plans.
  - Expanding the category of employer securities held by an ESOP to include debt securities represents a significant departure from the purpose of ESOPs which is to serve as a vehicle for increasing employees' ownership stake in their employer.
  - Increasing the allocation limits enables ESOP benefits to accrue to more highly compensated employees.
  - Expanding tax-free rollover treatment to sales of publicly-traded stock would significantly broaden this tax incentive beyond the original purposes of ESOPs, which was to encourage sales to an ESOP by owners of businesses for which there is no readily available market.

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- Permitting inclusion of debt provides a tax benefit that increases employees' potential for loss, with no potential for gain, and increases risk to workers because their jobs and their saving would be tied to one employer.

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## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Improving Financial Strength

## RECOMMENDATION:

- o 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.

## ADMINISTRATION POSITION:

Reject Immediately

- o Not necessary. This recommendation is based on a number of invalid premises relating to the Secretary of Transportation in this area of exercise of his authority. On balance this recommendation is not necessary because the Secretary of Transportation already has authority to provide advice to individual airlines, and to seek advice on an airline's financial health.
- o The Secretary of Transportation has exercised this authority in a number of cases including the one that some argue demonstrates the need for this proposal. Specifically in the case of N.W. the Secretary sought and received analyses and advice from a number of sources, including Wall Street who recommended approval of the LBO by Mr. Checchi.
- o Airlines would be less likely--not more likely to share their business plans with DOT if they knew outsiders would also get this information.
- o Secretary of Transportation could reaffirm his authority and his intention to act if he deems it necessary.

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## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Improving Financial Strength

## RECOMMENDATION:

- o 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.

## ADMINISTRATION POSITION:

Accept Premise

- Reject presidentially appointed advisory committee (see previous recommendation).
- Except for Presidential Commission, describes existing authority of Secretary.
- Secretary would reaffirm his authority and his intention to act if necessary.

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## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Improving Financial Strength

## RECOMMENDATION:

- o 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.

## ADMINISTRATION POSITION:

Accept

- describes existing authority of Secretary;
- Secretary would reaffirm his authority and his intention to act if necessary.

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## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Bankruptcy

### RECOMMENDATION:

- o Require Bankruptcy Judges to make findings, subject to judicial review, for granting 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.
- o 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 underutilized for extensive periods of time to the detriment of surrounding communities and the traveling public.
- o 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.
- o 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 of aircraft.
- o Make the Secretary of Transportation a statutory party to airline bankruptcy proceedings.

### ADMINISTRATION POSITION:

Accept premise, but more work is needed. The NEC should consider establishing a Working Group to review the economic effects of the bankruptcy laws. Treasury is currently developing a proposal to that end. (See attached).

- Two sets of potentially conflicting interests are involved in a bankruptcy. First is the interests of individual creditors and second is the social interest in the efficient use of the resources controlled by or affected by the bankrupt enterprise.
- Legislation has been introduced in the Congress that would make significant changes in the bankruptcy laws.

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The Administration should review the economic effects of the bankruptcy laws, including those cited by the Airline Commission, to determine what, if any, changes are needed.

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**DRAFT**

## Proposal for an NEC Bankruptcy Reform Working Group

### SUMMARY

Existing bankruptcy law has been subject to extensive criticism. Issues which have arisen include the standing of non-tax government claims (especially those of the Pension Benefit Guarantee Corporation) and various problems associated with Chapter 11 bankruptcies (the reorganization chapter). An NEC Working Group should be formed to examine how well the current system functions from the perspective of economic efficiency, as well as the more traditional concern with the rights of creditors. Such an examination should reveal significant opportunities for reform of the bankruptcy statutes, especially Chapter 11, and of the ways bankruptcy cases are actually administered by the courts.

### DISCUSSION

Bankruptcy law exists to provide a collective response by creditors to the financial failure of an individual or enterprise. This permits a better outcome than if each creditor individually scrambled to collect from the debtor. Individual interests can run counter to the interests of the group, and of society.

Two -- sometimes conflicting -- sets of interests are involved in the bankruptcy of an enterprise. First comes the social interest in the efficient use of the resources controlled by the firm. Second comes the individual interest of the creditors, and the rights they have relative to one another in circumstances where the debtor has insufficient assets to honor all of the obligations in full.

Bankruptcy law is divided into chapters, depending upon the economic status of the entity filing for bankruptcy protection (e.g., individual, non-bank business, farmer, etc.), and the resolution to be pursued (e.g., reorganization, liquidation).

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**DRAFT**

Even before the recession, the number of Chapter 11 filings was increasing. Chapter 11 filings leave control of the assets in the hands of the debtor -- typically the same management team which produced the need for the filing in the first place. As the number and value of these cases increases, it becomes more important to make sure Chapter 11 functions well.

The fundamental theory behind Chapter 11 is that value is better protected by keeping the business a going enterprise than by shutting the business down and selling off the assets individually. Chapter 11 was designed to enable debtors to regain profitable operations by protecting them from creditors' enforcement actions (eviction, foreclosure, etc.) while negotiating a settlement of outstanding claims.

Several problems arise. Sometimes the continued operations of the debtor only pile up more liabilities, diminishing the net value of the debtor's assets. Sometimes associated businesses (e.g., suppliers, partners, customers, competitors) are themselves forced into bankruptcy by the non-performance or advantage gained by the original debtor. All too often liquidation of the firm is only postponed, not avoided. The losses suffered by the creditors are made even larger than they would have been if liquidation had occurred at the time of filing.

Little substantive empirical information on the "on-the-ground" functioning of the system is available (some data are collected for the purpose of administering the case loads by the courts). There have been several attempts to gather data in recent years, but these have all been "single shot" attempts. They were very expensive, of limited applicability, and did not establish a continuing data series suitable for monitoring the performance of Chapter 11 over time. Because of these deficiencies, empirical analysis has not played a major part in the formulation of bankruptcy policy up to now.

A significant first step in a reform effort would be to require the reporting and compilation of useful data series by the courts on a continuing basis. Development of such a data series would take some time and care. However, the present move toward standardized forms for use in bankruptcy cases suggests the series could be generated with only a reasonable amount of effort.

The economic theory and practice of Chapter 11 needs to be thoroughly re-examined. There are problems which stem from the law itself, and in addition the actual application of the law by overloaded Bankruptcy Courts and Court-appointed Trustees permits practices that fail to balance creditors' rights and fail to protect the social interest in the efficient use of resources.

**DRAFT**

**DRAFT**

An analysis of the actual performance of cases filed under Chapter 11 needs to be conducted. Answering fundamental empirical questions such as the following should be attempted:

- o How many, and what is the total value of, the Chapter 11 cases currently in process?
- o What is the distribution of cases by value of assets involved?
- o What is the distribution of outcomes of past Chapter 11 cases (e.g., successful reorganization and emergence from bankruptcy protection, conversion to Chapter 7 and eventual liquidation)?
- o Where Chapter 11 cases are eventually liquidated, what is the value of the assets distributed among the creditors relative to the net asset value presented at the time of filing in the Financial Declaration?
- o How long does it take to resolve Chapter 11 cases in actual practice?
- o Do firms operating under Chapter 11 realize competitive advantages which work to the detriment of other firms in the industry?

Studying these and related questions may lead to recommendations on the resources needed by the courts to process bankruptcy cases effectively, what ongoing data series need to be established, and how any resource inefficiencies occurring under Chapter 11 might be mitigated.

These economic concerns need to be combined with the substantial legal expertise bearing on Bankruptcy Law available in the Department of Justice. An NEC Working Group with economic and legal involvement would be an appropriate mechanism to formulate recommendations giving proper weight to the legal, as well as the economic, dimensions of bankruptcy reform. The potential gains from such a reform effort are quite significant.

**DRAFT**

|                                                                                   |                               |                                                                                                                                                                                                  |                                                                                      |
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## REMARKS:

**PLEASE DELIVER IMMEDIATELY**

Systems Capacity Issues Team draft papers on the Airline Commission's final draft report are attached. These will be presented at the Interagency Working Group meeting with Secretary Pena and Dr. Tyson on Aug 5. These are intended to be the starting point to develop the Administration's position on each issue, and are for your review prior to the meeting.

## DISTRIBUTION:

Joseph Stiglitz 395-6947

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Joseph Del Balzo 267-5047

John Donahue 219-6924

Michael Delch 456-2223

Richard Delbello 395-4155

Alicia Munnell 622-2633

Timothy Newell 395-3261

## **AIRLINE COMMISSION RECOMMENDATIONS**

### **SECTION I: America's Air Transportation System Must be Efficient and Technologically Superior**

#### **ISSUE: Global Positioning System**

#### **RECOMMENDATIONS:**

"The Commission believes it is critical to pursue the earliest possible application of the GPS to commercial air transport for precision navigation and departure, enroute, and approach control. A fully modernized air traffic control system is central to those improvements. To achieve this, *we recommend:*

(1) Changing the air traffic control system to a satellite-based navigation system by 1996, *integrated with a modernized ATC system by the end of 1997.*

(2) Accelerating the implementation of the GPS and air traffic control modernization through such means as a public-private consortium, designed for expeditious development and implementation of improved technology."

#### **ADMINISTRATION POSITION:**

(1) Accept premise, but more work needed. Administration goals should include: (a) Fielding a modular, digital terminal and enroute ATC automation system, to include early implementation of Automated En Route ATC (AERA) functionality; (b) Accelerating standards for and certification of GPS during enroute, terminal, and precision phases of flight, within the constraints of technological capability; (c) Working with industry to achieve consensus on standards for currently undefined functions such as datalink; and (d) Modernizing the national airspace system to maintain transparency between civil and military flight operations while accommodating national security interests. (The civil and military ATC infrastructure must remain compatible and complementary.)

(2) Accept premise, but more work needed. This task should be assigned to the Joint DOT/DOD Task Force already established by Secretary Pena and Secretary Aspin to review civil use of GPS. The Task Force charter should be expanded to identify GPS/air traffic control technology opportunities where a "public-private consortium" could be used for expeditious development. Analysis should be completed within 120 days and included in the report to be submitted to the Secretaries.

## **AIRLINE COMMISSION RECOMMENDATIONS**

### **SECTION I: America's Air Transportation System Must be Efficient and Technologically Superior**

#### **ISSUE: Other System Capacity Issues**

#### **RECOMMENDATIONS:**

"The Commission also examined other options for improving system capacity and developed these recommendations. *We recommend:*

(1) FAA 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. (Washington National Airport's legislated limits would not be affected.)

(2) Congress fully fund system capacity elements -- facilities and equipment; airports; research, engineering and development; and FAA Operations -- as long as these remain within the federal budget process."

#### **ADMINISTRATION POSITION:**

(1) Immediately accept. FAA should review the rule that limits operations at "high density" airports and report to the Secretary of Transportation within 90 days.

(2) Immediately accept. The Administration should support in the President's Budget full funding of projects which will have a demonstrable impact on system capacity.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** Stage 3 Noise Compliance

**RECOMMENDATION:** 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.

**ADMINISTRATION POSITION:**

-- **Immediately accept:**

- The FAA will continue to exercise review and approval authority over all local Stage 3 restrictions proposed by airport operators, pursuant to the Airport Noise and Capacity Act of 1990 (ANCA) and its implementing regulation, part 161.
- The Federal transition to an all Stage 3 fleet by the year 2000, with limited waiver provisions, will ultimately reduce the population affected by significant levels of aircraft noise from 2.7 million to 400,000. As of December 31, 1992, 59 percent of the aircraft operating at U.S. airports were Stage 3. This is well ahead of the minimum 55 percent required by December 31, 1994.
- In most cases, the national schedule for transition to an all Stage 3 fleet should achieve the noise mitigation objective of airports and their affected communities. In the rare circumstance that an airport operator concludes that additional noise relief is needed, the FAA will urge the airport to exhaust all means to work with the local airport users in reaching voluntary agreement on any additional measures.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** Stage 3 Noise Compliance

**RECOMMENDATION:** The Federal Government should not enact any provision to mandate the replacement, retirement, or modification of Stage 3 aircraft for noise purposes.

**ADMINISTRATION POSITION:**

-- Immediately agree:

- The FAA will continue to ensure carrier compliance with the provisions in 14 CFR part 91, Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia, which provide for the phaseout of Stage 2 aircraft by the year 2000, with limited waiver provisions. This transition to an all Stage 3 fleet will result in substantial noise relief at all airports, ultimately reducing the population affected by significant levels of aircraft noise from 2.7 million to 400,000.
- The transition to an all Stage 3 fleet is moving even faster than the required national schedule. The 1992 operator compliance progress reports filed with the FAA show that as of 12/31/92, the overall fleet mix of Stage 3 aircraft was 59.3 percent, and 56.3 percent for domestic aircraft. This is well ahead of the minimum 55 percent required by 12/31/94.

**PROPOSED ADMINISTRATION POSITION ON  
AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:** General Aviation Aircraft Production

**Commission Recommendation:** Enactment of a statute of repose for general aviation aircraft which would limit the liability of manufacturers of these aircraft to 15 years from the date of manufacture.

**Administration Position:**

Immediately Accept.

While the Administration supports this issue, it is not looking for overall tort reform, but only relief for this specific industry. It is understood that Senator Kassenbaum and Representatives Glickman and Hansen have introduced bills in the Senate and House that would limit product liability for general aviation aircraft to 15 years.

# URGENT



United States Department of State

Washington, D.C. 20520

August 4, 1993

Michael  
Schmitt -  
Domestic Policy  
Council

MEMORANDUM

TO: IWG on Civil Aviation

FROM: James R. Tarrant  
Deputy Assistant Secretary for Transportation Affairs  
Department of State

SUBJECT: International Issues Papers for August 5 Meeting of  
the Interagency Working Group

Attached are papers covering the National Airline Commission's 7 recommendations on international airline issues and 9 recommendations on international aerospace issues.

COVER PLUS 15 PAGES

Distribution

Patrick V. Murphy, Acting Assistant Secretary for Policy and International Affairs, Department of Transportation

Thomas P. Glynn, Deputy Secretary of Labor

Alicia H. Munnell, Assistant Secretary for Economic Policy, Treasury Department

John W. Clark, Acting Assistant Attorney General for Antitrust, Justice Department

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Joseph E. Stiglitz, Expert Economist, Council of Economic Advisors

Mark Schecter, Department of Justice

Harry G. Broadman, Assistant USTR for Services, Investment, Science and Technology

# URGENT

## **AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION(S):**

- US negotiating efforts should focus on creating a multinational operating environment for airlines, free of discrimination and restrictions.
- Liberal, multinational agreements should be negotiated to encompass provisions for passenger and cargo services, charters, cross-border investment and ownership, comparable traffic rights, fifth/sixth freedom traffic rights, fair market access & doing business opportunities, system capacity, government subsidies, and customs & immigration facilities.

**ADMINISTRATION POSITION:**

Accept premise.

The existing interagency committee on aviation issues will consider possibilities and options for a multinational approach to international aviation negotiations and, as appropriate, possibly launch a multinational negotiating initiative.

The committee will also consider each of the provisions specified in the Commission's recommendation, as well as provisions to allow competitive pricing, recognizing that the appropriateness of each element or combination of elements will have to be considered in the context of any multinational approach the committee develops and/or the specific circumstances of the countries to be included in a multinational approach.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

- ➔ The Federal Aviation Act should be amended to allow the US to negotiate bilateral agreements that permit foreign investors to hold up to 49% voting equity in US airlines, providing those bilateral agreements are liberal and contain equivalent opportunities for US airlines; the foreign investor is not government-owned, and the investment will advance the national interest and the development of a liberal global regime for air services.

**ADMINISTRATION POSITION:**

**NOTE:** Liberalization of foreign investment provisions in the Federal Aviation Act is a major policy decision that should be discussed by IWG principals on August 5.

This issue should be considered jointly with the Commission's recommendation on the Civil Reserve Air Fleet (CRAF) program.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

- ✦ Enforcement of current bilateral aviation rights through all means, including denunciation and suspension of privileges and services when violations occur.

**ADMINISTRATION POSITION:**

Accept immediately.

Legal mechanisms such as the International Air Transportation Fair Competitive Practices Act of 1974 (IATFCPA) exist to address problems related to the violation of bilateral air services agreements.

The Administration agrees that the full panoply of available tools and resources should be fully, actively, and credibly considered in response to bilateral violations and denunciations.

## AIRLINE COMMISSION RECOMMENDATIONS

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

- ✦ Elevation of the stature of international air service negotiations and appointment of an ambassador-at-large to lead them; and a strengthening of the aviation career track at the Department of State to enhance continuity and expertise in the field.

**ADMINISTRATION POSITION:**

Accept premise.

With respect to the Commission's recommendation for the appointment of an Ambassador-at-large for aviation negotiations, the Commission has recognized that the development and pursuit of a multinational aviation negotiating initiative is a longer-term goal. This recommendation should be reviewed at such time as a multinational approach can be developed and launched.

With regard to strengthening the aviation career track to enhance continuity and expertise, State has already undertaken a review of current staffing and is exploring ways (e.g., longer tours of duty) to ensure that key staff remain in place for a longer period of time.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

- ✈ Conclusion of interim agreements liberalizing air cargo and charter services if those agreements support the overall objective of multinational liberalization.

**ADMINISTRATION POSITION:**

Accept premise.

State and DOT should work together to examine the prospects for sector-specific agreements and to determine whether and how such agreements can be shaped to support a multinational liberalization effort. Where it is feasible, we should consider negotiating separate agreements (both bilateral and multinational) to liberalize air cargo and/or charter services.

## AIRLINE COMMISSION RECOMMENDATIONS

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

- ➔ Avoid the use of unilateral sanctions against international air services unless passenger safety concerns are involved. This would not preclude sanctions for violations of a bilateral agreement.

**ADMINISTRATION POSITION:**

Needs review.

International air services have never been excluded from general economic sanctions imposed for broader foreign policy reasons. State should review this recommendation in the context of current US law, policy, and regulations.

## **AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

- ➔ Amend the Warsaw Convention by ratifying Montreal Protocols 3 and 4 and approving a supplemental compensation plan.

**ADMINISTRATION POSITION:**

Accept immediately.

The IWG should discuss the concerns of the aircraft and airframe manufacturers with regard to the supplemental compensation plan.

Following this discussion, State and DOT should consult on legislative strategy and advise Congress of the Administration's intent to pursue ratification of the Protocols and passage of a supplemental compensation plan.

## AIRLINE COMMISSION RECOMMENDATIONS

**ISSUE:** International Trade - Airlines

**RECOMMENDATIONS:**

- Protecting national security and defense interests by assuring that cross-border investment and ownership do not adversely affect the availability of aircraft for the CRAF program.

**ADMINISTRATION POSITION:**

Accept premise.

This recommendation should be considered in conjunction with the recommendation on amendment of the Federal Aviation Act and negotiation of agreements permitting greater foreign investment in US airlines. DOD and DOT should take the lead.

## A G E N D A

### I. Review spreadsheet containing Commission recommendations and proposed Administration responses. Focus on: (30 minutes)

- Areas where an agency may disagree with the proposed response
- Areas likely to receive significant attention
  - . Secretary Peña describe FAA restructuring response
  - . Tax relief
  - . Financial Advisory Board
  - . Foreign Investment
  - . Bankruptcy
  - . Question concerning jobs--Commissioner Peterpaul dissented from the Commission's recommendations because they "do nothing" to preserve jobs

### II. Next Steps (Strategy) (30 minutes)

- Commission Report Released August 19.
- Administration Response (August 19/20) Options
  1. Positive Response by President (Decide how President receives report (Rose Garden ceremony, other)) - Secretary Peña given lead for Administration. Secretary highlights significant positive steps/actions to be taken (Speech, News Conference, press release) Individual agencies given specific tasks
  2. No Response by President - Secretary given lead for Administration - Positive overall response with details provided by Secretary Peña in conjunction with other agencies
  3. President gives an Immediate positive response to work of the Commission but no immediate response by Administration to recommendations
  4. No Response - wait for congressional hearings

### Recommended: Option 1 - Steps to get there

- . August 5/6 - Secretary Peña/Dr. Tyson discuss with President
- . August 5-10 - Administration agreement reached on positions proposed by NEC working group
- . Aug. 10-18 - DOT and NEC package response for President/Secretary Peña and distribute to NEC working group for concurrence
- . August 19/20 - President/Secretary Peña respond

**NEC WORKING GROUP TEAMS'**  
**WRITTEN RESPONSES ON**  
**AIRLINE COMMISSION RECOMMENDATIONS**

*Responses in Order of 61 Recommendations  
Contained In Commission's Aug. 1, 1993, Draft Report*

**AIRLINE COMMISSION RECOMMENDATIONS**

**SECTION I: America's Air Transportation System Must be Efficient and Technologically Superior**

**ISSUE: Global Positioning System**

**RECOMMENDATIONS:**

"The Commission believes it is critical to pursue the earliest possible application of the GPS to commercial air transport for precision navigation and departure, enroute, and approach control. A fully modernized air traffic control system is central to those improvements. To achieve this, *we recommend:*

- #1** (1) Changing the air traffic control system to a satellite-based navigation system by 1996, *integrated with a modernized ATC system by the end of 1997.*
- #2** (2) Accelerating the implementation of the GPS and air traffic control modernization through such means as a public-private consortium, designed for expeditious development and implementation of improved technology."

**ADMINISTRATION POSITION:**

(1) Accept premise, but more work needed. Administration goals should include: (a) Fielding a modular, digital terminal and enroute ATC automation system, to include early implementation of Automated En Route ATC (AERA) functionality; (b) Accelerating standards for and certification of GPS during enroute, terminal, and precision phases of flight, within the constraints of technological capability; (c) Working with industry to achieve consensus on standards for currently undefined functions such as datalink; and (d) Modernizing the national airspace system to maintain transparency between civil and military flight operations while accommodating national security interests. (The civil and military ATC infrastructure must remain compatible and complementary.)

(2) Accept premise, but more work needed. This task should be assigned to the Joint DOT/DOD Task Force already established by Secretary Pena and Secretary Aspin to review civil use of GPS. The Task Force charter should be expanded to identify GPS/air traffic control technology opportunities where a "public-private consortium" could be used for expeditious development. Analysis should be completed within 120 days and included in the report to be submitted to the Secretaries.

**PROPOSED ADMINISTRATION POSITION ON  
AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:**      **Restructuring FAA**

**Commission Recommendations**

- #3** Create an independent federal corporate entity within DOT to manage and fund air traffic control and related functions, including system development, procurement and maintenance. Policy control of the air traffic control system and safety oversight should stay with the federal government.
- #4** Establish a panel of FAA and industry experts, with the participation of DOD, which will report in 90 days on the specific structure and method of implementation; and which will draft legislative proposals for creation of the corporate entity.
- #5** The following principles should be embodied in the federal corporate entity's implementing act:
- o Ability of the corporate entity to create and use a predictable, stable source of revenues for operations, maintenance and capital investment;
  - o Ability of the corporate entity to issue long-term bonds for capital purchases;
  - o Removal of current expenditures and revenues from the federal budget in equal amounts for a fiscally neutral effect;
  - o Sufficient management flexibility and compensation to attract and retain high-caliber leadership and staff;
  - o Flexibility to create systems for procurement, staff and budget consistent with best practices in the private sector;
  - o Flexibility in an orderly transfer of operating functions to the reorganized entity; and
  - o Continued air traffic control service to DOD, meeting national security requirements.

**Administration Position**

**PENDING (Deferred to Secretary Peña).**

## AIRLINE COMMISSION RECOMMENDATIONS

### SECTION I: America's Air Transportation System Must be Efficient and Technologically Superior

#### ISSUE: Other System Capacity Issues

#### RECOMMENDATIONS:

"The Commission also examined other options for improving system capacity and developed these recommendations. *We recommend:*

**#6** (1) FAA 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. (Washington National Airport's legislated limits would not be affected.)

**#7** (2) Congress fully fund system capacity elements -- facilities and equipment; airports; research, engineering and development; and FAA Operations -- as long as these remain within the federal budget process."

#### ADMINISTRATION POSITION:

(1) Immediately accept. FAA should review the rule that limits operations at "high density" airports and report to the Secretary of Transportation within 90 days.

(2) Immediately accept. The Administration should support in the President's Budget full funding of projects which will have a demonstrable impact on system capacity.

## 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.

**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.

**AIRLINE COMMISSION RECOMMENDATIONS****ISSUE:** Stage 3 Noise Compliance

**RECOMMENDATION:** 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.

#16

**ADMINISTRATIVE POSITION:**

-- **Immediately accept:**

- The FAA will continue to exercise review and approval authority over all local Stage 3 restrictions proposed by airport operators, pursuant to the Airport Noise and Capacity Act of 1990 (ANCA) and its implementing regulation, part 161.
- The Federal transition to an all Stage 3 fleet by the year 2000, with limited waiver provisions, will ultimately reduce the population affected by significant levels of aircraft noise from 2.7 million to 400,000. As of December 31, 1992, 59 percent of the aircraft operating at U.S. airports were Stage 3. This is well ahead of the minimum 55 percent required by December 31, 1994.
- In most cases, the national schedule for transition to an all Stage 3 fleet should achieve the noise mitigation objective of airports and their affected communities. In the rare circumstance that an airport operator concludes that additional noise relief is needed, the FAA will urge the airport to exhaust all means to work with the local airport users in reaching voluntary agreement on any additional measures.

**AIRLINE COMMISSION RECOMMENDATIONS****ISSUE:** Stage 3 Noise Compliance

**RECOMMENDATION:** The Federal Government should not enact any provision to mandate the replacement, retirement, or modification of Stage 3 aircraft for noise purposes.

#17

**ADMINISTRATIVE POSITION:**

-- ~~Immediately agree:~~

- The FAA will continue to ensure carrier compliance with the provisions in 14 CFR part 91, Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia, which provide for the phaseout of Stage 2 aircraft by the year 2000, with limited waiver provisions. This transition to an all Stage 3 fleet will result in substantial noise relief at all airports, ultimately reducing the population affected by significant levels of aircraft noise from 2.7 million to 400,000.
- The transition to an all Stage 3 fleet is moving even faster than the required national schedule. The 1992 operator compliance progress reports filed with the FAA show that as of 12/31/92, the overall fleet mix of Stage 3 aircraft was 59.3 percent, and 56.3 percent for domestic aircraft. This is well ahead of the minimum 35 percent required by 12/31/94.

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## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Improving Financial Strength

## RECOMMENDATION:

#18

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.

## ADMINISTRATION POSITION:

Reject Immediately

- o Not necessary. This recommendation is based on a number of invalid premises relating to the Secretary of Transportation in this area of exercise of his authority. On balance this recommendation is not necessary because the Secretary of Transportation already has authority to provide advice to individual airlines, and to seek advice on an airline's financial health.
- o The Secretary of Transportation has exercised this authority in a number of cases including the one that some argue demonstrates the need for this proposal. Specifically in the case of N.W. the Secretary sought and received analyses and advice from a number of sources, including Wall Street who recommended approval of the LBO by Mr. Chcochi.
- o Airlines would be less likely--not more likely to share their business plans with DOT if they knew outsiders would also get this information.
- o Secretary of Transportation could reaffirm his authority and his intention to act if he deems it necessary.

August 4, 1993

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**AIRLINE COMMISSION RECOMMENDATION****ISSUE: Improving Financial Strength****RECOMMENDATION:**

#19 °

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.

**ADMINISTRATION POSITION:****Accept Premise**

- **Reject presidentially appointed advisory committee (see previous recommendation).**
- **Except for Presidential Commission, describes existing authority of Secretary.**
- **Secretary would reaffirm his authority and his intention to act if necessary.**

August 4, 1993

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## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Improving Financial Strength

## RECOMMENDATION:

-D-

#20

- o 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.

## ADMINISTRATION POSITION:

Accept

- describes existing authority of Secretary;
- Secretary would reaffirm his authority and his intention to act if necessary.

August 4, 1993

15

**AIRLINE COMMISSION RECOMMENDATION****ISSUE: Bankruptcy****RECOMMENDATION:**

- #21** ○ Require Bankruptcy Judges to make findings, subject to judicial review, for granting 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.
- #22** ○ 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 underutilized for extensive periods of time to the detriment of surrounding communities and the traveling public.
- #23** ○ 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.
- #24** ○ 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 of aircraft.
- #25** ○ Make the Secretary of Transportation a statutory party to airline bankruptcy proceedings.

**ADMINISTRATIVE POSITION:**

Accept premise, but more work is needed. The NEC should consider establishing a Working Group to review the economic effects of the bankruptcy laws. Treasury is currently developing a proposal to that end. (See attached).

- Two sets of potentially conflicting interests are involved in a bankruptcy. First is the interests of individual creditors and second is the social interest in the efficient use of the resources controlled by or affected by the bankrupt enterprise.
- Legislation has been introduced in the Congress that would make significant changes in the bankruptcy laws.

August 4, 1993

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The Administration should review the economic effects of the bankruptcy laws, including those cited by the Airline Commission, to determine what, if any, changes are needed.

August 4, 1993

# DRAFT

## Proposal for an NEC Bankruptcy Reform Working Group

### SUMMARY

Existing bankruptcy law has been subject to extensive criticism. Issues which have arisen include the standing of non-tax government claims (especially those of the Pension Benefit Guarantee Corporation) and various problems associated with Chapter 11 bankruptcies (the reorganization chapter). An NEC Working Group should be formed to examine how well the current system functions from the perspective of economic efficiency, as well as the more traditional concern with the rights of creditors. Such an examination should reveal significant opportunities for reform of the bankruptcy statutes, especially Chapter 11, and of the ways bankruptcy cases are actually administered by the courts.

### DISCUSSION

Bankruptcy law exists to provide a collective response by creditors to the financial failure of an individual or enterprise. This permits a better outcome than if each creditor individually scrambled to collect from the debtor. Individual interests can run counter to the interests of the group, and of society.

Two -- sometimes conflicting -- sets of interests are involved in the bankruptcy of an enterprise. First comes the social interest in the efficient use of the resources controlled by the firm. Second comes the individual interest of the creditors, and the rights they have relative to one another in circumstances where the debtor has insufficient assets to honor all of the obligations in full.

Bankruptcy law is divided into chapters, depending upon the economic status of the entity filing for bankruptcy protection (e.g., individual, non-bank business, farmer, etc.), and the resolution to be pursued (e.g., reorganization, liquidation).

# DRAFT

# DRAFT

Even before the recession, the number of Chapter 11 filings was increasing. Chapter 11 filings leave control of the assets in the hands of the debtor -- typically the same management team which produced the need for the filing in the first place. As the number and value of these cases increases, it becomes more important to make sure Chapter 11 functions well.

The fundamental theory behind Chapter 11 is that value is better protected by keeping the business a going enterprise than by shutting the business down and selling off the assets individually. Chapter 11 was designed to enable debtors to regain profitable operations by protecting them from creditors' enforcement actions (eviction, foreclosure, etc.) while negotiating a settlement of outstanding claims.

Several problems arise. Sometimes the continued operations of the debtor only pile up more liabilities, diminishing the net value of the debtor's assets. Sometimes associated businesses (e.g., suppliers, partners, customers, competitors) are themselves forced into bankruptcy by the non-performance or advantage gained by the original debtor. All too often liquidation of the firm is only postponed, not avoided. The losses suffered by the creditors are made even larger than they would have been if liquidation had occurred at the time of filing.

Little substantive empirical information on the "on-the-ground" functioning of the system is available (some data are collected for the purpose of administering the case loads by the courts). There have been several attempts to gather data in recent years, but these have all been "single shot" attempts. They were very expensive, of limited applicability, and did not establish a continuing data series suitable for monitoring the performance of Chapter 11 over time. Because of these deficiencies, empirical analysis has not played a major part in the formulation of bankruptcy policy up to now.

A significant first step in a reform effort would be to require the reporting and compilation of useful data series by the courts on a continuing basis. Development of such a data series would take some time and care. However, the present move toward standardized forms for use in bankruptcy cases suggests the series could be generated with only a reasonable amount of effort.

The economic theory and practice of Chapter 11 needs to be thoroughly re-examined. There are problems which stem from the law itself, and in addition the actual application of the law by overloaded Bankruptcy Courts and Court-appointed Trustees permits practices that fail to balance creditors' rights and fail to protect the social interest in the efficient use of resources.

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## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Taxes and User Fees

## RECOMMENDATIONS:

#26

- o Reform the Alternative Minimum Tax so that airlines losing money are not required to pay income tax.

## ADMINISTRATION POSITION:

Accept promise that AMT relief should be provided.

- o The Administration supports the AMT relief provided under the budget reconciliation bill. The reconciliation bill will provide income tax relief for all firms subject to the AMT.
- o The purpose of the AMT is to ensure that corporations with economic income pay income tax. Thus, some corporations that have no taxable income because of tax preferences, such as accelerated depreciation, are required to pay AMT. The reconciliation bill will reduce, but not eliminate, the AMT by reducing the tax preference attributable to accelerated depreciation.

August 4, 1993

**AIRLINE COMMISSION RECOMMENDATION****ISSUE: Taxes and User Fees****RECOMMENDATIONS:**

- #27** o Roll back the ticket tax and the cargo waybill tax to their pre-1990 levels of 8% and 5%, respectively.
- #28** o 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.

**ADMINISTRATION POSITION:****Reject at present time**

- o *Payments from general revenue (beyond the government's fair user charge) should be based on a review of the 1969 decision to finance the air traffic control system by user fees. (OMB does not support a review).*
- o Ticket and waybill taxes are borne primarily by passengers and shippers in long run, not by carriers.
- o These taxes are user fees that support capital improvements and services provided by the FAA.
- o A roll back of these taxes would reduce federal revenues by \$4-5 billion in the budget period FY 94-98 and PAY-GO process requires offsetting revenue increases or mandatory spending cuts. No offset was suggested by the Commission.
- o FAA budget is 75 percent supported by user fees paid into the Trust Fund and 25 percent by the General Fund which covers the costs attributable to public sector users of the system. Increasing the General Fund's share of FAA's costs would shift costs to the general taxpayer, but would not increase the total funds available to be appropriated for FAA programs.
- o In each year since 1990, more money has been spent out of the Trust Fund than was paid in by aviation users.

August 4, 1993

## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Taxes and User Fees

## RECOMMENDATIONS:

- (#29) o Exempt airlines from any proposed transportation fuel tax.

## ADMINISTRATION POSITION:

Accept temporary exemption.

- o Under the budget reconciliation bill, aviation fuels are exempt from the motor fuels tax (4.3 cents per gallon) through 9/30/95.

August 4, 1993

**AIRLINE COMMISSION RECOMMENDATION****ISSUE: Taxes and User Fees****RECOMMENDATIONS:****#30**

- o Full deductibility for airline employee per diem payments.

**ADMINISTRATION POSITION:****Reject Immediately**

- o The Administration supports the budget reconciliation bill, which would reduce the present deduction for business meals and entertainment expenses from 80 percent to 50 percent.
- o Full deductibility for airline employee per diem expenses is not justified because these expenses inherently involve a personal consumption component. Special treatment for airline personnel also is unjustified, because travel is an essential component of other occupations.

August 4, 1993

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**AIRLINE COMMISSION RECOMMENDATION****ISSUE: Taxes and User Fees****RECOMMENDATIONS:**

#31

- o Expenditure of funds on improving facilitation of passengers and cargo arriving in the U.S. should be in rough approximation to the amounts collected in Customs, INS and Agriculture inspection fees.

**ADMINISTRATION POSITION:****Accept**

- o This recommendation reflects current Administration policy. The INS has a proposal to increase their fee by \$1 to permit greater spending to improve passenger and cargo inspection services. (Recommendation is probably based on earlier Agriculture fee levels which were too high. They were set at \$2 per passenger originally for administrative simplicity.) Since these fees were only available through appropriations to cover costs incurred, about \$30 million more was collected than spent. Fees have since been lowered to better align them with program costs and eliminate surplus collections.

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**AIRLINE COMMISSION RECOMMENDATION****ISSUE: Taxes and User Fees****RECOMMENDATIONS:**

#32

- o Rigorous enforcement of AIP (Airport Improvement Program) grant assurance language barring diversion of airport revenues to non-airport purposes.

**ADMINISTRATION POSITION:**Support premise

Further review needed by Department of Transportation--will respond in 30 days.

- o Because of the growing interest by cities to use airport revenues for general purposes, the Department is reviewing the legal and policy implications of such an approach.
- o Airports that receive federal improvement grants should not be allowed to divert airport revenues to non-airport use. If necessary the Administration should seek legislation to prevent such diversion.
  - Permitting diversion of airport revenues for non-airport purposes would likely increase costs to airport users and the cost of air travel or decrease service.
- o Certain municipalities may prefer exemption from the AIP in return for the authority to use airport revenues for general government purposes.

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**AIRLINE COMMISSION RECOMMENDATION****ISSUE: Taxes and User Fees****RECOMMENDATIONS:****33**

- o Continued close scrutiny of PFC (Passenger Facility Charge) applications and approval of only those projects which meet the PFC statute's criteria.

**ADMINISTRATIVE POSITION:****Immediately accept**

- o The FAA will continue to exercise its review and approval of PFC applications, based upon the PFC status and its implementing regulation (Part 158) according to the PFC process now in place:
  - Upon receiving a PFC application from an airport, the FAA will review the application and:
    - make a determination that the application is substantially complete (i.e., the application includes all information required by regulation to permit the FAA to make its decision); and then
    - publish a notice in the Federal Register that the application is completed and provide a 30 day comment period.
  - The FAA's decision on a PFC application will be made after the Federal Register review and within 120 days of the date the application is first submitted to the FAA. FAA's criteria for review of a PFC application is defined by the PFC statute:
    - eligible projects are those airport development and planning projects eligible under the Airport Improvement Program (AIP) and noise compatibility measures eligible for federal assistance. In addition to AIP standards, construction of gates and certain related facilities are PFC eligible.

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- furthermore, to be eligible, an airport must provide justification that a PFC project;
- preserves or enhances safety, security, or capacity of the national air transportation system;
- reduce noise or mitigates noise impacts resulting from an airport; or
- furnishes opportunities for enhanced competition between and among air carriers.

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## AIRLINE COMMISSION RECOMMENDATION

ISSUE: Taxes and User Fees

## RECOMMENDATIONS:

#34

When jet fuel prices rise substantially due to war or other national emergency the President should consider releasing crude oil from the (Strategic Petroleum) reserve as a means of addressing the adverse impact of those prices on the airlines and our economy.

## ADMINISTRATION POSITION:

Project as written, but ask DOE to review policy on uses of the SPR.

- o Purpose of Strategic Petroleum Reserve (SPR) has been to deal with supply interruption, not with speculation.
- o Price movements that result from anticipated changes in supply can be beneficial in stabilizing a market. DOE should be asked to review the policy on uses of the SPR to determine whether there are circumstances other than supply interruption in which it should be used to stabilize energy markets.
- o Regarding jet fuel prices:
  - Release from SPR would affect all energy prices and could not be restricted to jet fuel.
  - The jet fuel price spike during the Gulf War was due to increase consumption and stockpiling of jet fuel by U.S. and allied armed forces, speculation and refining constraints.
  - USG energy policy should not be driven by any one class of users, e.g. airlines.
  - The lag in filling the SPR makes it more difficult to justify its use for non-supply interruption purposes. (Current fill rate is 18,000 bbl. per day; fill is around 600 million bbls.; Administration fill target is 750 million bbl. and Congressional target is 1 billion bbl.)

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**PROPOSED ADMINISTRATION POSITION ON  
AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:**      New Entrants

**Commission Recommendation #35**

DOT should continue to be receptive to certifying 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.

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**AIRLINE COMMISSION RECOMMENDATION****ISSUE: Taxes/Labor-Management Relations****RECOMMENDATIONS:**

- **#40** Amend ERISA and the tax code to allow a company to offer its own debt securities to employees as part of a qualified plan.
- **#41** Amend provisions of IRS Section 415 that limit qualified stock plans to 25 percent of an employee's income in certain cases.
- **#42** Defer recognition of capital gains on shares sold to employees in public companies if certain conditions are met.

**ADMINISTRATION POSITION:****Reject immediately**

- 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.
  - Expanding the category of employer securities held by an ESOP to include debt securities represents a significant departure from the purpose of ESOPs which is to serve as a vehicle for increasing employees' ownership stake in their employer.
  - Increasing the allocation limits enables ESOP benefits to accrue to more highly compensated employees.
  - Expanding tax-free rollover treatment to sales of publicly-traded stock would significantly broaden this tax incentive beyond the original purposes of ESOPs, which was to encourage sales to an ESOP by owners of businesses for which there is no readily available market.

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- Permitting inclusion of debt provides a tax benefit that increases employees' potential for loss, with no potential for gain, and increases risk to workers because their jobs and their saving would be tied to one employer.

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**AIRLINE COMMISSION RECOMMENDATIONS****ISSUE:** International Trade - Airlines**RECOMMENDATION(S):**

#43

US negotiating efforts should focus on creating a multinational operating environment for airlines, free of discrimination and restrictions.

#44

Liberal, multinational agreements should be negotiated to encompass provisions for passenger and cargo services, charters, cross-border investment and ownership, comparable traffic rights, fifth/sixth freedom traffic rights, fair market access & doing business opportunities, system capacity, government subsidies, and customs & immigration facilities.

**ADMINISTRATION POSITION:**Accept premise.

The existing interagency committee on aviation issues will consider possibilities and options for a multinational approach to international aviation negotiations and, as appropriate, possibly launch a multinational negotiating initiative.

The committee will also consider each of the provisions specified in the Commission's recommendation, as well as provisions to allow competitive pricing, recognizing that the appropriateness of each element or combination of elements will have to be considered in the context of any multinational approach the committee develops and/or the specific circumstances of the countries to be included in a multinational approach.

**AIRLINE COMMISSION RECOMMENDATIONS****ISSUE:** International Trade - Airlines**RECOMMENDATION:**★  
#45

The Federal Aviation Act should be amended to allow the US to negotiate bilateral agreements that permit foreign investors to hold up to 49% voting equity in US airlines, providing those bilateral agreements are liberal and contain equivalent opportunities for US airlines; the foreign investor is not government-owned, and the investment will advance the national interest and the development of a liberal global regime for air services.

**ADMINISTRATION POSITION:**

**NOTE:** Liberalization of foreign investment provisions in the Federal Aviation Act is a major policy decision that should be discussed by IWG principals on August 5.

This issue should be considered jointly with the Commission's recommendation on the Civil Reserve Air Fleet (CRAF) program.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

**+ #46** Enforcement of current bilateral aviation rights through all means, including denunciation and suspension of privileges and services when violations occur.

**ADMINISTRATION POSITION:**

Accept immediately.

Legal mechanisms such as the International Air Transportation Fair Competitive Practices Act of 1974 (IATFCPA) exist to address problems related to the violation of bilateral air services agreements.

The Administration agrees that the full panoply of available tools and resources should be fully, actively, and credibly considered in response to bilateral violations and denunciations.

**AIRLINE COMMISSION RECOMMENDATIONS****ISSUE: International Trade - Airlines****RECOMMENDATION:**

#47 Elevation of the stature of international air service negotiations and appointment of an ambassador-at-large to lead them; and a strengthening of the aviation career track at the Department of State to enhance continuity and expertise in the field.

**ADMINISTRATION POSITION:**

Accept premise.

With respect to the Commission's recommendation for the appointment of an Ambassador-at-large for aviation negotiations, the Commission has recognized that the development and pursuit of a multinational aviation negotiating initiative is a longer-term goal. This recommendation should be reviewed at such time as a multinational approach can be developed and launched.

With regard to strengthening the aviation career track to enhance continuity and expertise, State has already undertaken a review of current staffing and is exploring ways (e.g., longer tours of duty) to ensure that key staff remain in place for a longer period of time.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

→  
AHS Conclusion of interim agreements liberalizing air cargo and charter services if those agreements support the overall objective of multinational liberalization.

**ADMINISTRATION POSITION:**

Accept premise.

State and DOT should work together to examine the prospects for sector-specific agreements and to determine whether and how such agreements can be shaped to support a multinational liberalization effort. Where it is feasible, we should consider negotiating separate agreements (both bilateral and multinational) to liberalize air cargo and/or charter services.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

#49

Avoid the use of unilateral sanctions against international air services unless passenger safety concerns are involved. This would not preclude sanctions for violations of a bilateral agreement.

**ADMINISTRATION POSITION:**

Needs review.

International air services have never been excluded from general economic sanctions imposed for broader foreign policy reasons. State should review this recommendation in the context of current US law, policy, and regulations.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATION:**

**#50** Amend the Warsaw Convention by ratifying Montreal Protocols 3 and 4 and approving a supplemental compensation plan.

**ADMINISTRATION POSITION:**

Accept immediately.

The IWG should discuss the concerns of the aircraft and airframe manufacturers with regard to the supplemental compensation plan.

Following this discussion, State and DOT should consult on legislative strategy and advise Congress of the Administration's intent to pursue ratification of the Protocols and passage of a supplemental compensation plan.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Airlines

**RECOMMENDATIONS:**

→  
#51 Protecting national security and defense interests by assuring that cross-border investment and ownership do not adversely affect the availability of aircraft for the CRAF program.

**ADMINISTRATION POSITION:**

Accept premise.

This recommendation should be considered in conjunction with the recommendation on amendment of the Federal Aviation Act and negotiation of agreements permitting greater foreign investment in US airlines. DOD and DOT should take the lead.

**AIRLINE COMMISSION RECOMMENDATIONS****ISSUE:** International Trade - Aerospace**RECOMMENDATIONS:**

#52

Strengthening and expanding coverage of international agreements that contain disciplines on government subsidies and government involvement in aircraft manufacturing projects.

**ADMINISTRATION POSITION:**

Accept immediately.

The 1992 bilateral aircraft agreement signed between the European Community and the United States commits both parties to work toward multilateral disciplines similar to those contained in the bilateral agreement. The parties agreed to include other civil aircraft producers through revision of the 1979 GATT Agreement on Trade in Civil Aircraft. At the initiative of the US and the European Community, multilateral negotiations toward revision of the 1979 GATT aircraft agreement are underway in Geneva. The Administration is specifically seeking to tighten further the disciplines on government support and subsidies currently contained in the GATT aircraft agreement and to expand the coverage of that agreement to other producing countries.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Aerospace

**RECOMMENDATIONS:**

7  
#53 Proper enforcement of international trade obligations and US trade laws and elimination of subsidies, offsets, purchasing and sourcing initiatives, and other unfair international trading practices.

**ADMINISTRATION POSITION:**

Accept immediately.

The Administration will vigorously enforce existing trade agreements and US trade laws. The Administration is especially committed to monitoring the compliance of the Airbus partner governments with the 1992 bilateral aircraft agreement signed between the European Community and the United States.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Aerospace

**RECOMMENDATIONS:**

\*  
#54

The Department of Commerce, with the Secretary maintaining full discretion, should use maximum means available under GATT to counteract illegal subsidies.

**ADMINISTRATION POSITION:**

Accept Premise.

The Commission recognized that this recommendation on enforcement with respect to actions by the Secretary of Commerce duplicates its recommendation to enforce US trade laws. However, the Commission agreed to retain it as a means of expressing its concern about the problems engendered by foreign aircraft subsidies.

**Note:** Subsidies *per se* are not illegal under US law. They are actionable only if they are injurious. Export subsidies are prohibited by the GATT; however, Airbus has mainly received internal subsidies.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Aerospace

**RECOMMENDATIONS:**

 Adopt explicit goals and devise policies to encourage domestic and international cooperation among airframe, component, and engine manufacturers to increase their ability to attract investment capital to support product development, manufacture, and marketing of new products.

**ADMINISTRATION POSITION:**

Needs review.

Commerce leads. Some clarification of the Commission's intent with regard to this recommendation would be helpful, because it appears to advocate a larger government role in the aerospace sector. To the extent that US antitrust laws permit, US firms already cooperate with domestic and foreign firms when they believe it is in their interest to do so.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Aerospace

**RECOMMENDATIONS:**

+  
#56 Increase Exim Bank funding levels and lending authority for large and small aircraft to the extent necessary to provide parity in financing for US manufacturers compared with foreign competitors.

**ADMINISTRATION POSITION:**

Needs review.

The Administration must ensure that Eximbank funding levels are adequate to enable US aircraft exports to remain competitive. Eximbank's annual budget takes into account likely demand for financing US exports, including aircraft.

**Background:** Over the years, Treasury has led the interagency US delegation of OECD Export Credit Group Participants, including Large Aircraft Sector Understanding (LASU) issues. The LASU agreement levels the competitive playing field in terms of export financing. Other agencies that participate in ongoing export credit negotiations include State, Commerce, Eximbank, USTR, OMB, AID, and TDA.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Aerospace

**RECOMMENDATIONS:**

**#57** Increase efforts to harmonize international standards for the manufacture and initial certification of aircraft, and encourage further cooperation between US and foreign certification inspection agencies.

**ADMINISTRATION POSITION:**

Accept immediately.

The FAA should strengthen its ongoing efforts to harmonize US and European standards for the manufacture and initial certification of aircraft, and State should strengthen its diplomatic support for these efforts.

These efforts could focus on continuing the harmonization of US and European performance-based standards, replacing bilateral airworthiness agreements with an updated format covering such areas as maintenance, flight simulators, and noise standards along with certification, technical assistance, oversight, and encouraging the development of regional civil aviation authorities. As appropriate, the Administration should also examine ways to harmonize international security standards.

**AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** International Trade - Aerospace

**RECOMMENDATIONS:**

→  
#58 Avoid placing unilateral sanctions on manufacturers' export of aerospace products unless those sanctions are necessary to protect the national security.

**ADMINISTRATION POSITION:**

Needs review.

Specific industries such as aerospace have not been excluded from sanctions that restrict the export of critical technologies for broader foreign policy or national security reasons.

State should lead a review to determine how this recommendation tracks with existing law, regulations, and policy.

**PROPOSED ADMINISTRATION POSITION ON  
AIRLINE COMMISSION RECOMMENDATION**

**ISSUE:** General Aviation Aircraft Production

**#59** **Commission Recommendation:** Enactment of a statute of repose for general aviation aircraft which would limit the liability of manufacturers of these aircraft to 15 years from the date of manufacture.

**Administration Position:**

Immediately Accept.

While the Administration supports this issue, it is not looking for overall tort reform, but only relief for this specific industry. It is understood that Senator Kassenbaum and Representatives Glickman and Hansen have introduced bills in the Senate and House that would limit product liability for general aviation aircraft to 15 years.

**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.

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION'S 61 RECOMMENDATIONS**

**NEC Working Group on Civil Aviation  
As of August 5, 1993**

| COMMISSION RECOMMENDATION                             | See Page(s)    | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | POSITION<br>DEFERRED | TOTAL     |
|-------------------------------------------------------|----------------|-----------------------|--------------------------------------------|-------------------------------------------------|-----------------------|----------------------|-----------|
| <b>AIR TRANSPORTATION EFFICIENCY &amp; TECHNOLOGY</b> | <b>1 - 6</b>   | <b>7</b>              | <b>6</b>                                   | <b>0</b>                                        | <b>1</b>              | <b>3</b>             | <b>17</b> |
| Global Positioning System                             | 1              | -                     | 2                                          |                                                 | -                     | -                    | 2         |
| Restructuring FAA                                     | 2              | -                     | -                                          |                                                 | -                     | 3                    | 3         |
| Other System Capacity Issues                          | 3              | 2                     | -                                          |                                                 | -                     | -                    | 2         |
| Regulatory Burden                                     | 4, 5           | 3                     | 4                                          |                                                 | 1                     | -                    | 8         |
| Noise                                                 | 6              | 2                     | -                                          |                                                 | -                     | -                    | 2         |
| <b>AIR TRANSPORTATION FINANCIAL STRENGTH</b>          | <b>7 - 12</b>  | <b>8</b>              | <b>7</b>                                   | <b>1</b>                                        | <b>9</b>              | <b>0</b>             | <b>25</b> |
| Furthering Financial Strength                         | 7              | 1                     | 1                                          | -                                               | 1                     |                      | 3         |
| Bankruptcy                                            | 8              | -                     | 5                                          | -                                               | -                     |                      | 5         |
| Tax Policy                                            | 9, 10          | 3                     | 1                                          | 1                                               | 4                     |                      | 9         |
| New Entrants                                          | 11             | 1                     | -                                          | -                                               | 1                     |                      | 2         |
| Role of the Workforce                                 | 12             | 3                     | -                                          | -                                               | 3                     |                      | 6         |
| <b>REACHING MARKETS WHEREVER THEY ARE</b>             | <b>13 - 19</b> | <b>6</b>              | <b>8</b>                                   | <b>4</b>                                        | <b>0</b>              | <b>1</b>             | <b>19</b> |
| Toward A Multi-National Regime                        | 13             | -                     | 2                                          | -                                               |                       | 1                    | 3         |
| Short-Term Issues                                     | 14             | 1                     | 2                                          | 1                                               |                       | -                    | 4         |
| Other International Airline Issues                    | 15             | 1                     | 1                                          | -                                               |                       | -                    | 2         |
| Aerospace Manufacturing                               | 16, 17         | 3                     | 1                                          | 3                                               |                       | -                    | 7         |
| General Aviation Aircraft Production                  | 18             | 1                     | -                                          | -                                               |                       | -                    | 1         |
| Assuring Service to Small Communities                 | 19             | -                     | 2                                          | -                                               |                       | -                    | 2         |
| <b>TOTAL</b>                                          |                | <b>21</b>             | <b>21</b>                                  | <b>5</b>                                        | <b>10</b>             | <b>4</b>             | <b>61</b> |

*Note: Page citations in the schedules that follow refer to the Commission's draft report dated Aug. 1, 1993, as subsequently amended at the Aug. 2 Commission hearing.*

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION EFFICIENCY & TECHNOLOGY - GLOBAL POSITIONING SYSTEM**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                         | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------|-------------------------------------------------|-----------------------|------------------------------|---------------------|
| 1 Set the goal of changing the air traffic control system to a satellite-based navigation system by 1996, <i>integrated with a modernized ATC system</i> by the end of 1997.                                                                              |                       | X                                          |                                                 |                       | 21                           | Systems<br>Capacity |
| 2 FAA and industry should pursue efforts to accelerate the implementation of GPS and air traffic control modernization through such means as a public-private consortium, designed for expeditious development and implementation of improved technology. |                       | X                                          |                                                 |                       | 21                           | Systems<br>Capacity |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION EFFICIENCY & TECHNOLOGY - RESTRUCTURING FAA**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED    | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------|-------------------------------------------------|-----------------------|------------------------------|---------------------|
| 3 Create an independent federal corporate entity within DOT to manage and fund air traffic control and related functions, including system development, procurement and maintenance. Policy control of the air traffic control system and safety oversight should stay with the federal government.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                       | <i>X</i><br><b>DEFERRED TO SECRETARY PEÑA</b> |                                                 |                       | 23                           | Systems<br>Capacity |
| 4 Establish a panel of FAA and industry experts, with the participation of DOD, which will report in 90 days on the specific structure and method of implementation; and which will draft legislative proposals for creation of the corporate entity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                       | <i>X</i><br><b>DEFERRED TO SECRETARY PEÑA</b> |                                                 |                       | 23                           | Systems<br>Capacity |
| 5 The following principles should be embodied in the federal corporate entity's implementing act: <ul style="list-style-type: none"> <li>o Ability of the corporate entity to create and use a predictable, stable source of revenues for operations, maintenance and capital investment;</li> <li>o Ability of the corporate entity to issue long-term bonds for capital purchases;</li> <li>o Removal of current expenditures and revenues from the federal budget in equal amounts for a fiscally neutral effect;</li> <li>o Sufficient management flexibility and compensation to attract and retain high-caliber leadership and staff;</li> <li>o Flexibility to create systems for procurement, staff and budget consistent with best practices in the private sector;</li> <li>o Flexibility in an orderly transfer of operating functions to the reorganized entity; and</li> <li>o Continued air traffic control service to DOD, meeting national security requirements.</li> </ul> |                       | <i>X</i><br><b>DEFERRED TO SECRETARY PEÑA</b> |                                                 |                       | 23                           | Systems<br>Capacity |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION EFFICIENCY & TECHNOLOGY - OTHER SYSTEM CAPACITY ISSUES**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                                                    | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------|-------------------------------------------------|-----------------------|------------------------------|---------------------|
| 6 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. (Washington National Airport's legislated limits would not be affected. | X                     |                                            |                                                 |                       | 25                           | Systems<br>Capacity |
| 7 Congress should fully fund system capacity elements -- facilities and equipment; airports; research, engineering and development; and FAA operations -- as long as these remain within the federal budget process.                                                                                 | X                     |                                            |                                                 |                       | 25                           | Systems<br>Capacity |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION EFFICIENCY & TECHNOLOGY - REGULATORY BURDEN**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                                                                                                                         | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------|-------------------------------------------------|-----------------------|------------------------------|-------------|
| 8 FAA should subject regulations to an annual regulatory cost budget -- except for emergency regulations needed to eliminate a direct and immediate threat to the traveling public.                                                                                                                                                                                       |                       |                                            | <i>X</i> <i>work already underway</i> <i>X</i>  |                       | 26                           | Domestic    |
| 9 Congress and DOT should be informed of the annual costs their own proposals would impose on the industry.                                                                                                                                                                                                                                                               |                       | X                                          |                                                 |                       | 27                           | Domestic    |
| 10 Congress, DOT and FAA should more clearly define legislative and regulatory proposals to address problems effectively and efficiently.                                                                                                                                                                                                                                 | X                     |                                            |                                                 |                       | 27                           | Domestic    |
| 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.                                                                                                                                                                              |                       | X                                          |                                                 |                       | 27                           | Domestic    |
| 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.                                                                                                                                                                                            | X                     |                                            |                                                 |                       | 27                           | Domestic    |
| 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. |                       | <i>X</i>                                   | <i>X</i>                                        |                       | 27<br>(Revised<br>8/2/93)    | Domestic    |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION EFFICIENCY & TECHNOLOGY - REGULATORY BURDEN, Continued...**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                         | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 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.                                                                          |                       | X                                          | 7/1                                             |                       | 27                           | Domestic    |
| 15 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. | X                     |                                            |                                                 |                       | (Added<br>8/2/93)            | Domestic    |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION EFFICIENCY & TECHNOLOGY - NOISE**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                   | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team         |
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| 16 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. | X                     |                                            |                                                 |                       | 29                           | Systems<br>Capacity |
| 17 The federal government should not enact any provision to mandate the replacement, retirement or modification of Stage 3 aircraft for noise purposes.                                                             | X                     |                                            |                                                 |                       | 29                           | Systems<br>Capacity |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS**  
**● ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION SYSTEM FINANCIAL STRENGTH - FURTHERING FINANCIAL STRENGTH**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                                                                                                                                                                                                                 | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 18 A presidentially appointed airline financial advisory committee should be created 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 to the industry. The committee should be bipartisan and include senior members from finance, industry and labor. |                       |                                            |                                                 | X                     | 32                           | Financial   |
| 19 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. The Department should continue to review in advance major changes in an airline's ownership and control (e.g., leveraged buyouts). If there are concerns, the Secretary would raise them directly with the airline's management or board.              |                       | X<br><i>careful in response here</i>       |                                                 |                       | 33                           | Financial   |
| 20 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.                                                                                                                                                                                                                                                                                        | X                     |                                            |                                                 |                       | 33                           | Financial   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE:** AIR TRANSPORTATION SYSTEM FINANCIAL STRENGTH - BANKRUPTCY (see Note)

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                          | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 21 Require bankruptcy judges to make findings, subject to judicial review, for granting an extension of the current 120-day limit and impose an absolute limit of 1 year on the exclusive right of a bankrupt carrier to file a reorganization plan.                       |                       | X                                          |                                                 |                       | 34                           | Financial   |
| 22 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 under-utilized for extensive periods of time to the detriment of surrounding communities and the traveling public. |                       | X                                          |                                                 |                       | 34                           | Financial   |
| 23 Allow governmental bodies, such as the Pension Benefit Guaranty Corporation, whose claims are not based on tax liability, to sit on creditors' committees.                                                                                                              |                       | X                                          |                                                 |                       | 34                           | Financial   |
| 24 Clarify provisions in the bankruptcy code with respect to aircraft leases. Lessors' concern about potential impacts of bankruptcy on their leases should be allayed, allowing other airlines to obtain better lease terms for aircraft.                                 |                       | X                                          |                                                 |                       | 34                           | Financial   |
| 25 Make the Secretary of Transportation a statutory party to airline bankruptcy proceedings.                                                                                                                                                                               |                       | X                                          |                                                 |                       | 35                           | Financial   |

Note: Given the extensive criticism leveled at existing bankruptcy law, Treasury is proposing that an NEC working group be established to thoroughly examine Chapter 11 and the need for reform.

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION SYSTEM FINANCIAL STRENGTH - TAX POLICY**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                         | IMMEDIATELY<br>ACCEPT         | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED         | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 26 Amend the Alternative Minimum Tax so airlines and other capital intensive industries are not required to pay income tax when losing large amounts of money.                                            | X<br><i>Reclarify version</i> | <i>we have agreed all we can do here in budget</i> |                                                 |                       | 35<br>(Revised 8/2/93)       | Financial   |
| 27 Roll back the ticket tax and the cargo waybill tax to their pre-1990 levels of 8% and 5%, respectively.                                                                                                |                               |                                                    |                                                 | X                     | 36                           | Financial   |
| 28 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.                                          |                               |                                                    |                                                 | X                     | 36                           | Financial   |
| 29 Exempt airlines from the proposed transportation fuel tax.                                                                                                                                             | X<br>(thru 9/30/95)           |                                                    |                                                 |                       | 36                           | Financial   |
| 30 Allow full deductibility for airline employee per diem payments.                                                                                                                                       |                               |                                                    |                                                 | X                     | 37                           | Financial   |
| 31 Expenditure of funds on improving facilitation of passengers and cargo arriving in the U.S. should be in rough approximation to the amounts collected in Customs, INS and Agriculture inspection fees. | X                             |                                                    |                                                 |                       | 37                           | Financial   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION SYSTEM FINANCIAL STRENGTH - TAX POLICY, Continued...**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                              | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED                                          | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS                                     | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 32 Rigorously enforce existing AIP Grant assurance language barring diversion of airport revenues to non-airport purposes.                                                                                                                                                     |                       |  |  |                       | 37                           | Financial   |
| 33 Continue close scrutiny of PFC applications and approval of only those projects which meet the PFC statute's criteria.                                                                                                                                                      | X                     |                                                                                     |                                                                                     |                       | 38                           | Financial   |
| 34 When jet fuel prices rise substantially due to war or other national emergency, the President should consider releasing crude oil from the (strategic petroleum) reserve as a means of addressing the adverse impact of those price spikes on the airlines and our economy. |                       |                                                                                     |                                                                                     | X                     | 38                           | Financial   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION SYSTEM FINANCIAL STRENGTH - NEW ENTRANTS**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                     | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 35 DOT continue to be receptive to certifying new applicants who can meet the rigorous scrutiny of the Department under its fitness standards.                        | X                     |                                            |                                                 |                       | 39                           | Domestic    |
| 36 New carriers should be required to meet the same requirements for fitness, operations and maintenance, including Stage 3 fleet requirements, as existing carriers. |                       |                                            |                                                 | X                     | 39                           | Domestic    |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: AIR TRANSPORTATION SYSTEM FINANCIAL STRENGTH - ROLE OF THE WORK FORCE**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 37 Policies which promote the retention and expansion of aviation industry jobs should be developed to the extent they are consistent with our international obligations.                                        | X                     |                                            |                                                 |                       | (Added<br>8/2/93)            | Domestic    |
| 38 The Department of Transportation should require acquiring carriers to advise DOT of their plans to protect potentially displaced workers.                                                                     | X                     |                                            |                                                 |                       | (Added<br>8/2/93)            | Domestic    |
| 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.                                       | X                     |                                            |                                                 |                       | 40                           | Domestic    |
| 40 The Employee Retirement Income Security Act (ERISA) and the appropriate internal revenue code should be amended to allow a company to offer its own debt securities to employees as part of a qualified plan. |                       |                                            | X                                               | X                     | 40<br>(Revised<br>8/2/93)    | Financial   |
| 41 Amend the Internal Revenue Code (Section 415) provisions that limit qualified stock plans to 25% of an employee's income in certain cases.                                                                    |                       |                                            | X                                               | X                     | 41                           | Financial   |
| 42 Allow deferral of taxes on capital gains on shares sold to employees in public companies if certain conditions are met.                                                                                       |                       |                                            | X                                               | X                     | 41                           | Financial   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: REACHING MARKETS WHEREVER THEY EXIST - TOWARD A MULTI-NATIONAL REGIME**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                                                                                                                          | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 43 U.S. negotiating efforts should focus on creating a multi-national operating environment for airlines free of discrimination and restrictions.                                                                                                                                                                                                                          |                       | X                                          |                                                 |                       | 45                           | Intern'l.   |
| 44 Liberal, multi-national agreements should be negotiated that encompass provisions for passenger and cargo services; charters; cross-border investment and ownership; comparable traffic rights; fifth/sixth freedom traffic rights; fair market access and doing business opportunities; system capacity; government subsidies; and customs and immigration facilities. |                       | X                                          |                                                 |                       | 45<br>(Revised<br>8/2/93)    | Intern'l.   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: REACHING MARKETS WHEREVER THEY EXIST - SHORT-TERM ISSUES**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS                                       | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 45 The Federal Aviation Act should be amended to allow the U.S. to negotiate bilateral agreements that permit foreign investors to hold up to 49% voting equity in U.S. airlines, providing those bilateral agreements are liberal and contain equivalent opportunities for U.S. airlines; the foreign investor is <i>not</i> government-owned; there are reciprocal investment rights for U.S. airlines; and the investment will advance the national interest and the development of a liberal global regime for air services. |                       |                                            |                                                                                       |                       | 46                           | Intern'l.   |
| <b>MAJOR POLICY ISSUE - DEFERRED FOR<br/>DISCUSSION BY WORKING GROUP<br/>PRINCIPALS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                          |                       |                                            |                                                                                       |                       |                              |             |
| 46 Enforce current bilateral aviation rights through all means, including renunciation and suspension of privileges and services when violations occur.                                                                                                                                                                                                                                                                                                                                                                          | X                     |                                            |                                                                                       |                       | 46                           | Intern'l.   |
| 47 Elevate the stature of international air service negotiations and appoint an ambassador-at-large to lead them; and strengthen the aviation career track at the Department of State to enhance continuity and expertise in the field.                                                                                                                                                                                                                                                                                          |                       | X                                          |                                                                                       |                       | 47                           | Intern'l.   |
| 48 Conclude interim agreements liberalizing air cargo and charter services if those agreement support the overall objective of multi-national liberalization.                                                                                                                                                                                                                                                                                                                                                                    |                       | X                                          |                                                                                       |                       | 47                           | Intern'l.   |
| 49 Avoid the use of unilateral sanctions against international air services unless passenger safety concerns are involved. This would not preclude sanctions for violations of a bilateral agreement.                                                                                                                                                                                                                                                                                                                            |                       |                                            |  | X                     | 47                           | Intern'l.   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: REACHING MARKETS WHEREVER THEY EXIST - OTHER INTERNATIONAL AIRLINE ISSUES**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                               | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 50 The U.S. should amend the Warsaw Convention by ratifying Montreal Protocols 3 and 4 and approve a supplemental compensation plan.                                            | X                     |                                            |                                                 |                       | 47                           | Intern'l.   |
| 51 Protect national security and defense interests by assuring cross-border investment and ownership do not adversely affect the availability of aircraft for the CRAF program. |                       | X                                          |                                                 |                       | 48                           | Intern'l.   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: REACHING MARKETS WHEREVER THEY EXIST - AEROSPACE MANUFACTURING**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                                                                                                             | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 52 Strengthen and expand the coverage of international agreements that contain disciplines on government subsidies and government involvement in aircraft manufacturing projects.                                                                                                                             | X                     |                                            |                                                 |                       | 49                           | Intern'l.   |
| 53 Properly enforce international trade obligations and U.S. trade laws and eliminate subsidies, offsets, purchasing and sourcing incentives, and unfair international trading practices.                                                                                                                     | X                     |                                            |                                                 |                       | 49                           | Intern'l.   |
| 54 The Department of Commerce, with the Secretary maintaining full discretion, should use the maximum means available under the GATT to counteract illegal subsidies.                                                                                                                                         |                       | X                                          |                                                 |                       | 49                           | Intern'l.   |
| 55 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. |                       |                                            | X                                               |                       | 49                           | Intern'l.   |
| 56 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.                                                                                       |                       |                                            | X                                               |                       | 50                           | Intern'l.   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: REACHING MARKETS WHEREVER THEY EXIST - AEROSPACE MANUFACTURING, Continued...**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                                                                    | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 57 Increase efforts to harmonize international standards for the manufacture and initial certification of aircraft and encourage further cooperation between U.S. and foreign certification and inspection agencies. | X                     |                                            |                                                 |                       | 50                           | Intern'l.   |
| 58 Avoid placing unilateral sanctions on manufacturers' export of aerospace products unless those sanctions are necessary to protect the national security.                                                          |                       |                                            | <del>14</del>                                   | X                     | 50                           | Intern'l.   |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: REACHING MARKETS WHEREVER THEY EXIST - GENERAL AVIATION AIRCRAFT PRODUCTION**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                                                                                       | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team         |
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| 59 Enact a statute of repose for general aviation aircraft which would limit the liability of manufacturers of these aircraft to 15 years from the date of manufacture. | X                     |                                            |                                                 |                       | 51                           | Systems<br>Capacity |

**SUMMARY: PROPOSED ADMINISTRATION POSITIONS  
ON AIRLINE COMMISSION RECOMMENDATIONS**

**ISSUE: REACHING MARKETS WHEREVER THEY EXIST - ASSURING SERVICE TO SMALL COMMUNITIES**

| COMMISSION RECOMMENDATION<br>(As of Aug. 2, 1993)                                                           | IMMEDIATELY<br>ACCEPT | ACCEPT PREMISE,<br>BUT MORE WORK<br>NEEDED | FURTHER REVIEW<br>NEEDED, RESPOND<br>IN 30 DAYS | REJECT<br>IMMEDIATELY | Aug. 1<br>Draft<br>Page Ref. | NEC<br>Team |
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| 60 Develop policies which encourage service to small communities.                                           |                       | X                                          |                                                 |                       | 52                           | Domestic    |
| 61 Maintain the federal Essential Air Service program at sufficient levels to serve its legislated purpose. |                       | X                                          |                                                 |                       | 52                           | Domestic    |

## **SUMMARY OF RECOMMENDATIONS BY TYPE OF IMPLEMENTATION ACTIONS NEEDED**

**CATEGORY 1 (Agency Action)**

| Rec. No.  | Summary of Recommendation                                                                                                                                                       | Agency     | Deadline       |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------------|
| HRM. 01-5 | Abolish regulatory time-in-grade requirements & revise OPM guidance on qualifications standards to provide more agency flexibility.                                             | OPM        | January 1994   |
| HRM. 01-7 | Create a governmentwide employment information system to inform public of job opportunities & coordinate develop of common automated staffing information systems for agencies. | OPM        | September 1994 |
| HRM. 01-8 | Decentralize authority to conduct background investigations to agencies.                                                                                                        | OPM        | January 1994   |
| HRM. 05-2 | Require agencies to protect percentage of payroll devoted to training in response to reductions in agency budget requests.                                                      | OMB        |                |
| HRM. 06-4 | Revise regulations to allow employees to use sick leave for dependent care .                                                                                                    | OPM        | September 1993 |
| HRM. 06-5 | Revise regulations to require that rehired employees's accrued sick leave (from past federal service) is reccredited, regardless of length of break in service.                 | OPM        | September 1993 |
| HRM. 09-2 | Require that EEO and civil rights professionals receive core training in personnel and that personnel professionals receive core training in EEO and civil rights.              | EEOC & OPM |                |
| HRM. 10-4 | Develop an automated executive search and information system for the SES. (See HRM. 10-1 regarding creation of SES Board.)                                                      | SES Board  |                |
| HRM. 11-2 | Replace FPM and agency directives with automated personnel processes and manuals.                                                                                               | OPM        |                |
| HRM. 11-3 | Develop useful accountability measures that can be automated.                                                                                                                   | OPM        |                |

**CATEGORY 2 (Presidential Action)**

| Rec. No.  | Summary of Recommendation                                                                                                                                                                              | Agency     | Deadline       |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------------|
| HRM. 06-1 | Issue Executive Order advocating family-friendly work schedules, flexiplace, and telecommuting.                                                                                                        | OPM        | September 1993 |
| HRM. 07-1 | Issue Executive Order to require use of alternative dispute resolution methods to deal with employee disputes.                                                                                         | OPM & EEOC | September 1994 |
| HRM. 07-2 | Issue Presidential memorandum directing that MSPB oversee study of ways of improving coordination and reducing jurisdictional overlap among MSPB, EEOC, OSC, and FLRA and provide report by June 1994. | NPR        | September 1993 |
| HRM. 08-1 | Issue Executive Order to all agency heads on EEO and affirmative action.                                                                                                                               | NPR        | September 1993 |
| HRM. 09-1 | Issue Presidential memorandum establishing an interagency EEO/AE management committee under joint chair of EEOC and OPM (to first convene in January 1994).                                            | NPR        | September 1993 |
| HRM. 09-3 | Issue Presidential memorandum directing EEOC and OPM to combine all EEO/AE reports into single, comprehensive assessment.                                                                              | NPR        | September 1993 |
| HRM. 09-4 | Issue Presidential memorandum directing OPM to redesign CPDF to generate all data needed to meet EEO/AE reporting requirements.                                                                        | NPR        | September 1993 |
| HRM. 11-1 | Issue Executive Order sunsetting the entire Federal Personnel Manual & all agency implementing directives.                                                                                             | OPM        | December 1994  |

**CATEGORY 3 (Law Change)**

| Rec. No.  | Summary of Recommendation                                                                                                                                                                                                                      | Agency | Deadline for Submission to Congress |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------------------------------------|
| HRM. 01-1 | Authorize agencies to establish own recruitment and examining programs, consistent with merit principles. Abolish central registers and standard application forms.                                                                            | OPM    | September 1994                      |
| HRM. 01-2 | Authorize agencies to directly hire candidates without ranking in specified situations.                                                                                                                                                        | OPM    | September 1994                      |
| HRM. 01-3 | Reduce number of types of competitive appointments to four.                                                                                                                                                                                    | OPM    | June 1994                           |
| HRM. 01-4 | Permit competitively hired nonpermanent employees to compete against permanent employees for permanent positions being filled through internal placement.                                                                                      | OPM    | June 1994                           |
| HRM. 01-6 | Eliminate all statutory rules on detailing employees to temporary assignments.                                                                                                                                                                 | OPM    | January 1994                        |
| HRM. 02-1 | Remove all grade-level classification criteria from the law.                                                                                                                                                                                   | OPM    | January 1994                        |
| HRM. 02-2 | Provide agencies with flexibility to establish broadbanding systems built upon the General Schedule framework. Reduce restrictions on demonstration project authority. (OPM would issue information on options within 1 year after enactment.) | OPM    | January 1994                        |
| HRM. 02-3 | Modify standard 15-grade classification system (effective 1 year after enactment).                                                                                                                                                             | OPM    | January 1994                        |
| HRM. 02-4 | Modify within-grade progression scheme for GS employees under the 15-grade system.                                                                                                                                                             | OPM    | November 1993                       |
| HRM. 02-4 | Provide agencies with several new flexibilities in setting base pay rates (effective 1 year after enactment).                                                                                                                                  | OPM    | January 1994                        |

|                     |                                                                                                                                                                                                |     |               |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------|
| HRM. 02-5           | Authorize OPM to collect compensation data from agencies and to require advance public notice of significant classification and pay actions.                                                   | OPM | January 1994  |
| HRM. 03-1           | Authorize agencies to design their own performance management programs.                                                                                                                        | OPM | November 1993 |
| HRM. 04-1           | Authorize agencies to design their own bonus and awards programs.                                                                                                                              | OPM | November 1993 |
| HRM. 05-1           | Amend GETA to eliminate (1) precondition that training be related to "official duties" and (2) preference given to government training over non-government training.                           | OPM | January 1994  |
| HRM. 06-2           | Repeal statutory provision that bars agencies from paying for telephone and fax machine installation and service in private residences (to promote flexiplace arrangements).                   | OPM |               |
| HRM. 06-3           | Expand authority to establish and fund dependent care programs.                                                                                                                                | OPM |               |
| HRM. 06-6           | Expand demonstration project authority to allow projects on employee benefits and leave.                                                                                                       | OPM |               |
| HRM. 06-7           | Reauthorize the voluntary leave transfer program.                                                                                                                                              | OPM | October 1993  |
| HRM. 10-1<br>& 10-2 | Establish an SES Board of Directors to oversee SES.                                                                                                                                            | OPM |               |
| HRM. 10-3           | Authorize SES Board to delegate certain SES program management responsibilities (e.g., establishment and evaluation of qualifications) to agencies.                                            | OPM |               |
| HRM 10-5            | Authorize SES Board to oversee process of designating key sub-cabinet positions as career reserved and designating at least one Director General in each agency with 50 or more SES positions. | OPM |               |

# Airline Industry Meeting 6-16-93

- Sec Peña and Lawa Tyson Co-Chair Group

## I Purpose of this Group

- ① Consider & Act on Recommendations of Airline Commission
- ② Not to influence Airline Commission
- ③ Not official recipients of recommendations<sup>Commission</sup>  
(Pres & Congress are)  
we ~~are~~ interpret recommendations

Lawa Tyson ex-officio member of Airline Commission

- ④ Group can raise questions through Lawa Tyson, communicate priorities, etc.

- When <sup>Commission</sup> report comes out, we should be ready to offer strategies & policies to Pres.

Next Mtg July 2

### III Key Issues/Concerns

- Reciprocity Neutrality
- Fed Loan Guarantees
- Reorganizing / Privatizing FAA
- Means available to reduce costs to Industry?
  - Regulatory Reform / Tax reform
  - Alcohol & Drug Testing
  - Noise Requirements
- Foreign ownership
- Calling "World Convention" to discuss issues
- Bankruptcy Laws
- Anti Trust Issues
- Entry Standards / Issues
- (<sup>state of</sup> Aircraft industry has dropped off the list)
  - industry taking high-risk financing positions
- Expenditures (infrastructure, etc)
- Bi-lateral Treaty Issues
- Finance

### IV - Organization

Break into 4 groups some as  
Airline Commission, ~~come back~~ each group  
monitor their counterpart - Come back together  
in 1st week of July (Friday)



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

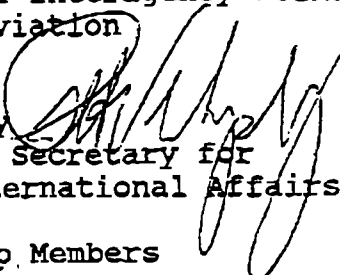
Assistant Secretary

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

**MEMORANDUM**

June 23, 1993

**SUBJECT:** July 2 Meeting of Interagency Working  
Group on Civil Aviation

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

**TO:** All Working Group Members

The next meeting of the Interagency Working Group for acting on recommendations from the Airline Commission is scheduled for Friday, July 2, at 3 p.m. in the Old Executive Office Building, Room 472.

At our initial meeting on June 16 with Secretary Peña and Dr. Tyson, we agreed to organize ourselves into four teams corresponding with the Commission's study groups, as follows:

| <u>Financial<br/>Issues Team</u> | <u>Domestic<br/>Aviation<br/>Issues Team</u> | <u>International<br/>Aviation<br/>Issues Team</u> | <u>System<br/>Capacity<br/>Issues Team</u> |
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| DOT                              | NEC                                          | DOT                                               | NASA                                       |
|                                  | DPC                                          | CEA                                               | DOT                                        |
|                                  | CEA                                          | Commerce                                          | CEA                                        |
|                                  | DOD                                          | OMB                                               | OMB                                        |
|                                  | OMB                                          |                                                   | DOD                                        |

\* Team Leader

For our July 2 session, I suggest that each team be prepared to spend (a) 5-10 minutes summarizing the key issues and anticipated Airline Commission recommendations for its respective area, and (b) 5-10 minutes on an open discussion of options concerning the position the Administration should take in response to those recommendations. I also believe it would aid our discussions if each team prepared a handout listing its key issues.

2

We should have clearer indications by July 2 of what the Commission is likely to recommend. This week and next, the Commission will be following up on areas targeted by its four study groups, as listed below. All sessions are being held at the Commerce Department auditorium. Morning sessions generally start at 9:30 a.m. and afternoon sessions at 1:30 p.m. Daily times can be confirmed by calling the Commission on 504-2000.

|           |                                                      |
|-----------|------------------------------------------------------|
| Tuesday   | System Capacity                                      |
| June 22   | Global Positioning System                            |
|           | Modernizing Air Traffic Control                      |
| Wednesday | Domestic Aviation                                    |
| June 23   | Antitrust                                            |
|           | Bankruptcy & Carrier Fitness                         |
| Thursday  | International Aviation - Improving Negotiating       |
| June 24   | Process (a.m.)                                       |
|           | Financial - Incentives, cost reductions, etc. (p.m.) |
| Tuesday   | Crosscutting panel discussions with manufacturers    |
| June 29   | and carrier representatives                          |
| Wednesday | Commission directions to staff on preparation of     |
| June 30   | initial report draft                                 |

Should you have any questions, please do not hesitate to contact me on 366-4551.

Distribution:

|          |                                                                                                                      |
|----------|----------------------------------------------------------------------------------------------------------------------|
| CEA      | Joseph Stiglitz, Expert Economist, Council of Economic Advisors                                                      |
| COMMERCE | Jonathan C. Menes, Acting Assistant Secretary for Trade Development, Department of Commerce                          |
| DOD      | Major General Jim Klugh, Deputy Under Secretary for Defense, Designate, Logistics                                    |
| DPC      | Michael T. Schmidt, Senior Policy Analyst, Office of Domestic Policy, Old Executive Office Building                  |
| JUSTICE  | John W. Clark, Acting Assistant Attorney General for Antitrust, Department of Justice                                |
| LABOR    | Thomas P. Glynn, Deputy Secretary of Labor                                                                           |
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| TREASURY | Alicia H. Munnell, Assistant Secretary for Economic Policy, Department of the Treasury                               |
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Office of the Assistant Secretary for Policy  
and International Affairs

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation

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

Number of pages including this page: 3

Date: 6-24-93 Time: \_\_\_\_\_ ☐ a.m. ☐ p.m.

TO: *Michael T. Schmitt*  
*456-7729*

FROM:

*Patrick V. Murphy*  
Deputy Assistant Secretary for Policy  
and Program Development

(202) 366-4551  
FAX: (202) 366-7127

FAX MESSAGE:



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

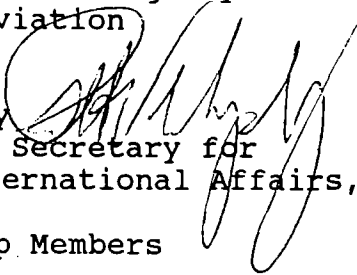
Assistant Secretary

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

**MEMORANDUM**

June 23, 1993

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

TO: All Working Group Members

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\* Team Leader

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| June 30   | initial report draft                                                   |

Should you have any questions, please do not hesitate to contact me on 366-4551.

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| TREASURY | Alicia H. Munnell, Assistant Secretary for Economic Policy, Department of the Treasury                               |
| USTR     | Donald M. Phillips, Assistant U.S. Trade Representative for Industry, U.S. Trade Representative                      |

06/25/93

15:11

202 366 7127

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001/003

Office of the Assistant Secretary for Policy  
and International Affairs

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation

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

Number of pages including this page: 3

Date: 6-25-93

Time: \_\_\_\_\_

☐ a.m.

☐ p.m.

TO: *Michael Schmidt*

FROM:

*Patrick V. Murphy*  
Deputy Assistant Secretary for Policy  
and Program Development

(202) 366-4551

FAX: (202) 366-7127

FAX MESSAGE:



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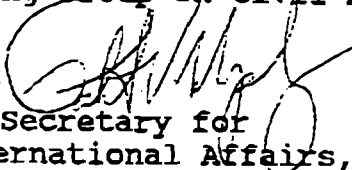
Assistant Secretary

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

MEMORANDUM

June 25, 1993

SUBJECT: Addendum to Notice of July 2 Meeting of  
Interagency Working Group on Civil Aviation

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

TO: All Working Group Members

In my June 23 notice regarding our next meeting on July 2, I inadvertently omitted the Department of Justice from the list of members on the International Aviation Issues Team. The complete team memberships are shown below. Mr. Mark Schechter, Chief, Transportation, Energy and Agriculture Section, Antitrust Division (307-6349), is Justice's representative on the Working Group teams.

| <u>Financial<br/>Issues Team</u> | <u>Domestic<br/>Aviation<br/>Issues Team</u> | <u>International<br/>Aviation<br/>Issues Team</u> | <u>System<br/>Capacity<br/>Issues Team</u> |
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\* Team Leader

Distribution:

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# Domestic Aviation Issues

7-1-83

## Financial Team - Report (Background)

### Possible Recommendations

- (1) Capacity
  - global positioning satellites
  - Automation Air Traffic Control
  - Advanced Automation System
- (2) FAA -- streamlined, reorganized, some quasi-gov model
- (3) More From bi- to multi-lateral negotiations
- (4) Large easing of tax burden
- (5) Easing of regulatory burden
- (6) Product liability law changes
- (7) Financial standards for fitness of Airlines ↑
  - provide buffer to bankruptcy
  - move airlines out of bankruptcy quicker - no lingering on bankruptcy
  - no one in Chapt 11 should be a price leader
- (8) Govt rigorously enforce 1984 Airbus agreement
- (9) No loan guarantee program

NPR team working with Commission to re-enforce FAA reorganization recommendation.

- Anti-Trust Immunity issue raised
- CRS
- Frequent Flier miles

### Paper on Domestic Aviation

- no-one disputed statement that industry is anti-trust and over-regulated
- two biggest issues
- \* - ANT hits them unfairly (capital-intensive industry)
  - \* - Excise taxes (FAA study -- pay 125% of costs)
  - user fees
  - \* - Per diem expenses of pilots should be deductible

PFC issue (Passenger Facility Charge) not really mentioned

\$1 billion in tax relief?

Ticket & Freight Tax → Airline Trust Fund (75% of FAA's budget)

Lack of revenue neutrality an important issue.

- Stage 3 conversion issue -- remain in background -- don't touch this.

- loan guarantees buried -- no help to ↑ debt --  
no need to intervene in market - allow airlines to finance



EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL OF ECONOMIC ADVISERS  
WASHINGTON, D.C. 20500

THE CHAIRMAN

July 14, 1993

Michael Schmidt  
Rm  
218

MEMORANDUM FOR INTERAGENCY WORKING GROUP ON CIVIL AVIATION

FROM: LAURA D. TYSON *Laura D. Tyson*  
SUBJECT: Sources of Airline Industry Problems

In response to a suggestion by one member of the working group, this memorandum provides CEA's analysis of the problems with the airline industry that the administration's policy recommendations should address.

Recent Industry Losses

During the most recent three years, 1990 to 1992, the twelve leading domestic airlines collectively reported losses on their income statements in excess of \$10 billion. Although this figure includes \$2.5 billion in non-recurring adjustments to reflect changes in the accounting rules related to pension liabilities, it also includes \$6.8 billion in operating losses for these carriers.

Operating losses are not distributed uniformly among the carriers. Indeed, Southwest and American both reported profits on operations over the 1990 to 1992 period taken as a whole. Moreover, the operating results of the carriers have varied dramatically over time. From 1987 to 1989, the major air carriers collectively earned operating profits of \$6.7 billion. Looking to the future, Wall Street analysts have forecast that the carriers will at least break even on operations in 1993, and will collectively earn from \$6 billion to \$19 billion in operating profits between 1994 and 1996.

Explaining Industry Losses

A. The Business Cycle and the Gulf War

The most compelling explanation for airline industry accounting losses is that they have resulted primarily from the recent recession, exacerbated by the Gulf War and by airline business decisions in the late 1980s to buy more aircraft and to issue more debt. Airline industry operating profits are highly sensitive to variation in passenger demand and fuel costs. Accordingly, recent industry operating losses are largely explained by the combination of the reduction in passenger demand resulting from the recent recession with the short term effects

of the Gulf War in lowering demand and raising the price of petroleum products. Moreover, airline management decisions during the last decade, especially decisions to add aircraft and to increase debt financing (perhaps prompted in part by tax subsidies to aircraft leasing), amplified the effect of cyclical operating losses on firm net income, leading the firms to record large accounting losses and increasing the likelihood that firms in financial distress would require bankruptcy protection from their creditors.

#### B. Excessive Taxation

Taxation is not a major source of the airline industry's financial problems. Almost every large industry can identify taxes that adversely affect it. But there is little reason to believe that the aggregate level of taxation of airlines and their passengers is either inefficient or unfair, or that changes in the tax code during the 1990 to 1992 period are the primary cause of the airline industry's financial distress.<sup>1</sup>

Because airline profits are cyclical, air carriers do pay more in corporate taxes than would a firm with similar average profits which earned those profits in a level stream over time. (This bias is mitigated in part by the existing loss carryforward provisions of the tax code.) But the extra cost to the firm with a cyclical profit stream is likely a fraction of its total losses, so this bias of the tax code is not the major source of the industry's financial problems.

#### C. Excess Capacity, Bankruptcy, and Excessive Competition

The airline industry currently has substantial excess capacity, in the form of underutilized aircraft, and it has seen a greater fraction of its assets pass through bankruptcy reorganization than have most major industries. Excess capacity

---

<sup>1</sup>In December 1990, certain aviation excise taxes were increased; most importantly, the passenger ticket tax rose from 8% to 10%. These tax increases were arguably unanticipated by the carriers when they made their prior capacity investment decisions. The additional cost to the carriers from the excise tax increases -- perhaps \$1 billion in total over the next two years (based on a conjecture about the incidence of aviation excise taxes) -- is not the primary explanation for the recent losses reported by the airlines. (Moreover, aviation excise taxes are roughly comparable in magnitude to federal expenditures on aviation infrastructure such as air traffic control.) A second arguably unanticipated tax increase, the adjusted current earnings depreciation adjustment to the alternative minimum tax (beginning in 1990), probably raised carrier tax payments by a small additional amount.

and bankruptcy are the effects of the recession and the Gulf War on airline industry demand and costs; they are not significant independent causes of the industry's financial distress.

The major airlines routinely lower fares when costs fall (e.g. fuel costs), when demand falls (e.g. seasonally on some routes) and in response to new competition (e.g. from low-cost short-haul airlines, including Southwest). They have less incentive to look to fare reductions as a method of attracting business away from rivals.<sup>2</sup> Small reductions in fares do not divert substantial traffic from rivals for three reasons. First, because airlines rapidly observe and quickly match the fare reductions of their competitors, the gains from fare reductions come largely from expanding the market as a whole, not from taking traffic away from competitors. (Although some carriers offer occasional one-day price reductions, this is the longest they can reliably expect to preserve a price advantage before their competitors react.) Second, a significant fraction of airline customers are loyal to a specific carrier (e.g. because the carrier offers them better connections or a more attractive frequent flyer program given their usual city of flight origination) and will not switch airlines for a small price differential. Third, an airline can direct fare cuts to the most price-sensitive travelers, without harming the revenue it derives from less price-sensitive passengers, through the use of fare restrictions and through "yield management" (frequent adjustment of the allocation of seats across fares on a given flight in response to trends in bookings).

Bankruptcy is largely an effect of the industry's recent financial problems, not a primary cause. Carriers with high costs, high levels of debt, and lower levels of marketing investments in passenger loyalty, are most likely to require bankruptcy protection because they are least able to survive recessions and shocks like the Gulf War.

Firms in financial distress or bankruptcy reorganization may be more inclined to take inefficiently large risks, hoping for a dramatic turnaround, than would more successful firms. For example, for a short time a carrier in distress might lower the price it charges on tickets for future travel in order to fund current expenditures, hoping that a future increase in demand would save the firm and save management jobs. Moreover, firms

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<sup>2</sup>Even during times of industry financial weakness, therefore, it is important to scrutinize carefully airline mergers, asset sales, and marketing practices for possible harm to competition; although such activities often promote competition, they may have features which impede the ability of new entrants and regional carriers to compete or which enhance the ability of the airlines to coordinate fares.

that have shed costs through reorganization may prefer lower prices than before, and thus may enhance industry competition. Any resulting downward pressure on prices, before or after reorganization, largely represents a social benefit of the bankruptcy laws. As in other areas, the fact that competition lowers profits should not be counted as a social cost.

#### D. Excessive Regulation

The airline industry's current financial problems almost surely do not stem from safety and environmental regulations, even if, as the carriers suggest, the social benefits of some regulations do not exceed the costs of compliance with those regulations. Airline compliance costs did not rise dramatically during 1990 to 1992, the years of the large losses. Moreover, the costs of complying with those regulations that have been criticized by the carriers are not of a magnitude comparable to the level of airline industry losses. (Although a 1990 law requires costly conversion of the fleet to (quieter) Stage 3 aircraft, these costs were not concentrated during the three years of recent losses. The legislation permits a decade-long phaseout of Stage 2 aircraft, thereby providing one form of assistance to help the carriers meet this expensive regulatory requirement.)

#### E. Conclusion

Airline industry accounting losses resulted primarily from the recent recession and the deleterious effects of the Gulf War on air travel and fuel costs. Airline decisions to increase debt financing and add aircraft amplified the effect of cyclical operating losses on firm net income. In consequence, the firms recorded large accounting losses and became more vulnerable to the threat of bankruptcy. (Although excessive taxation, excess capacity, bankruptcy, excessive competition, and excessive regulation were not the major cause of the industry's financial distress, it is nevertheless possible that tax rules, bankruptcy rules, and safety or environmental regulations could be improved.)