

**The original documents are located in Box 2, folder “Civil Aeronautics Board (4)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**


The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

## THE WHITE HOUSE

WASHINGTON

February 13, 1976

MEMORANDUM FOR: JOHN BARNUM  
 CAL COLLIER  
 ROBERT INGERSOLL  
 TOM KAUPER  
 LEN NIEDERLEHNER  
 STEVE PIPER  
 NINO SCALIA  
 BRENT SCOWCROFT

FROM: ED SCHMULTS 

SUBJECT: Preliminary Draft of Presidential  
 Decision Memorandum on Section 801  
 Review of CAB Decisions

The attached preliminary draft is forwarded for any comments or suggestions you may have before it is formally circulated for White House staff clearance. My purpose in sending you this advance copy is not to obtain your agency's clearance, but to have the benefit of your views before your formal clearance is requested.

I would appreciate your cooperation in maintaining very strict confidentiality. Please do not permit copies to be made and return this copy with your comments. As time is growing very short, I plan to begin the formal clearance<sup>\*/</sup> of a revised draft on Monday, February 23, and it would be helpful if we could have your comments by COB Friday, February 20.

<sup>\*/</sup> This refers to the White House staff clearance, which will be expanded to include the affected departments.

cc: Philip Buchen ✓



DRAFT

MEMORANDUM FOR THE PRESIDENT

FROM: EDWARD C. SCHMULTS

SUBJECT: Guidelines and Procedures for  
Presidential Review of CAB Decisions

The Presidential power to approve or disapprove CAB decisions in international cases is coming under increasing criticism, and proposals have been made that Congress pass legislation to limit the substantive grounds of review and assure procedural fairness. To address the concerns that have been raised, this memorandum proposes options to improve the Presidential review process by revising the substantive grounds of review and imposing certain procedural requirements.

1. Background

(a) The Presidential Authority to Review CAB Decisions

The President has two kinds of review authority over CAB decisions under Section 801 of the Federal Aviation Act:

- Under 801(a) Board actions affecting the certificate of an air carrier -- i.e., route awards and mergers -- affecting overseas



or foreign air transportation are subject to the approval of the President.\*/

-- Under 801(b), if the CAB exercises its power to disapprove an international fare schedule, the President may disapprove that order not later than 10 days following submission to the President.\*\*/

(b) Rationale for the Authority: Legislative History

The Congressional purpose in giving the power of approval to the President in international and overseas cases was a belief that there were both foreign policy and defense aspects to the choice

\*/ "The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof." 49 U.S.C. 1461(a)

\*\*/ "Any order of the Board pursuant to section 1482(j) of this title suspending, rejecting, or canceling a rate, fare, or charge for foreign air transportation, and any order rescinding the effectiveness of any such order, shall be submitted to the President before publication thereof. The President may disapprove any such order when he finds that disapproval is required for reasons of the national defense or the foreign policy of the United States not later than ten days following submission by the Board of any such order to the President." 49 U.S.C. 1461(b)



of routes and carriers, and the setting of rates. The floor debates made specific reference to the importance that foreign nations attached to airline matters. Defense was emphasized in connection with the selection of flight paths and access by foreign carriers to areas near U.S. defense installations, and in the selection of airport sites. The argument was made that such decisions were executive in character and should be left to the President.

As a legal matter, therefore, the review authority under both 801(a) and (b) was intended to preserve the prerogatives of the President in matters of defense and foreign policy, and should be exercised only for those purposes. These criteria are very broad, but they do suggest that Presidential review should not be concerned with errors of fact or law, or with economic questions, that do not arise from some defense or foreign policy concern of the President.

(c) Problems Raised

Over the years, aviation commentators have raised a number of problems with respect to the White House review process:

(1) Substance. There are no guidelines as to the kinds of substantive issues appropriate for consideration by the President. Continuing disagreement arises within the Executive Branch and the White House staff over what issues are relevant. Political and economic factors are often invoked by interested parties, and there have been allegations that the President's power has been abused. The American Bar Association, despite a study conclusion that the power has not been abused, is on record in favor of a partial withdrawal of this Presidential power,<sup>\*/</sup> and Senator Magnuson is said

---

<sup>\*/</sup> The December 31, 1975, Report of the CAB Advisory Committee on Procedural Reform endorsed the ABA's somewhat ambiguous proposal to withdraw the 801 authority "in a manner which will preserve the President's constitutional rights and obligations in the fields of national defense and foreign relations while removing domestic political considerations from the decision-making process and assuring availability of judicial review." (p. 24)



DRAFT

to be planning legislation that would bar the President from deciding which airline should receive an award.

(2) Procedures. There are no procedural restrictions governing access by interested parties to members of the White House staff. Many interested parties seek to argue their cases in ex parte contacts with the staff, while others scrupulously avoid any communication with us. This situation is perceived by some to be both unfair and conducive to appearances of impropriety. It is all the more so, the critics assert, in light of the open hearing on the record before the CAB. A similar problem is said to exist in the departments and agencies.

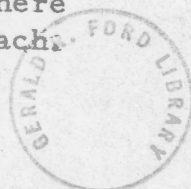
(3) Release of CAB Decision. The CAB is barred by statute from publishing its recommended decision until after submission to the President, but in practice the Board's decision continues to be withheld following submission until after the President has acted. As a result, during the White House staff review, some parties obtain copies of the opinion surreptitiously, while others are unable to address their arguments to the specifics of the Board's decision.

(4) Judicial Review. Judicial review is generally barred in cases subject to your approval. This tends to cut off the normal rights of judicial review in such cases and leads parties -- and the Justice Department -- to argue legal errors as grounds for Presidential disapproval. It is possible that a disclaimer of Presidential interest accompanying approval of a Board decision will operate to preserve judicial review with respect to errors by the Board. \*/

## 2. The Basic Dilemma

These problems arise because the statute superimposes executive approval on an adjudicative type administrative proceeding. This is unique to the CAB. The issues that come before the Board include questions of the impact of route awards on competing airlines, compatibility of a route award or fare decision with the overall route or fare structure, economic viability of the route and the ability of

\*/ You attempted to do this in the recent Allegheny decision. There is as yet no court decision confirming or rejecting this approach.



DRAFT

the carriers to perform. Resolving these questions fairly calls for the full panoply of due process -- hearings with witnesses, a formal record, the right to introduce evidence and a more or less adversary hearing. Neither the White House nor the Executive Branch generally is equipped to duplicate or review all of the aspects of such a process.

The temptation has been irresistible, however, for the interested parties and government agencies to reargue many of the same economic issues decided by the Board. When this is done through ex parte contacts at the White House or in the departments and agencies, the procedural safeguards to assure fairness are lacking and appearances of impropriety can arise.

There are no simple solutions to these problems. But it is clear that there has been an increasing tendency to argue here matters that relate primarily to economic and regulatory issues decided by the Board, and which some may view as having only a remote connection to defense or foreign policy objectives as such. Action to improve the Section 801 review process should be viewed by many as a significant "good government" effort on your part; inaction may result in a reduction or loss of your existing power.

The questions raised are thus both substantive and procedural: Substantively, what should be the proper scope of the terms "defense" and "foreign policy"? Procedurally, what changes should be made in the White House review to address the concerns expressed about the perceived "fairness" of the process? The answers to these questions may be interrelated, since a broad substantive review arguably creates a greater need for formal procedures than if substantive issues were largely excluded. We begin, therefore, with the substantive options.

### 3. Substantive Options as to the Scope of Presidential Review

#### Option A: A broad, flexible definition as used in the past

Under this option, the scope of the Presidential review of CAB decisions would not be changed. The meaning of "defense" is



fairly clear and has not been the subject of controversy. The expansive term is "foreign policy", which has been broadly interpreted to embrace a variety of Presidential policies, including competition, \*/ anti-inflation policies, \*\*/ errors of law, regulatory reform, and the financial health of the international U. S. flag carriers.

Pro:

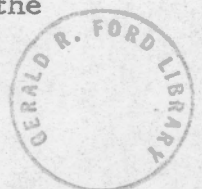
-- A broad, flexible interpretation enables the President to correct many overly restrictive, anti-competitive attitudes of the CAB in international markets. In the context of regulatory reform, it is possible to implement procompetitive international policies under existing authority without waiting for legislative action. It also enables the President to carry out directly other Presidential transportation and economic policies with significant foreign policy overtones.

\*/ President Truman declared a basic policy to preserve competition among U. S. carriers on international routes:

"My objective is to accomplish a route pattern in which our nation may have the benefit of competition to the principal traffic points in Europe, and to avoid a monopoly on the part of either of the United States carriers."  
North Atlantic Route Transfer Case 11 C.A.B. 676 (1950), discussed in Trans World Airlines v. Civil Aeronautics Board, 184 F.2d 66 (2d Cir. 1950).

Changes in the international air transportation market, in which many foreign flag carriers now compete, may make it less important that there be competition between U. S. carriers.

\*\*/ In several cases, the Justice Department has urged disapproval of the Board's suspension of fare reductions on the ground that the lower fares help to fight inflation, and that this is an objective of your foreign policy. You adopted this view in overruling the Board in two cases.





DRAFT

Con:

- Critics of the present process assert that it involves the President in a review on the merits of issues better left to the CAB's regulatory expertise. The present procedure has generated pressures for corrective legislation.

Option B: Issue a definition of defense and foreign policy

(1) Under this option, after appropriate consultation with the government agencies involved, the term "foreign policy" would be defined for Section 801 purposes to include certain matters and exclude others. Thus, an Executive Order could prescribe that foreign policy considerations will include, for example, one or more of the following:

- Questions of international aviation policy, which can be further defined to include or exclude issues of competition, transportation policy and financial health of the airlines
- Anti-inflation objectives
- De-regulation objectives

Pro:

- The rationale for Presidential consideration of certain issues would be more clearly stated than in the past, thus reducing appearances that the power is being abused.
- Providing specific criteria would give the parties a basis for presenting their arguments to the President.



DRAFT

Con:

- In practical effect, there would be no change in terms of what arguments the parties can make. Attempting to define in advance what are and are not foreign policy issues cannot be done with precision. --
- Setting specific grounds for Presidential review could stimulate the parties to appeal to the President with greater frequency and create additional pressure for procedural formalities. It could also imply the creation of substantive rights and lead to judicial review of the Presidential action.
- If the "foreign policy" definition includes some concept such as "international aviation policy" or "international economic policy", it will be argued that the President can substitute his regulatory policies for those of the CAB in international cases. If it is decided to refrain from what can be alleged to be "regulatory intervention", Option C would appear to be more effective than a definition of "foreign policy."

(2) A variant on this option would be to specify in the "foreign policy" definition that the President would not in his review choose one carrier over another. Newspapers have reported an interest in legislation to bar Presidential power to so choose.

---

\*/ For example, in the Service to Saipan case, the State Department raised the issue of the desirability of a direct circle route to the Micronesia market as a foreign policy matter, but this is also an issue that the Board must consider. The State Department also argued the prospective impact of Japanese pressure for additional routes to the United States on other airlines, but this is again an issue that must be considered by the Board.



DRAFT

Pro:

- The potential for appearances of impropriety is great when the Board is reversed on the selection of a particular carrier.
- Accepting this limitation could reduce pressure for legislation.

Con:

- Decisions on matters other than carrier selection per se can have just as much impact on a carrier, such as whether or not to establish or continue a route. The "reform" would be more apparent than real.
- Genuine foreign policy problems can involve the selection of a carrier.
- Other reforms could be equally or more effective in determining legislation.

Option C: Do not limit your authority by a definition of foreign policy, but declare your intention to exercise your review power only on matters which you deem to be of truly Presidential concern; and direct executive agencies to present to the CAB on the record any views which they may have on regulatory policy.

A more practical approach than defining "foreign policy", which could result in a contraction of Presidential power, would be to signal your intention to place greater reliance on the CAB process to ascertain facts, decide routine economic questions and, in general, establish regulatory policies. Presidential power would be fully preserved, since the President is the judge of what issues are important enough to rise to the level of a Presidential foreign policy concern. Less important matters can be dismissed on the ground that they don't rise to that level of concern, without saying that the President lacks power to consider them.



DRAFT

The major innovation would be to force executive agencies to categorize their views as either (a) so exceptional as to warrant Presidential consideration under Section 801, or (b) as regulatory issues that should be presented to the Board (and on the record, except as confidentiality may be required for reasons of national security). In the past, there has been no mandate to make such a choice, which has led to the arguing of all agency policies through the Section 801 review, without regard to their level of importance. The essence of this option is to sort out the issues of detail that don't warrant Presidential attention by establishing a test of importance rather than a restriction on the extent of the President's powers.



DRAFT

The policy represented by the option would recognize that while the President has sole responsibility for the conduct of foreign policy, Congress has a substantial role in prescribing international economic policy, and it has given the Board regulatory power over international as well as domestic aviation questions. Since the 801 power was given to protect the Presidential power to conduct foreign policy, it does not diminish that power to suggest that the President need not review those economic and regulatory issues in international aviation cases which have been thoroughly aired before the Board and do not have a material impact on foreign policy.

While it is impractical to set forth, in a hard and fast manner, categories of issues that should not be reargued before you, under this option you would ordinarily refrain from considering issues of competition, inflation, financial health of airlines, the viability of routes, or transportation objectives, which fall within the administrative competence of the Board. While the possibility that such issues could rise to the level of a foreign policy issue in particular cases cannot be excluded, the point is that foreign policy should not be invoked by government agencies and interested parties merely as a rationale for Presidential review of matter better left to CAB expertise. Of course, there will be cases where considerations of international trade or economic policy will be important components of foreign policy and so of Presidential concern.

Since the real problem here may be one of attitude or approach of the Executive Branch agencies in making 801 recommendations, an emphasis on procedural improvements and the function of the Section 801 review process may encourage the agencies to take a more restrictive approach and to view the President's approval power, not as a lever for making regulatory policy across the board in international aviation cases, but as a mechanism to protect his own prerogatives on matters of defense or foreign policy. \*/

\*/ The mere filing of a protest by a foreign government should not suffice to create a foreign policy reason to disapprove or modify the Board's decision. It should be recognized that private parties lobby foreign governments as well as our own, and that foreign governments are receptive from time to time to the protection of vested interests. The criterion should be not whether the foreign government agrees with the CAB's decision but whether that disagreement is serious enough to cause a foreign policy problem if the decision is allowed to stand.



This option would not prevent the Council on International Economic Policy, or the Departments of State, Justice, Commerce or Transportation from injecting substantive policy views on all issues into CAB proceedings, and on grounds broader than defense and foreign policy. This may and should be done on the record before the Board. Such substantive policies which are within the purview of the Board should be separated wherever possible from the grounds which should occasion Presidential review under Section 801.

Pro:

- The President's power to review international aviation matters would not be contracted but, as a practical matter, the scope of Presidential review would be reduced in many cases by encouraging government agencies and interested parties to abide by CAB resolution of the issues.
- The reason that the Section 801 power has become a problem to some aviation commentators is that in their view it has been used to review the substance of regulatory issues better left to the CAB. Thus, they argue that the only effective solution is to exclude regulatory issues wherever possible from Presidential review.
- It would avoid the need for formal procedures in the White House. It is the logical counterpart of procedural Option E below.

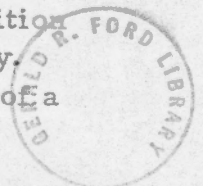
Con:

- The President's role in determining regulatory policy in international aviation would be reduced. Implementation of an Executive international aviation policy might have to rely on other means than the Section 801 authority.

Decision:

Approve Option \_\_\_ A: A broad, flexible definition as used in the past.

- \_\_\_ B: \_\_\_ (1) Issue a restrictive definition of defense and foreign policy.
- \_\_\_ (2) Abstain from the choice of a carrier.



\_\_\_\_\_ C: Do not limit your authority by a definition of foreign policy, but declare your intention to exercise your review power only on matters which you deem to be of truly Presidential concern; and direct executive agencies to present to the CAB on the record any views which they may have on regulatory policy. (Recommended by Counsel to the President, \_\_\_\_\_)

\_\_\_\_\_ Comment:

4. Procedural Options as to Contacts with White House Staff and Matters to be Presented to CAB

Option D: Adopt formal procedures for the Presidential review.

Ex parte contacts with White House personnel would be banned. Written comments from the parties would be accepted by the White House staff, but a docket would be established so that copies were available to all interested parties. Oral contacts by the parties would be limited to meetings or hearings to which all interested parties would be invited. All written materials submitted by government agencies would be made part of the public record subject to the usual exceptions for national security and proprietary information.

Pro:

-- This would regularize the review process and hopefully limit appearances of impropriety. It would be the logical procedural counterpart of substantive Options A or B.

Con:

-- The existence of such procedures invites the parties to reargue the same issues already decided by the Board.

-- It would involve the White House staff in a kind of operational activity and level of detail that go beyond its normal functions.



DRAFT

-- In some cases, Defense and foreign policy issues require confidential internal communications rather than on the record presentations and so establishing a docket for agency communication would create more problems than it would solve.

Option E: Bar contacts by private parties with the White House staff; require that Executive agencies state their economic and regulatory views in the Board's proceeding, and give the Board notice of any intention to make additional recommendations to the President on defense or foreign policy grounds; private parties' views would be conveyed to the President through the departments; exceptions would be permitted as required by foreign policy or defense needs.

This Option is the procedural counterpart of substantive Option C which would place greater reliance on the CAB regulatory process. Executive agencies could express substantive views on matters beyond the scope of 801, but on the record before the CAB. As to matters subject to 801 review, they should indicate whether they will have a recommendation or objection if such an issue is identifiable during the proceeding before the Board. The 801 review process would be limited to genuine foreign policy and defense issues which normally involve confidential communications rather than formal





procedures. To provide some discipline, executive agencies which present a point to the President that they have not made to the Board could be required to explain why the Board was not given an opportunity to consider it.

Pro:

- Ex parte contacts with the White House staff would be eliminated.
- The President and his staff would be freed from involvement in substantive issues decided by the CAB.
- Executive participation in formulating international aviation policy would be preserved, but separated from the more limited purpose of the 801 review. The threat of legislative restriction of the 801 power should also be reduced.

Con:

- As to 801 issues of foreign policy and defense, their discussion typically requires confidential communications which makes it difficult for the State Department to explain its views on the record. However, the statements required by Defense and State to the CAB on 801 matters could be limited to their conclusions and so much of their reasoning as does not require confidentiality. As long as the Board knows what that objection is, it can frame its recommended decision either to avoid that objection or, in the alternative, to state what its decision would be if the President agrees with the Departmental view or what the Board would recommend if he disagrees. Exceptions would be allowed for cases in which foreign policy embarrassment could result from disclosure of the sole fact that the State Department has made a recommendation.



- Some parties will complain that they are denied access to the President on foreign policy issues, though legitimate exceptions would be possible.

Option F: Make no change

Pro:

- Preserves maximum access by all parties.

Con:

- Presents an appearance of unfairness.

Decision:

Approve Option \_\_\_ D: Adopt formal procedures for the Presidential review

\_\_\_ E: Bar contacts by private parties with the White House staff; require that Executive agencies state their economic and regulatory views in the Board's proceeding, and give the Board notice of any intention to make additional recommendations to the President on defense or foreign policy grounds; private parties' views would be conveyed to the President through the departments; exceptions would be permitted as required by foreign policy or defense needs (Recommended by Counsel to the President, \_\_\_\_\_)

\_\_\_ F: Make no change

\_\_\_ Comment

5. Issuance of an Executive Order Embodying Reforms

Option H: Issue an Executive Order

There is presently no published guideline on conduct of the Presidential review under Section 801. In addition to specifying



DRAFT

the substantive and procedural changes, the Order could protect the parties' rights to judicial review by expressing the intention to do so. Since the issuance of an Executive Order involves a more extensive clearance procedure than this decision memorandum, an Order would be processed and submitted to you following your decisions herein. An illustrative draft embodying the recommended Options C and E is attached. The Order would also cover release of the CAB decision, giving that authority to the Board after allowing five days for objections.

Pro:

- If you decide to make a substantial change such as proposed in Options C and E, an Executive Order would be an affirmative statement of your intention to improve what some view as an unfair process and serve as a guideline for conduct by government agencies and private parties. (Recommended by Counsel to the President, \_\_\_\_\_).

Con:

- If you decide to make no substantial change, issuing an Order would serve no clear purpose.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_



DRAFT

EXECUTIVE ORDER

-----

PRESIDENTIAL APPROVAL OF DECISIONS BY THE CIVIL  
AERONAUTICS BOARD PURSUANT TO SECTION 801  
OF THE FEDERAL AVIATION ACT

By virtue of the authority vested in me by the Constitution and laws of the United States, including Section 801 of the Federal Aviation Act as amended (49 U.S.C. 1461 (Section 801)), it is ordered that:

Section 1. Recommendations by Federal departments and agencies to the President in connection with decisions of the Civil Aeronautics Board (Board) which are subject to approval by the President under Section 801 shall state specifically what foreign policy or defense objectives form the basis for such recommendations. Recommendations by departments and agencies with respect to economic and regulatory matters, other than considerations of defense and foreign policy matters which are the subject of recommendations to the President under Section 801 shall be made to the Board, on the public record, in accordance with the procedures of the Board. While



DRAFT

some issues will inevitably involve both questions of regulatory policy and foreign policy, executive agencies should make a conscientious effort to present as much of their views as possible in economic and regulatory terms on the record in proceedings before the Board, and raise only exceptional matters of defense or foreign policy that are of uniquely Presidential concern in the course of the limited review under Section 801.

Section 2. Departments and agencies which intend to make recommendations to the President on matters of defense or foreign policy for purposes of Section 801 shall, consistent with the confidentiality required for reasons of defense or foreign policy, make the existence of such intentions and the conclusions to be recommended known to the Board in the course of its proceedings. The requirements of defense or foreign policy may, in appropriate cases, require that the existence of a defense or foreign policy recommendation remain confidential. Any recommendation made to the President by a department or agency in the course of the Section 801 approval process that has not previously been conveyed to the Board shall be so identified, together with an explanation as to why the Board was not notified.



DRAFT

Section 3. No person within the Executive Office of the President shall discuss matters relating to the disposition of a case subject to the approval of the President under Section 801 with any interested private party prior to the President's decision; and any written communication from interested private parties shall be referred to the appropriate department or agency. Exceptions to this prohibition may be made when the head of an appropriate department or agency finds that direct written or oral communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy. Departments and agencies which make recommendations to the President pursuant to the Section 801 approval process shall prescribe procedures governing oral and written communications between their officers and employees and private parties in connection with the consideration of such recommendations.

Section 4. The Board is authorized to release the text of decisions submitted to the President under Section 801 following submission if no objection to such release has been received by him from the Departments of State or Defense, or from the Assistant to the President for National Security Affairs, within five working days after receipt of copies of the recommended decision. If objection is



raised to part but not all of a document, only that part as to which a defense or foreign policy objection to disclosure has been raised shall be withheld. A lack of objection to release of a document implies nothing with respect to possible defense or foreign policy objections to the content of the order.

Section 5. Approval by the President of a decision of the Board pursuant to Section 801 is not intended to deprive any party of an opportunity to obtain judicial review of the Board's decision, unless expressly stated to the contrary.

THE WHITE HOUSE



FAA

THE WHITE HOUSE

WASHINGTON

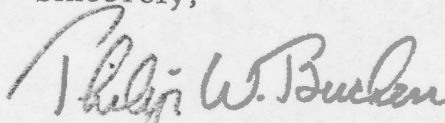
March 9, 1976

Dear Ms. Dennis:

This is in response to your letter to me repeating your request that the President intervene with the Federal Aviation Administration in support of your Father's application for reinstatement of his pilot's license.

Unfortunately, I must advise you that it is inappropriate for the President to intervene in such administrative proceedings. I trust you will understand that the President is not in a position to judge the particular factors which must be weighed in connection with granting a medical certificate and a pilot's license. However, I have referred your letter to the Federal Aviation Administration for response directly to you on what proceedings are available to him in this regard.

Sincerely,



Philip W. Buchen  
Counsel to the President

Ms. Rosemary L. Dennis  
225 Pernie Hall  
Plymouth State College  
Plymouth, New Hampshire 03264





THE WHITE HOUSE  
WASHINGTON

March 9, 1976

MEMORANDUM FOR

Bert Goodwin  
Chief Counsel  
Federal Aviation Administration

The attached letter from Ms. Rosemary Dennis has been acknowledged and is forwarded to you for appropriate consideration and response directly to her.

Thank you for your assistance.

*P.W.B.*

Philip W. Buchen  
Counsel to the President



PLYMOUTH STATE COLLEGE  
OF THE  
UNIVERSITY OF NEW HAMPSHIRE  
PLYMOUTH, NEW HAMPSHIRE 03264

Rosemary E. Dennis  
225 Penn Hall  
Plymouth State College  
Plymouth, N. H. 03264

Dear Mr. Buchen:

I reply to your letter of February 17, I still have many unanswered questions and am left with the same situation I started out with.

You seem to have mistaken information about my father's private pilot licence being revoked. My father has gone through two proceedings in an attempt to get his pilot certificate reinstated; but, in both cases he has been denied. At this point there is no legal proceeding which my father has left to exercise.

What I was hoping for by writing to Mr. Ford in the first place was that he might turn his personal attention to the matter. I feel that Mr. Ford is my father's last real hope for getting his licence reinstated.

Please see what you can do to help my father out. It would mean so much to him and my family.

Sincerely,

Rosemary E. Dennis



February 17, 1976

Dear Ms. Dennis:

On behalf of the President, this is in response to your letter of January 29.

Inasmuch as your father's medical certificate is currently being reviewed through the appropriate administrative appeal process, it would be inappropriate for me to comment on the specifics of his case. In carrying his appeal to the National Transportation Safety Board, he is exercising a very important legal right - one which has in many cases resulted in a favorable outcome. In the event of an adverse decision, your father will have the further right of judicial redress.

Realizing how much this means to your family, let me assure you that it is being fairly and objectively considered.

Sincerely,

Phillip W. Buchan  
Counsel to the President

Ms. Rosemary Dennis  
653 Main Street  
South Windsor, Connecticut 06074

PWB:BNR:FAA:ns

Central Files



June 10, 1976

## Office of the White House Press Secretary

THE WHITE HOUSE

## EXECUTIVE ORDER

ESTABLISHING EXECUTIVE BRANCH PROCEDURES  
SOLELY FOR THE PURPOSE OF FACILITATING  
PRESIDENTIAL REVIEW OF DECISIONS SUBMITTED  
TO THE PRESIDENT BY THE CIVIL AERONAUTICS BOARD

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), and as President of the United States of America, solely to provide Presidential guidance to department and agency heads and in order to facilitate Presidential review of decisions submitted to the President for his approval by the Civil Aeronautics Board pursuant to section 801 of the Federal Aviation Act, as amended, it is hereby ordered as follows:

Section 1. (a) Except as provided in this section, decisions of the Civil Aeronautics Board, hereinafter referred to as the CAB, transmitted to the President pursuant to section 801 of the Federal Aviation Act, as amended, hereinafter referred to as section 801, may be made available by the CAB for public inspection and copying following submission to the President.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 11652, as amended, decisions of the CAB transmitted to the President under section 801 shall be withheld from public disclosure for five days after submission to the President.

(c) At the same time that decisions of the CAB are submitted to the President pursuant to section 801, the CAB shall transmit copies thereof to the Secretary of State, the Secretary of Defense, and the Assistant to the President for National Security Affairs.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the CAB transmitted pursuant to subsection (c) above, and shall promptly advise the Assistant to the President for National Security Affairs or his designee, whether, and if so, why, action pursuant to Executive Order No. 11652, as amended, is deemed appropriate. If, after considering the above recommendations, the Assistant to the President for National Security Affairs or his designee determines that classification under Executive Order No. 11652 is appropriate, he shall take such action and immediately so inform the CAB. Action pursuant to this subsection shall be completed within five days of receipt of the decision by the President.

more



(e) On and after the sixth day following receipt by the President of a CAB decision submitted pursuant to section 801, the CAB is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under Executive order or statute other than section 801.

Sec. 2. (a) Views of departments and agencies outside of the Executive Office of the President, other than those views involving considerations of defense or foreign policy (including international negotiations costs) which are to be the subject of recommendations to the President in connection with his review under section 801, shall be presented to the CAB in accordance with the procedures of the CAB. While some issues will inevitably involve both questions of regulatory policy and defense or foreign policy, departments and agencies outside of the Executive Office of the President should make a conscientious effort to present their views on regulatory matters in proceedings before the CAB, and raise only matters of defense or foreign policy that are of Presidential concern in the course of the review under section 801.

(b) Departments and agencies outside of the Executive Office of the President which intend to make recommendations to the President on matters of defense or foreign policy and have such intentions while the matter is pending before the CAB, shall, except as confidentiality is required for reasons of defense or foreign policy, make the existence of such intentions and the conclusions to be recommended known to the CAB in the course of its proceedings.

Sec. 3. (a) In advising the President with respect to his review of an order submitted to him pursuant to section 801, departments and agencies outside of the Executive Office of the President shall:

(1) identify any matter contained in their respective recommendations which was not previously submitted to the CAB pursuant to section 2(a) above;

(2) explain why such matter was not previously submitted to the CAB for its consideration; and

(3) identify with particularity the defense or foreign policy implications of the CAB decision which are deemed appropriate for the President's consideration.

(b) Orders involving foreign and overseas air transportation certificates of U.S. carriers that are subject to the approval of the President are not subject to judicial review when the President approves or disapproves an order for reasons of defense or foreign policy. All disapprovals necessarily are based on such a Presidential decision, but approval by the President does not necessarily imply the existence of any defense or foreign policy reason. For the purpose of assuring whatever opportunity is available under the law for judicial review of the CAB decisions, all departments and agencies which make recommendations to the President pursuant to section 801 should indicate separately whether, and why, if the order or any portion of the order is approved, the President cannot state in his approval that no defense or foreign policy reason underlies his action.

more

Sec. 4. Individuals within the Executive Office of the President shall follow a policy of (a) refusing to discuss matters relating to the disposition of a case subject to the approval of the President under section 801 with any interested private party, or an attorney or agent for any such party, prior to the President's decision, and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President. Exceptions to this policy may only be made when the head of an appropriate department or agency outside of the Executive Office of the President personally finds that direct written or oral communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy.

Sec. 5. Departments and agencies outside of the Executive Office of the President which regularly make recommendations to the President in connection with the Presidential review pursuant to section 801 shall, consistent with applicable law, including the provisions of Chapter 5 of Title 5 of the United States Code:

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

(b) prescribe such other procedures governing oral and written communications as they deem appropriate.

Sec. 6. Although it is recognized that the provisions set forth in this Order will frequently apply to review of decisions made in adversary proceedings involving private parties, this Order is intended solely for the internal guidance of the departments and agencies in order to facilitate the Presidential review process. This Order does not confer rights on any private parties.

Sec. 7. The provisions of this Order shall be effective on the 30th day following publication in the Federal Register.

GERALD R. FORD

THE WHITE HOUSE,

June 10, 1976.

# # #

June 10, 1976

For filing

## Office of the White House Press Secretary

THE WHITE HOUSE

## FACT SHEET

EXECUTIVE ORDER ON PRESIDENTIAL REVIEW  
OF CIVIL AERONAUTICS BOARD DECISIONS

The President has issued today an Executive Order entitled "Establishing Executive Branch Procedures Solely for the Purpose of Facilitating Presidential Review of Decisions Submitted to the President by the Civil Aeronautics Board."

This Order establishes publicly, for the first time, guidelines to improve the process of Presidential review of decisions of the Civil Aeronautics Board. The guidelines are designed to better assure fairness and to avoid suspicions of impropriety.

BACKGROUND

Under Section 801 of the Federal Aviation Act, the President has authority to approve or disapprove certification and permit decisions of the CAB involving international and overseas air transportation. This authority is in recognition of the President's Constitutional responsibilities for foreign policy and national defense.

Over the years, the process of Presidential review of CAB decisions has provoked some controversy. Among the problems raised have been the following:

- The views of Executive branch departments and agencies on regulatory issues have not been, in some cases, presented to the CAB in the ordinary course of its proceedings, where such views can be addressed by the parties and considered by the CAB.
- Lack of procedural standards governing access by interested parties to staff in the Executive Office of the President have been criticized as lending to suspicions of unfairness.
- Recommended decisions of the CAB are not made public during the period after they are submitted to the President and before he acts, even where foreign policy or defense considerations do not require confidential treatment prior to such action. Over the years, some interested parties have obtained information about some decisions while other parties did not and thus were unable to address specific arguments to Executive branch departments and agencies.

more

- There has been a lack of opportunity to seek judicial review of CAB proceedings and decisions in "routine" cases (i.e., those orders of the CAB involving foreign and overseas certificates of U. S. carriers which are approved by the President and no defense or foreign policy reason underlies such approval).

After consideration within the Executive branch, the President is issuing an Executive Order to impose substantive and procedural guidelines and to facilitate Presidential review of CAB decisions. This is the first time in over thirty years during which this power has been exercised that a President has established such standards. They are designed to better assure fairness and to avoid suspicions of impropriety, as well as to improve the decision-making process.

#### PRINCIPAL PROVISIONS OF THE EXECUTIVE ORDER

1. Executive branch departments and agencies are directed, whenever possible, to present their views on regulatory issues to the CAB, on the record, in the regular course of its proceedings.
2. Individuals within the Executive Office of the President are directed not to discuss pending cases with interested parties and to transmit all written communications from such parties to the appropriate department or agency for handling. An exception is possible to handle an unusual circumstance.
3. Executive branch departments and agencies are directed to establish public dockets for all written communications from private parties (other than those requiring confidential treatment because of defense or foreign policy concerns), and to prescribe such other procedures governing oral and written communications with respect to CAB decisions as they determine appropriate.
4. A procedure is established for the release of CAB decisions as soon as they are screened for matters that must remain confidential for reasons relating to foreign policy or national defense. The procedure being adopted accords with a recent court decision involving the release of CAB decisions under the Freedom of Information Act.
5. Executive branch departments and agencies are requested to advise the President whether any foreign policy or defense factors might affect the judicial reviewability of the CAB proceedings and decisions. In a case involving a "routine" approval of an order with respect to a foreign or overseas certificate of a U. S. carrier, i.e., one not based on any foreign policy or defense objectives, the President may indicate that he would have no objection to judicial review of the CAB decision and proceeding.

\* \* \*

The provisions of the Executive Order are expected to become effective on the thirtieth day following publication in the Federal Register. Thus the effective date should be on July 11, 1976.

# # #



Thursday 8/5/76

Meeting  
8/5/76  
3 p.m.

10:15 James M. Hotchkiss and Marvin Osburn  
will come here at 3 o'clock this afternoon  
(Thursday 8/5).

Found after they arrived that they  
wanted to discuss an "801" matter  
in behalf of employees of Pan American.  
Advised them I could not discuss  
such matter and I gave them a copy  
of the recent EO and asked them  
to follow the required procedures.

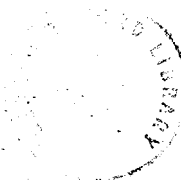


Thursday 8/5/76

Meeting  
8/5/76  
3 p.m.

8:55 Mr. Buchen advises that Jim Hotchkiss  
(Nellie Longworth's brother-in-law)  
will come in this afternoon (Thursday 8/5)  
to meet with Mr. Buchen.

He will be calling to give us the names  
of the other gentlemen who will accompany  
him.



*Aulonis*

THE WHITE HOUSE  
WASHINGTON  
August 11, 1976

Dear Senator Stone:

Thank you for your letter of August 2, 1976, regarding the Civil Aeronautics Board's (CAB) recent decision currently before the President for review.

Under Section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), the President has authority to approve or disapprove certification and permit decisions of the CAB involving international and overseas air transportation. This authority is in recognition of the President's Constitutional responsibilities for foreign policy and national defense.

On June 10, 1976, the President announced that he had issued Executive Order 11920 (copy attached) to improve the process of Presidential review of certification and permit decisions of the CAB involving international and overseas air transportation. The Order establishes for the first time guidelines to better assure fairness in the entire review process.

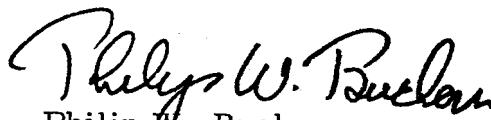
These guidelines provide in part that all communications from interested parties concerning pending CAB cases be referred to the appropriate department or agency for handling. While it is clear that matters of international economic policy frequently will be inextricably interwoven with foreign policy considerations, review at the White House by the President should only concern itself with defense or foreign policy implications arising from the particular decision. Therefore, I am taking the liberty of forwarding your correspondence to the National Security Adviser



to the President and the Department of Transportation in order that the views expressed therein receive full and timely consideration.

With best wishes,

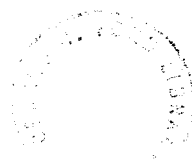
Sincerely,

A handwritten signature in cursive script that reads "Philip W. Buchen".

Philip W. Buchen  
Counsel to the President

The Honorable Richard Stone  
United States Senate  
Washington, D. C. 20510

Enclosure



*Antline*

THE WHITE HOUSE  
WASHINGTON  
August 11, 1976

Dear Senator Chiles:

Thank you for your letter of August 2, 1976, regarding the Civil Aeronautics Board's (CAB) recent decision currently before the President for review.

Under Section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), the President has authority to approve or disapprove certification and permit decisions of the CAB involving international and overseas air transportation. This authority is in recognition of the President's Constitutional responsibilities for foreign policy and national defense.

On June 10, 1976, the President announced that he had issued Executive Order 11920 (copy attached) to improve the process of Presidential review of certification and permit decisions of the CAB involving international and overseas air transportation. The Order establishes for the first time guidelines to better assure fairness in the entire review process.

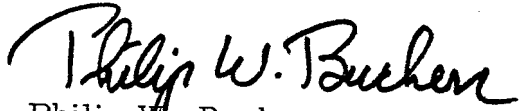
These guidelines provide in part that all communications from interested parties concerning pending CAB cases be referred to the appropriate department or agency for handling. While it is clear that matters of international economic policy frequently will be inextricably interwoven with foreign policy considerations, review at the White House by the President should only concern itself with defense or foreign policy implications arising from the particular CAB decision. Therefore, I am taking the liberty of forwarding your correspondence to



the National Security Adviser to the President and the Department of Transportation in order that the views expressed therein receive full and timely consideration.

With best wishes,

Sincerely,



Philip W. Buchen  
Counsel to the President

The Honorable Lawton Chiles  
United States Senate  
Washington, D.C. 20510

Enclosure

*Airlines*

THE WHITE HOUSE

WASHINGTON

August 11, 1976

Dear Senator Buckley:

Thank you for your letter of July 29, 1976, regarding the Civil Aeronautics Board's (CAB) recent decision currently before the President for review.

Under Section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), the President has authority to approve or disapprove certification and permit decisions of the CAB involving international and overseas air transportation. This authority is in recognition of the President's Constitutional responsibilities for foreign policy and national defense.

On June 10, 1976, the President announced that he had issued Executive Order 11920 (copy attached) to improve the process of Presidential review of certification and permit decisions of the CAB involving international and overseas air transportation. The Order establishes for the first time guidelines to better assure fairness in the entire review process.

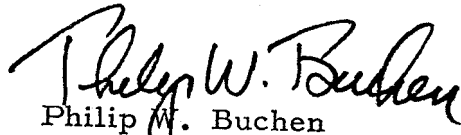
These guidelines provide in part that all communications from interested parties concerning pending CAB cases be referred to the appropriate department or agency for handling. While it is clear that matters of international economic policy frequently will be inextricably interwoven with foreign policy considerations, review at the White House by the President should only concern itself with defense or foreign policy implications arising from the particular CAB decision. Therefore, I am taking the liberty of forwarding your correspondence to



the National Security Adviser to the President and the Department of Transportation in order that the views expressed therein receive full and timely consideration.

With best wishes,

Sincerely,

  
Philip W. Buchen  
Counsel to the President

The Honorable James L. Buckley  
United States Senate  
Washington, D. C. 20510

Enclosure





*Aviation*

THE WHITE HOUSE

WASHINGTON

September 3, 1976

MEMORANDUM FOR:

BILL SEIDMAN

FROM:

PHIL BUCHEN *P.*

SUBJECT:

U.S. International Aviation  
Policy Statement

I have reviewed the proposed International Aviation Policy Statement and, though this is not an area in which I have any expertise, the Statement seems to be a logical and wise definition of policy. I particularly support the emphasis on the need to reform regulatory policies that presently inhibit the ability of the industry to achieve improved lower-cost scheduled and charter services and that inhibit the ability of U.S. carriers in foreign markets to achieve equal competitive opportunities. I also am pleased to see a specific statement on security objectives and their impact.

As to timing, I tend to agree with the State Department that a clear policy statement would strengthen the U.S. negotiating posture, vis-a-vis the United Kingdom, Japan and Italy.



THE WHITE HOUSE

WASHINGTON

September 1, 1976

MEMORANDUM FOR PHILIP BUCHEN ✓  
JAMES M. CANNON  
JOHN O. MARSH  
MAX FRIEDERSDORF  
BRENT SCOWCROFT  
ROBERT T. HARTMANN

FROM: L. WILLIAM SEIDMAN *LWS*  
SUBJECT: U.S. International Aviation Policy Statement

A draft memorandum for the President on adopting and issuing a new U.S. International Aviation Policy Statement is attached. The Economic Policy Board has approved the proposed statement and unanimously recommends that the President adopt and issue the new policy statement the week of September 7. The Chairman of the CAB has submitted some thoughts on the timing of a U.S. International Aviation Policy Statement, which are also attached, suggesting several reasons why issuing a statement should be deferred.

I would appreciate your comments and recommendations on: (1) whether you approve of the new policy statement and (2) whether you recommend issuing a new policy statement at this time or deferring issuing a statement.

For the reasons stated in the memorandum, the Departments of Transportation and State are anxious for a decision on this issue as soon as possible. I would appreciate your comments no later than Noon, Friday, September 3, 1976 in order that this paper may go forward to the President.

Attachment



Tuesday,  
September 14, 1976

*Please file*

2:00 p.m.

Ann Pavlik from Chairman Robson's office called re the Aerolineas Argentinas Docket 24248.

I spoke with Bob Linder's office (as Ms. Pavlik was requesting the return of the Docket) and was advised that the Docket is an official WH document.

They have tried on numerous occasions to gain possession of this material.

Mr. Linder will be happy to discuss the matter with you.

Ann Pavlik - 673-5052

*Ed:  
Kindly handle  
this matter with  
Bob and Robson's office.  
P.*

*OB*  
*August*



THE WHITE HOUSE  
WASHINGTON

*Chris*

August 31, 1976

Dear Mr. Chairman:

This is in response to your request to the Office of Management and Budget of July 23, 1976, concerning your order related to Aerolineas Argentinas Docket 24248 which the President stayed on May 7, 1975. The President has determined that no further action will be taken in this matter and that you may consider the order withdrawn.

Sincerely,

*Philip W. Buchen*

Philip Buchen  
Counsel to the President

The Honorable John E. Robson  
Chairman  
Civil Aeronautics Board  
Washington, D. C. 20428

