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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 301 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.

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- 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.

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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.

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