(5) measures to strengthen preflight screening of passengers.

[49 U.S.C. app. 1358a]

SEC. 319. FEDERAL SECURITY MANAGERS AND FOREIGN SECURITY LIASON OFFICERS.

(a) FEDERAL SECURITY MANAGERS.—

(1) ESTABLISHMENT OF POSITION.—Not later than 90 days after the date of the enactment of this section, the Administrator shall establish the position of Federal Security Manager for each airport in the United States at which the Administrator determines that such a Manager is necessary to meet the needs of air transportation security and shall begin designating persons as such Managers and stationing such Managers at such airports. In carrying out the requirements of this section, the Administrator may assign the functions and responsibilities described in this section to existing Federal Aviation Administration field personnel and designate such personnel accordingly.

(2) 1-YEAR STATIONING REQUIREMENT.—Not later than 1 year after the date of the enactment of this section, the Administrator shall have stationed a Federal Security Manager at each airport in the United States which is designated by the Department of Transportation as a category X airport.

(3) RESPONSIBILITIES.—The responsibilities of a Federal Security Manager with respect to an airport shall include the following:

(A) Receipt of intelligence information relating to aviation security.

(B) Ensuring and assisting in the development of a comprehensive security plan for the airport—

(i) which establishes responsibilities of each such air carrier and airport operator with respect to air transportation security at the airport; and

(ii) which includes measures to be taken during periods of normal airport operations and during periods when there is a need for additional airport security, as determined by the Federal Security Manager, and identifies the persons responsible for carrying out such measures.

(C) Oversight and enforcement of implementation by air carriers and airport operators of Federal security requirements, including the comprehensive plan developed pursuant to subparagraph (B).

(D) Serving as the on-site coordinator of the response of the Federal Aviation Administration to terrorist incidents and threats at the airport.

(E) Coordination of day-to-day Federal activities relating to aviation security at the airport.

(F) Coordination with local law enforcement efforts relating to aviation security.

(G) Coordination of activities with Federal Security Managers at other airports, as appropriate.

(4) AUTHORITY OF ASSISTANT ADMINISTRATOR.—A Federal Security Manager shall report directly to the office of the Assistant Administrator for Civil Aviation Security.

(5) NONDUPPLICATION OF FUNCTIONS.—When a Federal Security Manager is designated or stationed at an airport, the Civil Aviation Security Field Officer shall not be assigned security responsibilities at such airport.

(b) FOREIGN SECURITY LIASON OFFICERS.—

(1) ESTABLISHMENT OF POSITION.—Not later than 90 days after the date of the enactment of this section, the Administrator shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the Administrator determines that such an Officer is necessary for air transportation security and, in coordination with the Secretary of State, shall begin assigning such Officers.

(2) 2-YEAR REQUIREMENT.—Not later than 2 years after the date of the enactment of this section, the Administrator, in coordination with the Secretary of State, shall assign Foreign Security Liaison Officers for airports outside the United States where extraordinary security measures are in place. The Secretary of State shall give high priority to the stationing of such officers.

(3) RESPONSIBILITIES.—A Foreign Security Liaison Officer shall be responsible (A) for serving as the liaison of the Assistant Administrator for Civil Aviation Security with foreign security authorities (including foreign governments and airport authorities) with respect to implementation of Federal security requirements at the airport, and (B) to the extent practicable, for performing the responsibilities set forth in subsection (a)(3).

(4) AUTHORITY OF ASSISTANT ADMINISTRATOR.—A Foreign Security Liaison Officer shall report directly to the office of the Assistant Administrator for Civil Aviation Security.

(5) COORDINATION WITH CHIEF OF UNITED STATES DIPLOMATIC MISSION.—The activities of a Foreign Security Liaison Officer shall be coordinated with the chief of the United States diplomatic mission to which the Officer is assigned. All activities of a Foreign Security Liaison Officer pursuant to this subsection shall be consistent with the authorities of the Secretary of State and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 and section 207 of the Foreign Service Act of 1980.

(c) LONG-TERM IMPLEMENTATION PLAN.—Not later than 180 days after the date of the enactment of this section, the Administrator shall submit to Congress a plan to fully implement the requirements of this section. Such plan shall include a schedule for implementation and an assessment of personnel and funding needs.

[49 U.S.C. app. 1358b]

SEC. 320. DEPLOYMENT OF EXPLOSIVE DETECTION EQUIPMENT.

(a) GENERAL RULE.—No deployment or purchase of any explosive detection equipment pursuant to section 108.7(b)(8) and 108.20 of title 14, Code of Federal Regulations, or any similar rule, shall be required after the date of the enactment of this section, unless
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the Administrator certifies that, based on the results of tests conducted pursuant to protocols developed in consultation with expert scientists from outside the Federal Aviation Administration, such equipment alone or as part of an integrated system can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material which would be likely to be used to cause catastrophic damage to commercial aircraft.

(b) DEADLINE FOR COMPLETION OF TESTS.—The tests referred to in subsection (a) shall be completed not later than 18 months after the date of the enactment of this section.

(c) LIMITED AUTHORITY FOR INTERIM DEPLOYMENT.—Before completion of the tests referred to in subsection (a), but in no event later than 18 months after the date of the enactment of this section, the Administrator may require the deployment of explosive detection equipment referred to in subsection (a) if the Administrator determines that such deployment shall significantly enhance aviation security. In making such determination, the Administrator shall take into consideration, but not be limited to, such factors as the ability of such equipment alone or as part of an integrated system to detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives of a deployment decision made pursuant to this subsection.

(d) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as prohibiting the Administrator from purchasing or deploying explosive detection equipment referred to in subsection (a).

SEC. 321. REPORTING OF THREATS TO CIVIL AVIATION.

(a) IN GENERAL.—Pursuant to such guidelines as the Secretary of Transportation shall establish, an air carrier, airport operator, ticket agent, or individual employed by such an entity, receiving information, other than through a communication directed by the Federal Government, of a threat to civil aviation, shall promptly provide such information to the Secretary or the designee of the Secretary.

(b) FLIGHT CANCELLATIONS.—In the event that a determination is made that a particular threat to civil aviation cannot be addressed in a manner adequate to ensure, to the extent feasible, the safety of the passengers and crew of a particular flight or series of flights, the Administrator shall order the cancellation of such flight or series of flights.

(c) NOTIFICATION GUIDELINES.—

(1) PUBLIC NOTIFICATION GUIDELINES.—Not later than 180 days after the date of the enactment of this section, the President shall develop guidelines for ensuring notification to the public of threats to civil aviation in appropriate cases.

(2) FLIGHT AND CABIN CREW NOTIFICATION GUIDELINES.—Not later than 180 days after the date of the enactment of this section, the Administrator shall develop guidelines for ensuring notification of the flight and cabin crews of an air carrier flight of threats to the security of such flight in appropriate cases.

(d) RESPONSIBILITIES.—The guidelines developed under subsection (c)(1) shall identify officials responsible for—

(1) determining, on a case-by-case basis, if public notification of a threat is in the best interest of the United States and the traveling public;

(2) ensuring that public notification, when considered appropriate, is made in a timely and effective manner, including the use of a toll-free telephone number; and

(3) canceling the departure of a flight or series of flights under subsection (b).

(e) CRITERIA.—The guidelines developed pursuant to subsection (c)(1) shall provide for the consideration of—

(1) the specificity of the threat;

(2) the credibility of intelligence information related to the threat;

(3) the ability to effectively counter the threat;

(4) the protection of intelligence information sources and methods;

(5) cancellation, by an air carrier or the Administrator, of a flight or series of flights instead of public notification;

(6) the ability of passengers and crew to take steps to reduce the risk to their safety as a result of any notification; and

(7) such other factors as the Administrator considers appropriate.

(f) SELECTIVE NOTIFICATION PROHIBITED.—In no event shall there be notification of a threat to civil aviation to only selective potential travelers unless such threat applies only to them.

(g) DISTRIBUTION.—The guidelines developed pursuant to subsection (c) shall be distributed for use by appropriate officials of the Department of Transportation, the Department of State, the Department of Justice, and air carriers.

(h) ACCESS TO INFORMATION.—The Administrator, in cooperation with agencies involved in the collection, receipt, and analysis of intelligence information relating to aviation security, shall develop procedures to minimize the number of individuals having access to threat information. Any restrictions adopted pursuant to this subsection shall not diminish the ability of the Federal Government to effectively discharge its responsibilities relating to aviation security, including notification of the public and flight and cabin crews under subsection (c).

[49 U.S.C. app. 1358d]
TITLE IV—AIR CARRIER ECONOMIC REGULATION

CERTIFICATE OF PUBLIC CONVENIENCE AND Necessity

Certificate Required

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

Application for Certificate

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

Route Applications

(c)(1) Upon the filing of any application pursuant to subsection (b) of this section, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. The Board shall—

(A) set such application for a public hearing;

(B) begin to make a determination with respect to such application under the simplified procedures established by the Board in regulations pursuant to subsection (p); or

(C) dismiss such application on the merits;

not later than ninety days after the date the application is filed with the Board. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of the certificate requested by such application. Any order of dismissal of an application issued by the Board without setting such application for a hearing or beginning to make a determination with respect to such application under such simplified procedures, shall be deemed a final order subject to judicial review in accordance with the provisions of section 1006 of this Act.

(2) If the Board determines that any application should be set for a public hearing under clause (A) of the second sentence of paragraph (1) of this subsection, an initial or recommended decision shall be issued not later than one hundred and fifty days after the date of such determination by the Board. Not later than ninety days after the initial or recommended decision is issued, the Board shall make its final order with respect to such application. If the Board does not act within such ninety-day period—

(A) in the case of an application for a certificate to engage in interstate or overseas air transportation, the initial or recommended decision shall become the final decision of the Board and shall be subject to judicial review in accordance with the provisions of section 1006 of this Act; and

(B) in the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President pursuant to section 801 of this Act.

(3) Not later than the one-hundred-eightieth day after the Board begins to make a determination with respect to an application under the simplified procedures established by the Board in regulations pursuant to subsection (p) of this section, the Board shall issue its final order with respect to such application.

(4) If an applicant fails to meet the procedural schedule adopted by the Board in a particular proceeding, the applicable period prescribed in paragraph (2) or (3) of this subsection may be extended by the Board for a period equal to the period of delay caused by the applicant. In addition to any extension authorized by the preceding sentence, in extraordinary circumstances, the Board may, by order delay an initial or recommended decision for not to exceed thirty days beyond the final date on which the decision is required to be made.

Issuance of Certificate

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

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

(3) In the case of an application for a certificate to engage in charter air transportation, the Board may issue a certificate to any applicant, not holding a certificate under paragraph (1) or (2) of this subsection on January 1, 1977, authorizing interstate air transportation of persons, which authorizes the whole or any part thereof for such periods, as is consistent with the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(4)(A) Notwithstanding any other provision of this Act, any citizen of the United States who undertakes, within any State, the

1 For terminations and transfers of functions of the Civil Aeronautics Board, see section 1601 of this Act. In this title, footnotes are used to indicate terminations of functions and transfers of functions to agencies other than the Department of Transportation. Any authority of the Board not covered by such a footnote was transferred on January 1, 1986, to the Department of Transportation. The exercise of authority relating to foreign air transportation is to be in consultation with the Department of State.

1 Section 401(d)(1), (2), and (3) authority terminated December 31, 1981, insofar as the provisions require a determination of consistency with the public convenience and necessity for interstate and overseas air transportation of persons, and insofar as section 401(d)(3) prohibits persons holding certificates under (d)(1) or (d)(2) from providing interstate or overseas charter air transportation of persons. Section 1601(a)(1)(A) of this Act.
carriage of persons or property as a common carrier for compensation or hire with aircraft capable of carrying thirty or more persons pursuant to authority for such carriage within such State granted by the appropriate State agency is authorized to establish services for persons and property which includes transportation by such citizen over its routes in such State and transportation by an air carrier or a foreign air carrier in air transportation; and

(ii) subject to the requirements of section 412 of this title, to enter into an agreement with any air carrier or foreign air carrier for the establishment of joint fares, rates, or services for such through services.

(B) The joint fares or rates established under clause (ii) of subparagraph (A) of this paragraph shall be the lowest of—

(i) the sum of the applicable fare or rate for service in the States approved by the appropriate State agency, and the applicable fare or rate for that part of the through service provided by the air carrier or foreign air carrier;

(ii) a joint fare or rate established and filed in accordance with section 403 of this Act; or

(iii) a joint fare or rate established by the Board in accordance with section 1002 of this Act.

(5)(A) Except as provided in subparagraphs (B) and (G)(i) of this paragraph, if an air carrier is authorized by its certificate to provide round trip service nonstop each way between any two points in the forty-eight contiguous States or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week for at least thirteen weeks during any twenty-six-week period (other than such a period during which service was interrupted by a labor dispute which lasted more than six weeks) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least thirteen weeks during such twenty-six-week period, pursuant to published flight schedules, by no more than one other air carrier, then the Board shall issue a certificate to the first applicant who, within thirty days after the last day of such twenty-six-week period, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire of the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

(B) Except as provided in subparagraph (G)(ii) of this paragraph, if an air carrier is authorized to provide seasonal round trip service nonstop each way between any two points in the forty-eight contiguous States in interstate air transportation or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week during half of the weeks during such season (other than such a season during which service was interrupted by a labor dispute which lasted more than 25 per centum of such season) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least half of the weeks during such season, pursuant
to published flight schedules, by two or more other air carriers, then the Board, subject to subparagraph (F) of this paragraph, shall issue a certificate to the first applicant who, within thirty days after the last day of such season, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property. A common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

(F)(i) Except as provided in subparagraph (G) of this paragraph, with respect to any application which is submitted pursuant to subparagraph (D) or (E) of this paragraph, the Board shall issue a final order granting such certificate within sixty days of the date of such application, unless the Board finds that the issuance of such certificate is inconsistent with the public convenience and necessity. Prior to issuing such final order, the Board shall afford adequate notice and opportunity for interested persons to file appropriate written evidence and argument, but the Board need not hold oral evidentiary hearings.

(ii) For purposes of clause (i) of this subparagraph, there shall be a rebuttable presumption that any transportation covered by an application for a certificate submitted pursuant to subparagraph (D) or (E) of this paragraph is consistent with the public convenience and necessity.

(G)(i) If, after the failure of any air carrier to provide the minimum level of service between any pair of points for the period of time specified in subparagraph (A) or (D) of this paragraph and before the Board receives an application from any applicant for a certificate under such subparagraph to provide air transportation between such points, the Board receives notice from such air carrier that it intends to commence service within thirty days of such notice and to provide a minimum of five round trips per week for thirteen consecutive weeks between such points and the Board has not previously received notice from such air carrier with respect to such points, the Board shall not approve such application for a certificate to provide service between such points during such thirteen-week period based upon such failure, unless such air carrier fails to provide such service when the Board receives an application from any applicant for a certificate under such subparagraph to provide air transportation between such points, the Board shall receive notice from such air carrier that it intends to commence service within fifteen days of such notice and to provide a minimum of five round trips per week for the first half of such season between such points and the Board has not previously received notice from such air carrier with respect to such points, the Board shall not approve such application for a certificate to provide service between such points during the first half of such period based upon such failure, unless such air carrier fails to provide such service during the first half of such period.

(H)(i) Whenever the Board issues a certificate pursuant to subparagraph (A) or (D) of this paragraph, the air carrier receiving such certificate shall commence service pursuant to such certificate within forty-five days of such issuance. If such air carrier fails to commence service within such period, the Board shall revoke such certificate.

(ii) Whenever the Board issues a certificate pursuant to subparagraph (B) or (E) of this paragraph to provide seasonal service, the air carrier receiving such certificate shall commence service pursuant to such certificate within fifteen days after the beginning of the first such season which begins on or after the date of such issuance. If such air carrier fails to commence service within such period, the Board shall revoke such certificate.

(I) Not more than one certificate shall be issued under this paragraph for round trip nonstop service between two points in interstate air transportation based upon the failure of the same air carrier to provide such service between such points.

(J) Whenever the Board issues a certificate pursuant to subparagraph (A) of this paragraph based upon the failure of any air carrier to provide the round trip service described in such subparagraph, the Board shall suspend the authority of such air carrier to provide such service, and suspend the authority of any other air carrier which failed to provide such service during the same twenty-six-week period for twenty-six weeks after the date of issuance of such certificate pursuant to subparagraph (A), or until such time within such twenty-six weeks as the air carrier to which a certificate is issued under such subparagraph fails to provide such service at a minimum of five round trips per week for at least thirteen weeks, whichever first occurs, except that the Board shall not suspend the authority of such air carriers under such subparagraph if the Board finds that such suspension is not necessary to encourage continued service between such points by the air carrier which received a certificate under subparagraph (A).

(6) Any air carrier holding a valid certificate to engage in foreign air transportation is authorized, on any scheduled flight in foreign air transportation, to transport persons, property, and mail between points in the United States between which it is authorized to operate during such flight. The authority described in the preceding sentence shall be limited to one round-trip flight per day between any such pair of points, unless the Board authorizes more than one round-trip flight per day between any such pair of points.

(7)(A) After the first business day of each of the calendar years 1979, 1980, and 1981 and before the thirtieth day of such calendar year—

(i) any air carrier which (I) has operated during the preceding calendar year in accordance with a certificate issued by the Board under this section which has been in force during such entire preceding calendar year, and (II) has provided air transportation of persons during such calendar year; and

(ii) any intrastate air carrier which has a valid certificate or license issued by a State regulatory authority to engage in intrastate air transportation and which has operated more than one hundred million available seat-miles in intrastate air transportation in the preceding calendar year;
any other air carrier from obtaining authority under subparagraph (A) or (B) of this paragraph to engage in nonstop service between such pair of points during such calendar year may, on such day, file written notice to the Board which sets forth such pair of points. Upon receipt of any written notice under the preceding sentence, the Board shall make such notice available to the public.

(ii) No air carrier may file a written notice under clause (i) of this subparagraph during any calendar year with respect to more than one pair of points in interest or overseas in air transportation.

(D)(i) The Board shall, on an emergency basis, by rule modify the program established by this paragraph, if the Board finds that—

I) the operation of such program is causing substantial public harm to the national air transportation system, or a substantial reduction in air service to small and medium sized communities in any region of the country;

II) the modification proposed by the Board is required by the public convenience and necessity in order to alleviate such harm or reduction; and

III) such harm or reduction identified by the Board cannot be rectified by any reasonably available means other than the modification proposed by the Board.

Any emergency modification proposed by the Board under this subparagraph shall modify such program only to the minimum extent necessary to rectify the harm or reduction identified by the Board. Any emergency modification of such program may be limited to any pair of points.

(ii) The findings of fact by the Board in any proceeding held pursuant to this subparagraph, if supported by substantial evidence, shall be conclusive. No objection to a modification of the program proposed by the Board under this subparagraph shall be considered by a court unless such objection shall have been submitted to the Board, if it was not so submitted, unless there were reasonable grounds for failure to do so.

(E) The Board shall conduct a study of the procedure for certification of air carriers and intrastate air carrier set forth in subparagraphs (A) and (B) of this paragraph to evaluate—

(i) whether such procedure is consistent with the criteria set forth in section 102 of this Act; and

(ii) the relative effectiveness of such procedure as compared with other procedures for certification set forth in this Act, including but not limited to, the procedures set forth in paragraphs (5) and (6) of this subsection and in subsection (p) of this section.

Not later than December 31, 1980, the Board shall complete such study and report the results of such study to the Congress.

(8) The Board may grant an application under subsection (d)(1), (2), or (3) of this section (whether the application be for permanent or temporary authority) for only a temporary period of time whenever the Board determines that a test period is desirable in order to determine if projected services, efficiencies, methods, rates,
fares, charges, or other projected results will in fact materialize and remain for a sustained period of time, or to assess the impact of the new services on the national air route structure, or otherwise to evaluate the proposed new services. In any case where the Board has issued a certificate under any one of such subsections on the basis that the air carrier holding such certificate will provide innovative or low-priced air transportation under such certificate, the Board, upon petition, or its own motion, may review the performance of such air carrier, and may alter, amend, modify, suspend, or revoke such certificate or authority in accordance with the procedures prescribed in section 401(g) of this title, on the grounds that such air carrier has not provided, or is not providing, such air transportation.

(9)(A) In any determination as to whether or not any applicant is fit, willing, and able to perform properly the air transportation specified in the application for a certificate described in paragraph (1)(A), (2)(A), or (3)(A) of this subsection and to conform to the provisions of this Act, the applicant shall have the burden of showing that it is so fit, willing, and able.

(B) In any determination as to whether the air transportation specified in any application for a certificate described in paragraph (1)(A), (2)(A), or (3)(A) of this subsection is or is not consistent with the public convenience and necessity, an opponent of the application shall have the burden of showing that such air transportation is not consistent with the public convenience and necessity.

(C) Transportation covered by any application for a certificate described in paragraph (1)(A), (2)(A), or (3)(A) of this subsection shall, for the purpose of such paragraphs, be deemed to be consistent with the public convenience and necessity, unless the Board finds based upon a preponderance of the evidence that such transportation is not consistent with the public convenience and necessity.

TERMS AND CONDITIONS OF CERTIFICATE

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

(2) A certificate issued under this section to engage in foreign air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

(3) A certificate issued under this section to engage in foreign charter air transportation shall designate the terminal and inter-

mediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within which the service may be rendered.

(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require.

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

(6) Any air carrier, other than a charter air carrier, may perform charter trips (including inclusive tour charter trips) or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board.

(7)(A) On and after the date of enactment of this paragraph, the Board shall not attach a closed-door restriction to any certificate issued under this section. Any closed-door restriction attached to any certificate issued before such date shall, on and after such date, have no force or effect. This subparagraph shall not apply to (i) a closed-door restriction applicable to air transportation between two points both of which are in the State of Hawaii, or (ii) a closed-door restriction in effect on such date which resulted from a sale, exchange, or transfer by any air carrier of its authority to provide air transportation to another air carrier.

(B) Upon application of any air carrier seeking removal or modification of a term, condition, or limitation attached to a certificate issued under this section to engage in interstate, overseas, or foreign air transportation, the Board shall, within sixty days after the filing of such application, set such application for oral evidentiary hearings on the record or begin to consider such application under the simplified procedures established by the Board in regulations pursuant to subsection (p) of this section for purposes of eliminating or modifying any such term, condition, or limitation which it finds is inconsistent with the criteria set forth in section 102 of this Act. Applications under this paragraph shall not be subject to dismissal pursuant to section 401(c)(1) of this Act.

(C) For purposes of this paragraph, the term “closed-door restriction” means any condition attached to a certificate to provide interstate or overseas air transportation issued under this section which prohibits such air carrier from providing local passenger service between any pair of points between which it is authorized to operate pursuant to such certificate.

EFFECTIVE DATE AND DURATION OF CERTIFICATE

(f) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as provided in this section, or until the Board shall certify that operation thereunder has ceased, or, if issued for a limited period of

1Section 401(e)(1) authority terminated December 31, 1981 insofar as it permits the Board to specify terminal and intermediate points in interstate and overseas air transportation of persons. Section 1601(a)(1)(C) of this Act.
time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Board shall certify that operations thereunder have ceased.

AUTHORITY TO MODIFY, SUSPEND, OR REVOKE

(g)(1) The Board upon petition or complaint or upon its own initiative, after notice and hearings, or pursuant to the simplified procedures under subsection (p) of this section, may alter, amend, modify, or suspend any such certificate, in whole or in part, for the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate. No such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this sentence), rule, regulation, term, condition, or limitation found by the Board to have been violated. No certificate to engage in foreign air transportation may be altered, amended, modified, suspended, or revoked pursuant to the simplified procedures of subsection (p) of this section if the holder of such certificate requests an oral evidentiary hearing or the Board finds that, under all the facts and circumstances, an oral evidentiary hearing is required in the public interest.

(2) Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of a certificate pursuant to paragraph (1) of this subsection.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, the Board may suspend or revoke authority of an air carrier to serve any point in foreign air transportation authorized in a certificate issued under this section, upon notice and with a reasonable opportunity for the affected carrier to present its views, but without hearing, if the carrier has notified the Board in accordance with subsection (j) of this section or any regulation of the Board that it proposes to suspend all service provided by that carrier to such point, or, except at a point which is provided seasonal service comparable to that provided during the previous year, if the carrier has failed to provide any regularly scheduled service to the point for 90 days preceding the date of the Board’s notice to the carrier of its proposed action.

TRANSFER OF CERTIFICATE

(h)(1) No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

(2) CERTIFICATION.—The Secretary of Transportation shall, upon any transfer of a certificate, certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with the public interest.

(3) ACCOMPANYING REPORT.—A certification under this subsection shall be accompanied by a report analyzing the effects of the transfer on—

(A) the viability of each of the carriers involved in the transfer;
(B) competition in the domestic airline industry, and
(C) the trade position of the United States in the international air transportation market.

CERTAIN RIGHTS NOT CONFERRED BY CERTIFICATE

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

TERMINATIONS, REDUCTIONS, AND SUSPENSIONS OF SERVICE

(j)(1) No air carrier holding a certificate issued under this section shall—

(A) terminate or suspend all air transportation which it is providing to a point under such certificate; or
(B) reduce any such air transportation below that which the Board has determined to be essential air transportation for such point;

unless such air carrier has first given the Board, any community affected, and the State agency of the State in which such community is located, at least 90 days notice of its intent to so terminate, suspend, or reduce such air transportation. The Board may, by regulation or otherwise, authorize such temporary suspension of service as may be in the public interest.

(2) If an air carrier holding a certificate issued pursuant to section 401 of this Act proposes to terminate or suspend nonstop or single-plane air transportation between two points being provided by such air carrier under such certificate, and such air carrier is the only air carrier certificated pursuant to such section 401 providing nonstop or single-plane air transportation between such points, at least sixty days before such proposed termination or suspension, such air carrier shall file with the Board and serve upon each community to be directly affected notice of such termination or suspension.

COMPLIANCE WITH LABOR LEGISLATION

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

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign

1 Section 401(j) authority terminated December 31, 1981, to the extent the provisions relate to interstate and overseas air transportation of persons, except with respect to essential air transportation. Section 1601(a)(18)(D) of this Act.
air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said certificate service to pilots and employees engaged in interstate air transportation within the continental United States (not including Alaska).

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

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

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

REQUIREMENT AS TO CARRIAGE OF MAIL

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

APPLICATION FOR NEW MAIL SERVICE

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

69 ADDITIONAL POWERS AND DUTIES OF BOARD WITH RESPECT TO CHARTER AIR CARRIERS

(n)(1) Notwithstanding any other provision of this title, no air carrier providing air transportation under a certificate issued under this section shall commence, on the same flight, passengers being transported in interstate, overseas, or foreign charter air transportation with passengers being transported in scheduled interstate, overseas, or foreign air transportation except that this subsection shall not apply to the carriage of passengers in air transportation under group fare tariffs.

(2) No rule, regulation, order issued by the Board shall restrict the marketability, flexibility, accessibility, or variety of charter trips provided under a certificate issued under this section except to the extent required by the public interest, and shall in no event be more restrictive than those regulations regarding charter air transportation in effect on October 1, 1978.

(3) Notwithstanding any other provision of this title, no certificate issued under this section shall authorize the holder thereof to provide charter air transportation between two points within the State of Alaska unless, and then only to the extent to which, the Board, in issuing or amending such certificate, may authorize after determining that such charter air transportation is required by the public convenience and necessity. This subsection shall not apply to a certificate issued under this section to a person who, before July 1, 1977, maintained its principal place of business within the State of Alaska and conducted air transport operations between points within the State of Alaska with aircraft having a certificated gross takeoff weight of more than 40,000 pounds.

(4) No certificate issued under this section shall permit a charter air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with a person authorized by the Board to make such sales.

In any case in which the Board determines that the failure of a charter air carrier to comply with the provisions of subsection (q) or (r) of this section, or regulations or orders of the Board thereunder, requires, in the interest of the rights, welfare, or safety of the public, immediate suspension of such carrier's certificate, the Board shall suspend such certificate, in whole or in part, without notice or hearing, for not more than thirty days. The Board shall immediately enter upon a hearing to determine whether such certificate should be modified, suspended, or revoked and, pending the completion of such hearing, the Board may further suspend such certificate for additional periods aggregating not more than sixty days. If the Board determines that a carrier whose certificate is suspended under this paragraph comes into compliance with the provisions of subsections (q) and (r) of this section and regulations and orders of the Board thereunder, the Board may immediately terminate the suspension of such certificate and any pending proceeding commenced under this paragraph, but nothing in this sen-

1Sections 401 (l) and (m) authority terminated January 1, 1985, insofar as provisions relate to interstate and overseas air transportation (except insofar as provisions apply to transportation of mail between two points both of which are within the State of Alaska). Authority relating to transportation of mail between two points within Alaska will terminate January 1, 1989. Sections 1601(a)(3)(A) and 1601(a)(3) of this Act. New the United States Postal Service. Public Laws 91-375, 84 Stat. 783.

2Section 401(a)(3) and (4) authority terminated December 31, 1981, insofar as provisions relate to interstate and overseas air transportation of passengers. Section 1601(a)(3)(A) of this Act.
tence shall preclude the Board from imposing on such carrier, a
civil penalty for any violation of such provisions, regulations, or or-
ders.

(6) The Board shall prescribe such regulations and issue such
orders as may be necessary to carry out the provisions of this sub-
section.

(o)(1) Except as provided in paragraph (2) of this subsection,
transportation of persons or property by transport category aircraft
in interstate air transportation procured by the Department of De-
fense, including military department within such Department,
through contracts of more than 30 days duration for airlift service
within the United States, shall be provided only by carriers which
(1) have aircraft in the civil reserve air fleet or offer to place air-
craft in such fleet, and (2) hold certificates under this section. Ap-
lications for certification under subsection (a) of this section for
the purpose of providing the service referred to in this subsection
shall be acted on expeditiously by the Board.

(2) In any case in which the Secretary of Defense determines
that no air carrier certified under subsection (a) of this section
is capable of providing and willing to provide the type of service de-
scribed in paragraph (1) of this subsection, he may contract with
an air carrier which does not hold a certificate under this section.

PROCEDURES FOR PROCESSING APPLICATIONS FOR CERTIFICATES

(p)(1) The Board shall promulgate rules establishing simplified
procedures for—

(A) the disposition of applications for a certificate to en-
gage in air transportation pursuant to subsection (d) (1), (2), or
(3) of this section; and

(B) the alteration, amendment, modification, suspension,
or transfer of all or any part of any certificate pursuant to sub-
section (f), (g), or (h) of this section.

Such rules shall provide for the adequate notice and an opportunity
for any interested person to file appropriate written evidence and ar-
gument but need not provide for oral evidentiary hearings. Such
rules may provide that such written evidence and argument shall
be filed by such person as part of a protest or memorandum filed
with respect to such application under subsection (c) of this section.

(2) The Board may use such simplified procedures in any case
if the Board determines that the use of such simplified procedures
is in the public interest. The rules adopted by the Board pursuant
to this subsection shall, to the extent the Board finds it practicable,
set forth the standards it intends to apply in determining whether
to employ such simplified procedures, and in deciding cases in
which such procedures are employed.

INSURANCE AND LIABILITY

(q)(1) No certificate shall be issued or remain in effect unless
the applicant for such certificate or the air carrier, as the case may
be, complies with regulations or orders issued by the Board govern-

ing the filing and approval of policies of insurance or plans for self-
insurance in the amount prescribed by the Board which are condi-
tioned to pay, within the amount of such insurance, amounts for

which such applicant or such air carrier may become liable for bod-
ily injuries to or the death of any person, or for loss of or damage to
property of others, resulting from the operation or maintenance
of aircraft under such certificate.

(2) In order to protect travelers and shippers by aircraft oper-
ated by certificated air carriers, the Board may require any such
air carrier to file a performance bond or equivalent security ar-
angement, in such amount and upon such terms as the Board shall
prescribe, to be conditioned upon such air carrier’s making appro-

priate compensation to such travelers and shippers, as prescribed
by the Board, for failure on the part of such carrier to perform
air transportation services in accordance with agreements there-
fore.

CONTINUING REQUIREMENT

(r) The requirement that each applicant for a certificate or any
other authority under this title must be found to be fit, willing, and
able to perform properly the transportation covered by its applica-
tion and to conform to the provisions of this Act and the rules, reg-
ulations, and requirements of the Board under this Act, shall be a
continuing requirement applicable to each such air carrier with re-
spect to the transportation authorized by the Board. The Board
shall by order, after notice and hearing, modify, suspend, or
revoke such certificate or other authority, in whole or in part,
for failure of such air carrier to comply with the continuing require-
ment that the air carrier be so fit, willing, and able, or for failure
to file such reports as the Board may deem necessary to determine
whether such air carrier is so fit, willing, and able.

[49 U.S.C. App. 1371]

PERMITS TO FOREIGN AIR CARRIERS

PERMIT REQUIRED

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

ISSUANCE OF PERMIT

(b) The Board is empowered to issue such a permit if it finds
(1) that the applicant is fit, willing, and able properly to perform
such foreign air transportation and to conform to the provisions
of this Act and the rules, regulations, and requirements of the Board
hereunder, and (2) that the applicant is qualified, and has been
designated by its government, to perform such foreign air
transportation under the terms of an agreement with the United
States, or that such transportation will be in the public interest.

APPLICATION FOR PERMIT

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

NOTICE OF APPLICATION

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

TERMS AND CONDITIONS OF PERMIT

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

AUTHORITY TO MODIFY, SUSPEND, OR REVOCATE

(f)(1) Any permit issued under the provisions of this section may, after notice and hearing, be altered, modified, amended, suspended, canceled, or revoked by the Board whenever it finds such action to be in the public interest. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, modification, amendment, suspension, cancellation, or revocation of a permit.

(2) Whenever the Board finds that the government, aeronautical authorities, or foreign air carriers of any foreign country have, over the objections of the Government of the United States, impaired, limited, or denied the operating rights of United States air carriers, or engaged in unfair, discriminatory, or restrictive practices with a substantial adverse competitive impact upon United States carriers, with respect to air transportation services to, from, through, or over the territory of such country, the Board may, without hearing but subject to the approval of the President of the United States, summarily suspend the permits of the foreign air carriers of such country, or alter, modify, amend, condition, or limit operations under such permits, if it finds such action to be in the public interest. The Board may also, without hearing but subject to Presidential approval, to the extent necessary to make the operations of this paragraph effective, restrict operations between such foreign country and the United States by any foreign air carrier of a third country.

TRANSFER OF PERMIT

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

PROCEDURES FOR PROCESSING APPLICATIONS FOR PERMITS

(h) The Board shall promulgate rules establishing simplified procedures for—

(1) the disposition of applications for a permit to engage in foreign air transportation pursuant to this section; and

(2) the alteration, amendment, modification, suspension, or transfer of all or any part of any permit pursuant to subsection (f) of this section.

Such rules shall provide for adequate notice and an opportunity for all interested persons to file appropriate written evidence and argument, but need not provide for oral evidentiary hearings.

[49 U.S.C. App. 1372]

TARIFFS OF AIR CARRIERS

FILING OF TARIFFS REQUIRED

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

OBSERVANCE OF TARIFFS; REBATING PROHIBITED

(b)(1) No air carrier or foreign air carrier or any ticket agent shall charge or demand or collect or receive a greater or less or different compensation for air transportation, or for any service in connection therewith, than the rates, fares, and charges specified in then currently effective tariffs of such air carrier or foreign air carrier; and no air carrier or foreign air carrier or ticket agent shall, in any manner or by any device, directly or indirectly, through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Board to be specified in such tariffs except those specified therein. Nothing in this Act shall prohibit such air carriers or foreign air carriers, under such terms and conditions as the Board may prescribe, from issuing or interchanging tickets or passes for free or reduced-rate transportation to their directors, officers, and employees (including retired directors, officers, and employees who are receiving retirement benefits from any air carrier or foreign air

1Section 403 authority terminated January 1, 1985, to extent provisions relate to interstate and overseas air transportation. Section 1601(a)(14)(B) of this Act.
carrier), the parents and immediate families of such officers and employees, widowers, and minor children of employees who have died as a direct result of personal injury sustained while in the performance of duty in the service of such air carrier or foreign air carrier; witnesses and attorneys attending any legal investigation which such an air carrier is interested; persons injured in aircraft accidents and physicians and nurses attending such persons; immediate families, including parents, of persons injured or killed in aircraft accidents where the object is to transport such persons in connection with such accident; and any person or property with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation; and, in the case of overseas or foreign air transportation, to such other persons and under such circumstances as the Board may by regulations prescribe. Any air carrier or foreign air carrier, under such terms and conditions as the Board may prescribe, may grant reduced-rate transportation on a space-available basis to any minister of religion, any person who is sixty years of age or older and retired, any person who is sixty-five years of age or older, and to any handicapped person and any attendant required by such handicapped person. For purposes of this subsection, the term "handicapped person" means any person who has severely impaired vision or hearing, and any other physically or mentally handicapped person, as defined by the Board. For purposes of this subsection, the term "retired" means no longer gainfully employed as defined by the Board.

(2) No shipper, consignor, consignee, forwarder, broker, or other person, or any director, officer, agent, or employee thereof, shall knowingly pay, directly or indirectly, by any device or device, any greater or less or different rate, charge, fee, or expense, or any greater or less or different discrimination in the charges for transportation of property, or for any service in connection therewith, than the rates, fares, and charges specified in the schedule of rates, fares, and charges in effect at the time the transportation is provided for in accordance with the provisions of this Act, and which are in effect at the time the transportation is provided for in accordance with the provisions of this Act.

NOTICE OF TARIFF CHANGES
(c)(1) Except as provided in paragraph (2) of this subsection, no change shall be made in any rate, fare, charge, or any classification, rule, regulation, or practice affecting such rate, fare, charge, or any rule, regulation, or practice thereof, except to the extent theretofore, in any manner of any manner, by any device or device, or otherwise, knowingly solicit, accept, or receive a refund or remittance of any portion of the rates, fares, and charges so specified, or knowingly solicit, accept, or receive a refund or remittance of any portion of the rates, fares, and charges so specified, except as provided in paragraph (2) of this subsection, no change shall be made in any rate, fare, charge, or any classification, rule, regulation, or practice affecting such rate, fare, charge, or any rule, regulation, or practice thereof.

this subsection shall plainly state the change proposed to be made and the time such change will take effect.

(2) If the effect of any proposed tariff change would be to institute a fare that is outside of the applicable range of fares specified in subparagraphs (A) and (B) of section 1002(d)(4) or subparagraphs (A), (B), and (C) of section 1002(c)(6) of this Act, or specified by the Board under section 1002(c)(7) or section 1002(c)(9) of this Act, or would be to institute a fare to which such range of fares does not apply, then such proposed change shall not be implemented except after 60 days' notice filed in accordance with regulations prescribed by the Board.

FILING OF DIVISIONS OF RATES AND CHARGES REQUIRED
(d) Every air carrier or foreign air carrier shall keep current on file with the Board, if the Board so requires, the established divisions of all joint rates, fares, and charges for air transportation in which such air carrier or foreign air carrier participates.

49 U.S.C. App. 1373]

RATES FOR CARRIAGE OF PERSONS AND PROPERTY

SEC. 404. (a)(1) It shall be the duty of every air carrier to provide and furnish interstate and overseas air transportation, as authorized by and in accordance with the provisions of this Act, and to provide for its agents and representatives to receive and provide the service therewith, to the extent theretofore, in any manner of any manner, by any device or device, or otherwise, knowingly solicit, accept, or receive a refund or remittance of any portion of the rates, fares, and charges so specified, or knowingly solicit, accept, or receive a refund or remittance of any portion of the rates, fares, and charges so specified.

(2) It shall be the duty of every air carrier and foreign air carrier to establish, maintain, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers.

Section 404 authority terminated January 1, 1986, to the extent provisions relate to interstate and overseas air transportation except as specified by provisions requiring carriers to provide safe and adequate service. Section 1601(a)(4)(C) of this Act.
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within which shall not unduly prefer or prejudge any of such participating air carriers or foreign air carriers.

DISCRIMINATION

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

PROHIBITION ON DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS

(c)(1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.

(2) For the purposes of paragraph (1) of this subsection the term "handicapped individual" means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

PROHIBITION AGAINST SMOKING ON SCHEDULED FLIGHTS AND TAMPERING WITH SMOKE ALARM DEVICES

(d)(1)(A) On and after the date of expiration of the 4-month period following the date of the enactment of this subsection, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight segment in air transportation or intrastate air transportation, which is—

(i) between any two points within Puerto Rico, the United States, Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdictions;

(ii) within the State of Alaska or within the State of Hawaii; or

(iii) scheduled for 6 hours or less in duration, and between any point described in clause (i) and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

(B) The Secretary of Transportation shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(2) Any passenger who tampers with, disables, or destroys any smoke alarm device located in any lavatory aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901, except that such civil penalty may be imposed in an amount up to $2,000.

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Sec. 405

TRANSPORTATION OF MAIL

POSTAL RULES AND REGULATIONS

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

MAIL SCHEDULES

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

MAXIMUM MAIL LOAD

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

TENDER OF MAIL

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

FOREIGN POSTAL ARRANGEMENT

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

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

TRANSPORTATION OF FOREIGN MAIL

(f)(1) Any air carrier holding a certificate to engage in foreign air transportation and transporting mails of foreign countries shall transport such mails subject to control and regulation by the United States Postal Service. The Postmaster General shall fix from time to time the rates of compensation that shall be charged the respective foreign countries for the transportation of their mails by such air carriers; and such rates shall be set by the Postmaster General in accordance with the provisions of the postal convention regulating the postal relations between the United States and the respective foreign countries, or as provided hereinafter in this subsection.

In any case where such rates are fixed by the Postmaster General, the Postmaster General, in advance of the making of any such arrangement, may approve such rates provided in arrangements between such air carrier and such foreign country covering the transportation of mails of such country, under which rates of such country have been established on scheduled operations prior to January 1, 1938, or in extensions or modifications of such arrangements, and may permit any such air carrier to enter into arrangements with any foreign country for the transportation of its mails at rates fixed by the Postmaster General in advance of the making of any such arrangement. The Postmaster General may authorize any such air carrier, under such limitations as the Postmaster General may prescribe, to change the rates to be charged any foreign country for the transportation of its mails by such air carrier within that country or between that country and another foreign country.

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

EVIDENCE OF PERFORMANCE OF MAIL SERVICE

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

EMERGENCY MAIL SERVICE

(h) In the event of emergency caused by flood, fire, or other calamitous visitation, the Postmaster General is authorized to contract, without advertising, for the transportation by aircraft of any or all classes of mail to or from localities affected by such calamity, where available facilities of persons authorized to transport mail to or from such localities are inadequate to meet the requirements of the Postal Service during such emergency. Such contracts may be made for such periods as may be necessitated, for the maintenance of mail service, by the inadequacy of such other facilities. No operation pursuant to any such contract, for such period, shall be air transportation within the purview of this Act. Payment of compensation for service performed under such contracts shall not be made, at rates provided in such contracts, from appropriations for the transportation of mail by the means normally used for transporting the mail transported under such contracts.

EXPERIMENTAL AIRMAIL SERVICE

(i) Nothing contained in this Act shall be construed to repeal in whole or in part the provisions of section 6 of the Act entitled "An Act to provide for experimental airmail service, to further develop safety, efficiency, economy, and for other purposes", approved

1 See footnote 1 on preceding page.
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April 15, 1938, as amended. The transportation of mail under contracts entered into under such section shall not except for sections 401(k) and 418(b), be deemed to be "air transportation" as used in this Act, and the rates of compensation for such transportation of mail shall not be fixed under this Act.

FREE TRAVEL FOR POSTAL EMPLOYEES

(i) Every air carrier carrying the mails shall carry on any plane that it operates and without charge therefor, the persons in charge of the mails when on duty and such other persons as the Postmaster General of the United States, or as may be prescribed by or pursuant to law, while traveling on official business relating to the transportation of mail by aircraft, as the Board may by regulation prescribe, upon the exhibition of their credentials.

[49 U.S.C. App. 1375]

RATES FOR TRANSPORTATION OF MAIL

AUTHORITY TO FIX RATES

SEC. 406. 2 (a) The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith including the transpor-
tation of mail by an air carrier by other means than aircraft, whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from an interruption or discontinuance by such holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound, mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same. Nothing in this section shall prohibit the Board from making payments as compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, for the period August 23, 1975, through July 31, 1978, where such payments have already been provided by Board order, to the holder of a certificate authorizing the transportation of mail by aircraft, to the account or for the benefit of any air carrier designated an "air taxi operator" by the Board, with respect to any air transportation between points named in the holder's certificate in satisfaction of an express condi-
tion to the suspension by Board order of the holder's certificate au-
thority to engage in air transportation between those points. In no

2 The authority of the Board to determine rates for the carriage of mail in interstate and over-
seas transportation (except that such rates were transferred to the Postal Service on January 1, 1986) is to be exercised through negotiation or competitive bidding. Section 1601(d)(2) of this Act.
3 The authority with respect to two points within the United States transferred to the Department of Transportation on January 1, 1986 (section 1601(b)(3) of this Act) and will be transferred to the Postal Service to be exercised through negotiations or competitive bidding on January 1, 1989. Section 1601(b)(3) of this Act.

RATE-MAKING ELEMENTS

(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board, considering the conditions peculiar to transportation by aircraft and to the particular air carry-
er or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into con-
sideration, among other factors, (1) the condition that such air carriers may hold and operate under certificates authorizing the car-
rriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; (2) such standards re-
specting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and (3) the need of each such air carrier (other than a charter air carrier) for compensation for the transportation of mail sufficient to insure the performance of such service, and—

(A) during the period beginning on the date of enactment of this clause and ending on January 1, 1983, both dates inclusive, together with all other revenue of the air carrier from the service for which the compensation is being paid; and

(B) after January 1, 1983, together with all other revenue of the air carrier;

to the able such air carrier under honest, economical, and efficient management, to provide (except for modifications with respect to an individual point determined after January 1, 1983, to be re-
quired by the public interest, after giving interested parties an oppor-
tunity for an evidentiary hearing with respect to air transporta-
tion for such individual point) air transportation of at least the same extent, character, and quality as that provided during the year ending December 31, 1977, to maintain and continue the de-
velopment of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, 4 and the national defense. Notwithstanding any other provision of this section, rates of compensation paid to the air carrier under this section for service performed between the date of enactment of this sentence and January 1, 1983, shall be based on the subsidy need of the air carrier with respect to service per-
formed to points for which such carrier was entitled to receive com-
pensation for serving during calendar year 1977. In the case of any local service carrier, such subsidy need shall be based on the ad-
justments applicable to such carrier determined in a matter consist-
ent with the provisions of Local Service Class Subsidy Rate VIII, with technical adjustments, and in the case of any other carrier re-
cieving compensation during the twelve months ended June 30, 1978, such subsidy need shall be determined pursuant to the meth-

TREATMENT OF PROCEEDS OF DISPOSITION OF CERTAIN PROPERTY

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

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

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

Any amounts so deposited in a reequipment fund as above provided shall be used solely for investment in flight equipment either through payments on account of the purchase price or construction of flight equipment or in retirement of debt contracted for the purchase or construction of flight equipment, and unless so reinvested within such reasonable time as the Board may prescribe, the carrier shall not have the benefit of this paragraph. Amounts so deposited in the reequipment fund shall not be included as part of the carrier’s used and useful investment for purposes of section 406 until expended as provided above: Provided, That the flight equipment in which said gains may be invested shall not include equipment delivered to the carrier prior to April 6, 1966: Provided further, That the provisions of this subsection shall be effective as to all capital gains or losses realized on and after April 6, 1966, with respect to the sale or other disposition of flight equipment whether or not the Board shall have entered a final order taking account thereof in determining all other revenue of the air carrier.

STATEMENT OF POSTMASTER GENERAL AND CARRIER

(e) Any petition for the fixing of fair and reasonable rates of compensation under this section shall include a statement of the manner in which the rate petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in each proceeding under this section a comprehensive statement of all service to be required of the air carrier and such other information in his pos-

of this section, whenever is later. Any petition for review of a decision of the Board with respect to any such claim pending in a United States court of appeals on the date of enactment of this Act in which no final decision has been rendered without prejudice upon motion of the petitioner.

(b) Except as provided herein, the following provisions of the Contract Disputes Act of 1978 shall apply to any claim to which this section applies as if such claim were a claim with respect to a decision of a contracting officer under section 10a of such Act and as if the Board were a contracting officer:

(1) Section 12, relating to interest, which shall be payable by the Board or the Court of Claims at the rates provided in such section, not to exceed the date of enactment of the Contract Disputes Act of 1978.

(2) Section 15, relating to the payment of claims and judgments.

(3) Section 16, relating to the jurisdiction of the United States Claims Court.

(4) If any administrative law judge has issued an initial decision after a hearing on the record in such proceeding before the Board, the court may, in its discretion, rely upon the evidence adduced at such hearing and may give such initial decision such weight as it deems appropriate.
session as may be deemed by the Board to be material to the inquiry.

WEIGHING OF MAIL

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

AVAILABILITY OF APPROPRIATIONS

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

PAYMENTS TO FOREIGN AIR CARRIERS

(b)(1) In any case where air transportation is performed between the United States and any foreign country, both by aircraft owned or operated by one or more air carriers holding a certificate under this title and by aircraft owned or operated by one or more foreign air carriers or between any such foreign air carrier and a certificate holder under this title, the Postmaster General shall not pay to or for the account of any such foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country, which, in his opinion, will result (over such reasonable period as the Postmaster General may determine, taking account of exchange fluctuations and other factors) in such foreign air carrier receiving a higher rate of compensation for transporting such mail than any foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and the United States, or receiving a higher rate of compensation for transporting such mail than a rate determined by the Postmaster General to be comparable to the rate such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and intermediate country on the route of such air carrier between such foreign country and the United States.

(2) The Secretary of State and the Postmaster General each shall take all necessary and appropriate actions to assure that the rates paid for the transportation of mail pursuant to the Universal Postal Union Convention shall not be higher than fair and reasonable rates for such services. The Secretary of State and the Postmaster General shall oppose any present or proposed Universal Postal Union rates which are higher than such fair and reasonable rates.

(3) The Civil Aeronautics Board shall act expeditiously on any proposed changes in rates for the transportation of mail by aircraft in foreign air transportation. In establishing such rates, the Board shall take into consideration rates paid for transportation of mail pursuant to the Universal Postal Union Convention as ratified by the United States Government, shall take into account all of the ratemaking elements employed by the Universal Postal Union in fixing its airmail rates, and shall further consider the competitive disadvantages resulting to United States flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for the carriage of United States mail and the national origin mail of their own countries.

ACCOUNTS, RECORDS, AND REPORTS

FLING OF REPORTS

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

(b), (c)
FORM OF ACCOUNTS

(d) The Board shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Board: Provided, That any air carrier may keep additional accounts, records, or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Board and do not constitute an undue financial burden on such air carrier.

INSPECTION OF ACCOUNTS AND PROPERTY

(e) The Board shall have access to all lands, buildings, and equipment of any air carrier or foreign air carrier when necessary for a determination under section 401, 402, 418, or 419 of this title that such carrier is fit, willing, and able. The Board shall at all times have access to all accounts, records, and memorandums, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers, foreign air carriers, or ticket agents. The Board may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine lands, buildings, equipment, accounts, records, and memorandums to which the Board has access under this subsection. The provisions of this section shall apply to the extent found by the Board to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of the Interstate Commerce Act, as amended.\(^1\)

\(^1\) [49 U.S.C. App. 1377]
\[^{66} 42 U.S.C. 408.\(^1\)\]
\[^{66} 42 U.S.C. 409.\(^3\)\]

SEC. 410. PASSENGER MANIFEST.

(a) REQUIREMENT.—Not later than 120 days after the date of the enactment of this section, the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State—

(1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or

(2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification.


\(^3\) Section 409 authority terminated January 1, 1989. Section 1601(a)(7) of this Act.

\(^3\) Section 409 authority terminated January 1, 1989. Section 1601(a)(7) of this Act.

\(^1\) The authority of the Board under section 412(a) and (b) terminated January 1, 1989, unless provisions relate to interstate and overseas air transportation. Section 1601(a)(6) of this Act.

\(^2\) Methods of Competition

INVESTIGATIONS

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

INCORPORATION BY REFERENCE

(b) Any air carrier may incorporate by reference in any ticket or other written instrument any of the terms of the contract of carriage in interstate and overseas air transportation, to the extent such incorporation by reference is in accordance with regulations issued by the Board.

[49 U.S.C. App. 1381]

POOLING AND OTHER AGREEMENTS

FILING AND APPROVAL OF AGREEMENTS

SEC. 412. (a)(1) Any air carrier or foreign air carrier may file with the Board a true copy, or, if oral, a true and complete memorandum, of any contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise), or a request for authority to discuss possible cooperative working arrangements in force on the effective date of this subsection, or thereafter entered into, or any modification or cancellation thereof, between such air carrier or foreign air carrier and any other air carrier, foreign air carrier, or other carrier.

(2)(A) The Board shall by order disapprove any contract, agreement, or request filed pursuant to paragraph (1) of this subsection, whether or not previously approved by it, that it finds to be adverse to the public interest or in violation of this Act, and shall by order approve any contract, agreement, or request, or any modific-
tion or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act, except that—

(i) the Board may not approve or, after periodic review, continue its approval of any such contract, agreement, or request, or any modification or cancellation thereof, which substantially reduces or eliminates competition unless it finds that the contract, agreement, or request is necessary to meet a serious transportation need or to secure important public benefits, including international comity or foreign policy considerations, and it does not find that such need can be met or such benefits can be secured by reasonably available alternative means having materially less anticompetitive effects;

(ii) the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it; and

(iii) the Board may not approve any such contract or agreement, affecting interstate or overseas air transportation, or any modification or cancellation thereof, that limits the level of capacity among air carriers in markets in which they compete, that fixes rates, fares, or charges between or among air carriers (except for joint rates, fares, or charges).

(B) In any proceeding before the Board involving the application of the standards set forth in subparagraph (A)(i) of this paragraph, the party opposing the proposed contract, agreement, or request shall have the burden of proving the reduction or elimination of competition, and the availability of alternative means having less anticompetitive effects, and the party defending the proposed contract, agreement, or request shall have the burden of proving transportation need or public benefits.

(C) The findings required by subparagraph (A)(i) of this paragraph, shall be included in any order of the Board approving or disapproving any contract or agreement, or any memorandum of any contract or agreement, or any modification or cancellation thereof, or any request.

PROCEEDINGS UPON FILING

(b) Upon the filing of any contract or agreement, or any modification or cancellation thereof, or any request for authority to discuss possible cooperative working arrangements, pursuant to subsection (a) of this section, the Board, in accordance with regulations which it prescribes, shall provide to the Attorney General, the Secretary of State, and the Secretary of Transportation written notice of, and an opportunity to submit written comments on, the filed document. The Board may, upon its own initiative or if requested by the Attorney General or other Secretary, hold a hearing, in accordance with regulations prescribed by the Board, to determine if a contract or agreement, or request for discussion authority, wheth-

er or not previously approved, is consistent with the provisions of this Act.

MUTUAL AID AGREEMENTS

(c)(1) Notwithstanding any other provision of law, any mutual aid agreement between air carriers which was approved by the Board before the date of enactment of this subsection and which is in effect on such date of enactment shall be deemed disapproved and not in effect on and after such date of enactment.

(2) No air carrier shall enter into any mutual aid agreement with any other air carrier, unless such air carrier files a true copy of such agreement with the Board and the Board approves such agreement pursuant to the provisions of this section. Notwithstanding subsection (a) of this section, the Board shall not approve any such agreement unless such agreement provides that a) any air carrier will not receive payments for any period which exceed 60 per centum of the direct operating expenses during such period, b) that benefits under the agreement are not payable for more than eight weeks during any labor strike, and that such benefits may not be for losses incurred during the first thirty days of any labor strike, and c) that any party to such agreement will agree to submit the issues causing any labor strike to binding arbitration pursuant to the Railway Labor Act if the striking employees request such binding arbitration.

(3) For purposes of this subsection, the term—

(A) "mutual aid agreement" means any contract or agreement between air carriers which provides that any such air carrier will receive payments from the other air carriers which are parties to such contract or agreement for any period during which such air carrier is not engaging in air transportation, or is providing reduced levels of service in air transportation, due to a labor strike; and

(B) "direct operating expenses" includes interest expenses but does not include depreciation or amortization expenses.

FORM OF CONTROL

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

ANTITRUST EXEMPTION

SEC. 414. In any order made under section 408, 409, or 412 of this Act, the Board may, as part of such order, exempt any person affected by such order from the operations of the "antitrust laws" set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board.

1The authority of the Board under section 414 relating to orders made under sections 412 (a) and (b) with respect to interstate and overseas air transportation and relating to sections 408 and 409 is terminated January 1, 1969. Section 160(a)(16) and (17) of this Act.


3See footnote 1 on preceding page.
in such order and those transactions necessarily contemplated by such order, except that the Board may not exempt such person unless it determines that such exemption is required in the public interest. Notwithstanding the preceding sentence, on the basis of the findings required by subsection (a)(2)(X)(ii) of section 412, the Board shall, as part of any order under such section which approves any contract, agreement, or request or any modification or cancellation thereof, exempt any person affected by such order from the operations of the “anti-trust laws” set forth in subsection (a)(1) of the first section of the Clayton Act (15 U.S.C. 12) to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board in such order and with those transactions necessarily contemplated by such order.

[49 U.S.C. App. 1384]

INQUIRY INTO AIR CARRIER MANAGEMENT

SEC. 415. For the purpose of exercising and performing its powers and duties under this Act, the Board is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain, from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information.

[49 U.S.C.App. 1385]

CLASSIFICATION AND EXEMPTION OF CARRIERS

CLASSIFICATION

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

EXEMPTIONS

(b)(1) Except as provided in paragraph (2) of this subsection, the Board, from time to time and to the extent necessary, may exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any person or class of persons if it finds that the exemption is consistent with the public interest.

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

(3) The Board may by order relieve foreign air carriers who are not directly engaged in the operation of aircraft in foreign air transportation from the provisions of this Act to the extent and for such periods as such relief may be in the public interest.

(4) Subject to paragraph (5) of this subsection, any air carrier in air transportation which provides (A) passenger service solely with aircraft having a maximum passenger capacity of less than fifty-six passengers, or (B) cargo service in air transportation solely with aircraft having a maximum payload capacity of less than eighteen thousand pounds, shall be exempt from the requirements of subsection (a) of section 401 of this title, and of such other provisions of this Act as may be prescribed in regulations promulgated by the Board, if such air carrier conforms to such liability insurance requirements and such other reasonable regulations as the Board shall from time to time adopt in the public interest. The Board may by regulation increase the passenger or property capacities specified in this paragraph when the public interest so requires.

(5) The exemption from section 401 of this title or any other requirement of this Act shall not apply to any air transportation by any air carrier between points both of which are in the State of Alaska, or one of which is in the State of Alaska and the other in Canada, unless such air carrier also holds authority to provide such air transportation from the State of Alaska.

(6) Any air carrier operating within the State of Alaska pursuant to the exemption from section 401 of this title shall not be subject to any limitation, promulgated by the Board, on the number or location of points to be served by such air carrier, or any limitation on the frequency of service by such air carrier to points within such State, unless the Board, after a hearing, finds that the operation of such air carrier substantially impairs the ability of a certificated air carrier to provide the service authorized by its certificate, including but not limited to, the minimum service requirement for such State specified in section 419(e)(2) of this title.

(7) The Board may by order, to the extent it finds that such action is required in the public interest, exempt any foreign air carrier for a period not to exceed 30 days from the requirements or limitations of this Act, to the extent necessary to authorize the foreign air carrier to carry passengers, cargo, or mail in international or overseas air transportation in certain markets if the Board, after consultation with the Secretary of Transportation, finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in such markets cannot be accommodated by air carriers holding certificates under section 401 of this Act;
period, may, during the forty-five-day period which begins on the date of enactment of this section, submit an application to the Board for a certificate under this section to provide all-cargo air service. Such application shall contain such information and be in such form as the Board shall by regulation require.

(3) Any citizen of the United States who has a valid certificate issued under section 401(d)(3) of this title and who provided supplemental air transportation carrying only cargo at any time during the period from January 1, 1977, through the date of enactment of this section may, during the forty-five day period beginning on April 1, 1978, submit an application to the Board for a certificate under this section to provide all-cargo air service. Such application shall contain such information and be in such form as the Board shall by regulation require.

(4) After the three hundred and sixty-fifth day which begins after the date of enactment of this section, any citizen of the United States may submit an application to the Board for a certificate under this section to provide all-cargo air service. Such application shall contain such information and be in such form as the Board shall by regulation require.

ISSUANCE AND REVOCATION OF CERTIFICATE

(b)(1)(A) Not later than sixty days after any application is submitted pursuant to paragraph (1), (2), or (3) of subsection (a) of this section, the Board shall issue a certificate under this section authorizing the all-cargo air service covered by the application.

(b)(1)(B) No later than one hundred and eighty days after any application is submitted pursuant to paragraph (4) of subsection (a) of this section, the Board shall issue a certificate under this section authorizing the whole or any part of the all-cargo air service covered by the application unless it finds that the applicant is not fit, willing, and able to provide such service and to comply with any rules and regulations promulgated by the Board.

(2) Any certificate issued by the Board under this section may contain such reasonable conditions and limitations as the Board deems necessary, except that such terms and conditions shall not restrict the points which may be served, or the rates which may be charged, by the holder of such certificate.

(4) If any all-cargo air service authorized by a certificate issued under this subsection is not performed to the minimum extent prescribed by the Board, it may by order, entered after notice and opportunity for a hearing, direct that such certificate shall, thereafter, cease to be effective to the extent of such service.

EXEMPTIONS

(c) Any applicant who is issued a certificate under this section shall, with respect to any all-cargo air service provided in accordance with such certificate, be exempt from the requirements of section 401(a) of this Act, and any other section of this Act which the Board by rule determines appropriate, and any rule, regulation, or procedure issued pursuant to any such section.

1Section 418(b)(3) was repealed by Public Law 98-443, section 9(a)(2).
AIR CARRIER STATUS

(d) Any applicant who is issued a certificate under this section shall be an air carrier for the purposes of this Act, except to the extent such carrier is exempt from any requirement of the Act pursuant to this section.

[49 U.S.C. App. 1388]

SEC. 419. SMALL COMMUNITY AIR SERVICE.

(a) ELIGIBLE POINT DEFINED.—

(1) GENERAL RULE.—For purposes of this section, the term "eligible point means any point in the United States—

(A) which was defined as an eligible point under this section as in effect before November 1, 1988;

(B) which received scheduled air transportation at any time after January 1, 1990; and

(C) which is not listed in the Department of Transportation Orders 89-3-37 and 89-12-52 as being a point no longer eligible for compensation under this section.

(2) LIMITATION ON USE OF PER PASSENGER SUBSIDY.—The Secretary may not determine a point described in paragraph (1) not an eligible point on the basis of the per passenger subsidy at the point or on any other basis not specifically set forth in this section.

(b) BASIC ESSENTIAL AIR SERVICE.—

(1) LEVEL OF SERVICE.—

(A) DETERMINATION FOR ESSENTIAL AIR SERVICE POINTS.—With respect to each eligible point for which a determination of what constitutes essential air transportation was made under this section before October 1, 1988, the Secretary shall determine what is basic essential air service for such point. Such determination shall be made no later than the last day of the 1-year period beginning on the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987 and only after consideration of the views of any interested community and the State agency of the State in which such community is located.

(B) DETERMINATION FOR OTHER POINTS.—With respect to each eligible point for which a determination of what constitutes essential air transportation was not made before October 1, 1988, the Secretary shall determine what is basic essential air service to such point if the Secretary receives notice that service to such point will be provided by only 1 air carrier. Such determination shall be made no later than the last day of the 6-month period beginning on the date on which the Secretary receives such notice and only after the Secretary considers the views of any interested community and the State agency of the State in which such community is located. The Secretary may impose such notice requirements as may be necessary to implement this subparagraph.

(C) CONTINUATION OF REQUIREMENT; TRANSITION PROVISIONS.—An air carrier required to provide essential air transportation before October 1, 1988, to an eligible point shall be required to continue to provide such transportation to such point after such date and the level of such transportation shall be deemed to be basic essential air service for purposes of this subsection until a determination is made under subparagraph (A) with respect to such point. The rate of compensation in effect for essential air transportation before such date shall continue in effect until a new rate is determined in accordance with the guidelines under subsection (f) of this section.

(D) REVIEW.—The Secretary shall periodically review the basic essential air service level for each eligible point, and may, based upon such review and consultations with the interested community and the State agency of the State in which such community is located, make appropriate adjustments to the basic essential air service level.

(2) NOTICE REQUIRED BEFORE TERMINATION, SUSPENSION, OR REDUCTION IN SERVICE.—An air carrier may not terminate, suspend, or reduce air transportation to any eligible point below the level of basic essential air service established under paragraph (1) unless such air carrier has given the Secretary, the appropriate State agency or agencies, and the communities affected at least 90 days notice before such termination, suspension, or reduction.

(3) DETERMINATION OF NEED FOR COMPENSATION.—

(A) SELECTION OF CARRIER.—Whenever the Secretary determines that basic essential air service will not be provided to an eligible point without compensation, the Secretary shall provide notice that applications may be submitted by any air carrier that is willing to provide such service to such point for compensation under this subsection.

(B) DETERMINATION FOR OTHER POINTS.—With respect to each eligible point for which a determination of what constitutes basic essential air transportation was not made before October 1, 1988, the Secretary shall determine what constitutes basic essential air transportation to such point if the Secretary receives notice that service to such point will be provided by only 1 air carrier. Such determination shall be made no later than the last day of the 6-month period beginning on the date on which the Secretary receives such notice and only after the Secretary considers the views of any interested community and the State agency of the State in which such community is located.

(C) CONTRACTUAL ARRANGEMENTS.—Any air carrier required to provide basic essential air transportation before October 1, 1988, to an eligible point shall be required to continue to provide such transportation to such point after such date and the level of such transportation shall be deemed to be basic essential air service for purposes of this subsection until a determination is made under subparagraph (A) with respect to such point. The rate of compensation in effect for basic essential air transportation before such date shall continue in effect until a new rate is determined in accordance with the guidelines under subsection (f) of this section.

(D) REVIEW.—The Secretary shall periodically review the basic essential air service level for each eligible point, and may, based upon such review and consultations with the interested community and the State agency of the State in which such community is located, make appropriate adjustments to the basic essential air service level.

(E) NOTICE REQUIRED BEFORE TERMINATION, SUSPENSION, OR REDUCTION IN SERVICE.—An air carrier may not terminate, suspend, or reduce air transportation to any eligible point below the level of basic essential air service established under paragraph (1) unless such air carrier has given the Secretary, the appropriate State agency or agencies, and the communities affected at least 90 days notice before such termination, suspension, or reduction.

(F) DETERMINATION OF NEED FOR COMPENSATION.—

(A) SELECTION OF CARRIER.—Whenever the Secretary determines that basic essential air service will not be provided to an eligible point without compensation, the Secretary shall provide notice that applications may be submitted by any air carrier that is willing to provide such service to such point for compensation under this subsection.

(B) DETERMINATION FOR OTHER POINTS.—With respect to each eligible point for which a determination of what constitutes basic essential air transportation was not made before October 1, 1988, the Secretary shall determine what constitutes basic essential air transportation to such point if the Secretary receives notice that service to such point will be provided by only 1 air carrier. Such determination shall be made no later than the last day of the 6-month period beginning on the date on which the Secretary receives such notice and only after the Secretary considers the views of any interested community and the State agency of the State in which such community is located.
under subsection (f), the rate of compensation to be paid for providing basic essential air service under this subsection.

(4) PAYMENT OF COMPENSATION.—The Secretary shall make payments of compensation under this subsection at times and in a manner determined by the Secretary to be appropriate. The Secretary shall continue to pay compensation to any air carrier to provide basic essential air service to an eligible point only for so long as the Secretary determines necessary in order to maintain basic essential air service to such point.

(5) REQUIREMENT TO CONTINUE SERVICE.—If an air carrier has provided notice to the Secretary under paragraph (2) of such air carrier’s intention to suspend, terminate, or reduce service to any eligible point below the level of basic essential air service to such point, and if at the conclusion of the 30-day period of notice the Secretary has not been able to find another air carrier to provide basic essential air service to such point, the Secretary shall require the carrier which provided such notice to continue such service to such point for an additional 30-day period, or until another air carrier has begun to provide basic essential air service to such point, whichever first occurs. If at the end of such 30-day period the Secretary determines that no other air carrier can be secured to provide basic essential air service to such eligible point on a continuing basis, either with or without compensation, then the Secretary shall extend such requirement for an additional 30-day period (making the same determination at the end of each such period) as may be necessary to continue basic essential air service to such eligible point until another air carrier can be secured to provide basic essential air service to such eligible point on a continuing basis.

(6) COMPENSATION FOR CONTINUED SERVICE.—

(A) CARRIERS RECEIVING COMPENSATION.—If an air carrier (i) which is providing air transportation to any eligible point, and (ii) which is receiving compensation under this subsection for providing such service, is required by the Secretary to continue service to such point beyond the date on which such carrier would, but for paragraph (5), be able to suspend, terminate, or reduce such service below the level of basic essential air service to such point, then after such date such carrier shall continue to receive such service until the Secretary secures another air carrier to provide basic essential air service to such point, or the 90th day following such date, whichever is earlier. If, after such 90th day, the Secretary has not secured another air carrier to provide such service, the carrier required to continue to provide such service shall receive compensation in an amount sufficient—

(i) to cover the carrier’s fully allocated actual cost of performing the basic essential air service that was being provided at the time the 90-day notice of termination, suspension, or reduction of service is given to the Secretary under paragraph (2) plus a fair and reasonable return on investment which shall not be less than 5 percent of operating costs; and

(ii) to provide the carrier an additional return which recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that such lost profits increase as the duration of the required basic essential air service increases.

(B) CARRIERS NOT RECEIVING COMPENSATION.—If the Secretary requires an air carrier which is providing air transportation to an eligible point without compensation pursuant to paragraph (4) to continue to provide basic essential air service to such point beyond the 90-day notice period after which, but for paragraph (5) of this subsection, such air carrier would be able to suspend, terminate, or reduce service to such point below basic essential air service for such point, the Secretary shall compensate such air carrier in an amount sufficient—

(i) to cover the carrier’s fully allocated actual cost of performing the basic essential air service that was being provided at the time the 90-day notice of termination, suspension, or reduction of service is given to the Secretary under paragraph (2) plus a fair and reasonable return on investment which shall not be less than 5 percent of operating costs; and

(ii) to provide the carrier an additional return which recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that such lost profits increase as the duration of the required basic essential air service increases.

(7) TRANSFER OF OPERATIONAL AUTHORITY AT CERTAIN HIGH-DENSITY AIRPORTS.—If an air carrier which is providing basic essential air service under this subsection between an eligible point and an airport at which the Administrator limits the number of instrument flight rule takeoffs and landings of aircraft provides notice to the Secretary of its intention to suspend, terminate, or reduce such service and another air carrier is secured to provide such service on a continuing basis, the Secretary shall require the carrier to continue, suspending, terminating, or reducing such service to transfer any operational authority which such carrier has to conduct a landing or takeoff at such airport with respect to such service to the carrier secured to provide such service unless the carrier secured to provide such service does not need such authority or such authority is being used to provide air service with respect to more than 1 eligible point.

(8) EFFORT TO SECURE CARRIERS.—During any period for which the Secretary requires an air carrier to continue providing air transportation to an eligible point which such air carrier has proposed to terminate, reduce, or suspend, the Secretary shall continue to make every effort to secure an air carrier to provide at least basic essential air service to such eligible point, on a continuing basis.

(9) PROHIBITION ON CERTAIN REDUCTIONS IN SERVICE.—Unless the Secretary has determined what is basic essential air.
service for any eligible point pursuant to paragraph (1) of this subsection, the Secretary shall, upon petition of any appropriate representative of such point, prohibit any temporary suspension, or reduction of air transportation which reasonably appears to deprive such point of basic essential air service, until the Secretary has completed such determination.

(c) ENHANCED ESSENTIAL AIR SERVICE.—

(1) PROPOSAL.—

(A) SUBMISSION.—A State or local government may submit a proposal to the Secretary for enhanced essential air service to an eligible point with respect to which basic essential air service is being provided under subsection (b).

(B) CONTENTS.—A proposal submitted under this subsection shall specify the service and type of enhanced essential air service which the State or local government considers appropriate. Such proposal shall also include an agreement relating to compensation required for the proposed enhanced essential air service. Such agreement shall be subject to the requirements of subparagraph (C).

(C) COMPENSATION AGREEMENT.—The agreement relating to compensation included in the proposal submitted by a State or local government under this subsection shall either—

(i) provide for the State or local government or any person to pay 50 percent of the compensation required for the proposed enhanced essential air service and for the Federal share of such compensation to be 50 percent; or

(ii) provide for the Federal share for such compensation to be 100 percent and provide that, if the proposed service is not successful in terms of the criteria established under paragraph (3)(C) for not less than a 2-year period, the eligible point shall not be eligible for air service for which compensation is payable by the Secretary under this section.

(2) ESTABLISHMENT OF SERVICE.—Not later than 90 days after receiving a proposal under paragraph (1), the Secretary shall issue a decision on the proposal. The Secretary shall approve such proposal unless the Secretary determines that such proposal is not reasonable. If the Secretary determines that such proposal is not reasonable, the Secretary shall disapprove such proposal and notifying the State or local government submitting such proposal of such disapproval and the reasons therefore.

(3) REVIEW.—

(A) PROPOSALS FOR 50 PERCENT FEDERAL SHARE.—If the enhanced essential air service approved under this subsection is to be at a 50 percent Federal share, the Secretary shall periodically review the level and type of such service to an eligible point and may, based upon such review and consultations with the community and the government or person paying the non-Federal share, make appropriate adjustments to the level and type of enhanced essential air service to such point.
(1) PROPOSAL.—A State or local government may make a proposal to the Secretary for compensated air transportation in accordance with this subsection to a point that is not an eligible point under this section.

(2) DETERMINATION OF ELIGIBILITY.—

(A) DESIGNATION OF POINTS.—Not later than 90 days after the submission of a proposal under this subsection, the Secretary—

(i) shall determine whether or not to designate the point for which such proposal is made as eligible to receive compensation under this subsection; and

(ii) shall approve or disapprove such proposal and notify the State or local government submitting such proposal of such decision.

The Secretary shall approve such proposal if the State or local government submitting the proposal or any other person is willing and able to pay 50 percent of the cost of providing the proposed compensated air transportation; except that the Secretary shall disapprove such proposal if the Secretary determines that such proposal is not reasonable. In the case of disapproval of a proposal, the notification of such disapproval must include the reasons for such disapproval.

(B) SMALL COMMUNITY SERVICE.—Notwithstanding subparagraph (A)(ii), the Secretary shall approve a proposal submitted under this subsection for compensated air transportation to a point in the 48 contiguous States and designate such point as eligible for compensation under this subsection if—

(i) if, at any time before October 23, 1978, the point was served by an air carrier that held a certificate issued under section 401; or

(ii) if the point is more than 50 miles from the nearest small hub airport or an eligible point; or

(iii) if the point is more than 150 miles from the nearest hub airport; and

(iv) if the State or local government submitting the proposal or any other person is willing and able to pay 25 percent of the cost of providing the proposed compensated air transportation.

(C) CRITERIA FOR DETERMINING REASONABLENESS.—In determining whether or not a proposal submitted under this subsection is reasonable, the Secretary shall consider, among other factors, the traffic generating potential of the point, the cost to the Federal Government for providing the proposed service, and the distance of the point from the closest hub airport.

(D) WITHDRAWAL OF DESIGNATION.—After notice and an opportunity for any interested person to comment, the Secretary may withdraw the designation of a point under subparagraph (A) as eligible to receive compensation under this subsection if the point has received air service under this subsection for at least 2 years and the Secretary determines that withdrawal of that designation would be in the public interest. The Secretary shall establish, by regulation, standards for determining whether or not withdrawal of a designation under this paragraph is in the public interest. Such standards shall include, but not be limited to, the factors set forth in subparagraph (C).

(3) LEVEL OF SERVICE.—

(A) INITIAL DETERMINATION.—If the Secretary designates a point under paragraph (2), the Secretary shall determine the level of service to be provided under this subsection. The Secretary shall determine such level after considering the views of any interested community, the State agency of the State in which the point is located, and the government or person agreeing to pay the non-Federal share of the cost of the proposed service. The Secretary shall determine such level not later than 6 months after the date on which the Secretary designates such point under paragraph (2).

(B) REVIEW.—The Secretary shall periodically review the level of air service provided under this subsection and may, based upon such review and consultation with any interested community, any State agency of the State in which the community is located, and any government or person providing the non-Federal share of the compensation for the service, make appropriate adjustments in the level of service.

(4) SELECTION OF CARRIER.—After making the determinations required by paragraph (3) with respect to a designated point, the Secretary shall provide notice that applications may be submitted by any air carrier that is willing to provide the level of air service determined under paragraph (3) with respect to such point. In selecting an applicant to provide such service the Secretary shall, among other factors, consider the factors set forth in subsection (b)(3)(A) and shall also consider the views of the government or person paying the non-Federal share of the cost of the service.

(5) NON-FEDERAL SHARE.—Except as provided in paragraph (2)(B), the non-Federal share for compensation required for providing air service under this subsection shall be 50 percent.

(6) NOTICE BEFORE TERMINATION, SUSPENSION, OR REDUCTION OF SERVICE.—An air carrier may not terminate, suspend, or reduce air transportation to an eligible point for which compensation is paid under this subsection below the level of such service established by the Secretary under paragraph (3) unless such carrier has given the Secretary, the community affected, and the government or person paying the non-Federal share at least 30 days' notice before such termination, suspension, or reduction.

(7) PAYMENT OF COMPENSATION.—The Secretary shall make payments of compensation under this subsection at times and in a manner determined by the Secretary to be appropriate. The Secretary shall continue to pay compensation to an air carrier to provide service to a point designated under this subsection only for so long as such carrier maintains such service and the government or person agreeing to pay the non-Fed-