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REPT. 105–822
Part 1

AIRLINE SERVICE IMPROVEMENT ACT OF 1998

OCTOBER 15, 1998.—Ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

[To accompany H.R. 2748]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2748) to amend title 49, United States Code, to provide assistance and slots with respect to air carrier service between high density airports and airports not receiving sufficient air service, to improve jet aircraft service to underserved markets, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Airline Service Improvement Act of 1998".

TITLE I—SERVICE TO AIRPORTS NOT RECEIVING SUFFICIENT SERVICE

SEC. 101. AVAILABILITY OF SLOTS.

(a) PERIOD OF EFFECTIVENESS.—

(1) SLOTS FOR FOREIGN AIR TRANSPORTATION.—Section 41714(b) of title 49, United States Code, is amended by striking paragraph (4).

(2) SLOTS FOR NEW ENTRANTS.—Section 41714(c) of such title is amended—

(A) by striking "(1) IN GENERAL.—";

(B) by striking paragraph (2); and

(C) by moving the text of paragraph (1) so that it follows the subsection heading and its margin is aligned with the margin for subsection (g).

(b) SLOTS FOR AIRPORTS NOT RECEIVING SUFFICIENT SERVICE.—Section 41714 of such title is amended—

(1) by striking subsections (e) and (f) and inserting the following:

"(e) SLOTS FOR AIRPORTS NOT RECEIVING SUFFICIENT SERVICE.—

"(1) EXEMPTIONS.—Notwithstanding part D of chapter 491 of this title, the Secretary may by order grant exemptions from the requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to enable air carriers to provide nonstop air transportation using jet aircraft that comply with the stage 3 noise levels of part 36 of such title 14 between a high density airport and a small hub airport or nonhub airport that the Secretary determines is not receiving sufficient air carrier service to and from such high density airport.

"(2) LIMITATIONS.—No more than 2 exemptions per hour may be granted under this subsection for slots at any high density airport, and no more than 6 exemptions per day may be granted under this subsection for slots at Ronald Reagan Washington National Airport. An exemption may be granted under this subsection for a slot at Ronald Reagan Washington National Airport only if the flight utilizing such slot begins or ends within 1,250 miles of the Airport and a stage 3 aircraft is used for such flight.

"(3) APPLICATION.—An air carrier interested in an exemption under this subsection shall submit to the Secretary an application for such exemption. No application may be submitted to the Secretary before the last day of the 30-day period beginning on the date of the enactment of this paragraph.

"(4) DEADLINE FOR DECISION.—Notwithstanding any other provision of law, the Secretary shall make a decision with regard to granting an exemption under this subsection on or before the 120th day following the date of the application for the exemption. If the Secretary does not make the decision on or before such 120th day, the air carrier applying for the service may provide such service until the Secretary makes the decision or the Administrator of the Federal Aviation Administration determines that providing such service would have an adverse effect on air safety.

"(5) PERIOD OF EFFECTIVENESS.—An exemption granted under this subsection may remain in effect while the air carrier for whom the exemption is granted continues to provide nonstop air transportation between the airport that the Secretary determined was not receiving sufficient air carrier service and the high density airport.

"(6) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) NONHUB AIRPORT.—The term 'nonhub airport' means an airport that each year has at least 2,500 passenger boardings but less than .05 percent of the total annual boardings in the United States.

"(B) SMALL HUB AIRPORT.—The term 'small hub airport' means an airport that each year has at least .05 percent but less than .25 percent of the total annual boardings in the United States.

"(f) TREATMENT OF CERTAIN COMMUTER AIR CARRIERS.—The Secretary shall treat all commuter air carriers that have cooperative agreements, including code share agreements with other air carriers, equally for determining eligibility for exemptions under this section regardless of the form of the corporate relationship between the commuter air carrier and the other air carrier.".

SEC. 102. FUNDING FOR AIR CARRIER SERVICE TO AIRPORTS NOT RECEIVING SUFFICIENT SERVICE.

(a) FUNDING FOR SMALL COMMUNITY AIR SERVICE.—Section 41742(b) of title 49, United States Code, is amended to read as follows:

"(b) FUNDING FOR SMALL COMMUNITY AIR SERVICE.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, from moneys credited to the account established under section 45303(a), including the funds derived from fees imposed under the authority contained in section 45301(a)—

"(A) not to exceed $45,000,000 for each fiscal year beginning after September 30, 1998, shall be used to carry out the essential air service program under this subchapter; and

"(B) not to exceed $5,000,000 for such fiscal year shall be used—

"(i) for assisting an air carrier to subsidize service to and from an underserved airport for a period not to exceed 3 years; and

"(ii) for assisting an underserved airport to market service to and from the underserved airport.

"(2) RURAL AIR SAFETY.—Any funds that are made available by paragraph (1) for a fiscal year and that the Secretary determines will not be obligated or expended before the last day of such fiscal year shall be available to the Administrator for use under this subchapter in improving rural air safety at airports with less than 100,000 annual boardings.

"(3) ALLOCATION OF ADDITIONAL FUNDING.—If, for a fiscal year beginning after September 30, 1998, more than $50,000,000 is made available under subsection (a) to carry out the small community air service program, ½ of the amounts in excess of $50,000,000 shall be used for the purposes specified in paragraph (1)(B), in addition to amounts made available for such purposes under paragraph (1)(B).

"(4) PRIORITY CRITERIA FOR ASSISTING AIRPORTS NOT RECEIVING SUFFICIENT SERVICE.—In providing assistance to airports under paragraph (1)(B), the Administrator shall give priority to those airports for which a community will provide, from local sources (other than airport revenues), a portion of the cost of the activity to be assisted.

"(5) UNDERSERVED AIPORT DEFINED.—In this subsection, the term 'underserved airport' means a nonhub airport or small hub airport (as such terms are defined in section 41714(e)) that the Secretary determines is not receiving sufficient air carrier service.".

(b) CONFORMING AMENDMENTS.—Chapter 417 of such title is amended—

(1) section 41742 is amended—

(A) in the section heading by striking "**Essential**" and inserting "**Small community**"; and

(B) in each of subsections (a) and (c) by striking "essential air" and inserting "small community"; and

(2) in the analysis for such chapter by striking the item relating to section 41742 and inserting the following:

"41742. Small community air service authorization.".

SEC. 103. WAIVER OF LOCAL CONTRIBUTION.

Section 41736(b) of title 49, United States Code, is amended by adding at the end the following:

"Paragraph (4) shall not apply to any place for which a proposal was approved or that was designated as eligible under this section in the period beginning on October 1, 1991, and ending on December 31, 1997.".

SEC. 104. UNFAIR COMPETITION COMPLAINTS.

Section 41712 of such title title 49, United States Code, is amended—

(1) by inserting "(a) IN GENERAL.—" before "On"; and

(2) by adding at the end the following:

"(b) DEADLINE FOR DECISION ON UNFAIR COMPETITION COMPLAINTS.—The Secretary shall make a decision on any complaint the Secretary receives under this section regarding whether an air carrier has been or is engaged in an unfair method of competition in air transportation or the sale of air transportation not later than 180 days after the date of receipt of the complaint.".

TITLE II—REGIONAL AIR SERVICE INCENTIVE PROGRAM

SEC. 201. AMENDMENT OF TITLE 49, UNITED STATES CODE.

(a) IN GENERAL.—Chapter 417 of title 49, United States Code, is amended by adding at the end the following:

"SUBCHAPTER III—REGIONAL AIR SERVICE INCENTIVE PROGRAM

"§ 41761. Purpose

"The purpose of this subchapter is to improve service by jet aircraft to underserved markets by providing assistance, in the form of loan guarantees, to commuter air carriers that purchase regional jet aircraft for use in serving those markets.

"§ 41762. Definitions

"In this subchapter, the following definitions apply:

"(1) AIRCRAFT PURCHASE LOAN.—The term 'aircraft purchase loan' means any loan made for the purchase of commercial transport aircraft, including spare parts normally associated with the aircraft.

"(2) COMMUTER AIR CARRIER.—The term 'commuter air carrier' means an air carrier that primarily operates aircraft designed to have a maximum passenger seating capacity of 75 or less in accordance with published flight schedules.

"(3) NEW ENTRANT AIR CARRIER.—The term 'new entrant air carrier' means an air carrier that has been providing air transportation according to a published schedule for less than 5 years, including any person that has received authority

from the Secretary to provide air transportation but is not providing air transportation.

"(4) NONHUB AIRPORT.—The term 'nonhub airport' means an airport that each year has at least 2,500 passenger boardings, but less than .05 percent of the total annual boardings in the United States.

"(5) REGIONAL JET AIRCRAFT.—The term 'regional jet aircraft' means a civil aircraft—

"(A) powered by jet propulsion; and

"(B) designed to have a maximum passenger seating capacity of not less than 30 nor more than 75.

"(6) SMALL HUB AIRPORT.—The term 'small hub airport' means an airport that each year has at least .05 percent, but less than .25 percent, of the total annual boardings in the United States.

"(7) UNDERSERVED AIRPORT.—The term 'underserved airport' means an airport that—

"(A) is a nonhub airport or a small hub airport;

"(B) is not within a 40-mile radius of another airport that each year has at least .25 percent of the total annual boardings in the United States; and

"(C) the Secretary determines does not have sufficient air service.

"§ 41763. Loan guarantees

"(a) IN GENERAL.—Subject to advance appropriations, the Secretary of Transportation may guarantee any lender against loss of principal or interest on any aircraft purchase loan made by that lender to a commuter air carrier or new entrant air carrier.

"(b) FORM, TERMS, AND CONDITIONS.—A guarantee shall be made under subsection (a)—

"(1) in such form and on such terms and conditions; and

"(2) pursuant to such regulations;

as the Secretary considers to be necessary and consistent with this subchapter.

"(c) TREATMENT OF CERTAIN COMMUTER AIR CARRIERS.—The Secretary shall treat all commuter air carriers that have cooperative agreements, including code share agreements with other air carriers, equally for determining eligibility for guarantees under this section regardless of the form of the corporate relationship between the commuter air carrier and the other air carrier.

"§ 41764. Conditions and limitations

"(a) LIMITATIONS ON FUNDS.—Subject to subsection (d), no loan guarantee shall be made under this subchapter—

"(1) extending to more than the unpaid interest and 80 percent of the unpaid principal of any loan;

"(2) on any loan or combination of loans for more than 80 percent of the purchase price of the aircraft, including spare parts, to be purchased with the loan or loan combination;

"(3) on any loan with respect to which terms permit repayment more than 15 years after the date the loan is made;

"(4) in any case in which the total face amount of the loan and any other loans to the same air carrier or corporate predecessor of that air carrier that are guaranteed and outstanding under the terms of this subchapter exceed $100,000,000.

"(b) CONDITIONS FOR MAKING LOANS.—Subject to subsection (c), the Secretary of Transportation may only make a loan guarantee under this subchapter if—

"(1) the Secretary finds that the aircraft to be purchased with the loan is a regional jet aircraft to be used by the commuter air carrier or new entrant air carrier;

"(2) the commuter air carrier or new entrant air carrier agrees to use the aircraft to provide at least 2 round-trips per day 5 days per week to the underserved airport; and

"(3) the Secretary finds that the prospective earning power of the commuter air carrier or new entrant air carrier, together with the character and value of the security pledged, furnish—

"(A) reasonable assurances of the air carrier's ability and intention to repay the loan within the term of the loan—

"(i) to continue its operations as an air carrier; and

"(ii) to the extent that the Secretary determines to be necessary, to continue its operations as an air carrier between the same route or routes being operated by the air carrier at the time of the loan guarantee; and

"(B) reasonable protection to the United States.

"(c) REQUIREMENT.—Subject to subsection (d), no loan guarantee may be made under this subchapter on any loan or combination of loans for the purchase of any regional jet aircraft that does not comply with the stage 3 noise levels of part 36 of title 14 of the Code of Federal Regulations, as in effect on January 1, 1998.

"(d) OTHER LIMITATIONS.—

"(1) ON PURCHASE OF REGIONAL JET AIRCRAFT.—No loan guarantee shall be made by the Secretary under this subchapter on any loan for the purchase of a regional jet aircraft unless the commuter air carrier or new entrant air carrier agrees that it will provide scheduled passenger air transportation to the underserved airport for which the aircraft is purchased, or to another underserved airport, for a period of not less than 24 consecutive months after the aircraft is placed in service.

"(2) ON SUBORDINATION.—No loan guarantee made under this subchapter may be subordinated to another debt of the carrier or to any other claims against the carrier.

"(3) TO PROTECT INTERESTS OF UNITED STATES.—No loan may be guaranteed under this subchapter unless the Secretary determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interests of the United States.

"§ 41765. Payment of losses

"(a) IN GENERAL.—If, as a result of a default by a carrier under a loan guaranteed under this subchapter and after the holder of the loan has made such further collection efforts as the Secretary of Transportation may require, the Secretary determines that the holder has suffered a loss, the Secretary shall pay the holder the amount of the loss under the guarantee contract. Upon making the payment, the Secretary shall be subrogated to all the rights of the recipient of the payment.

"(b) ENFORCEMENT OF UNITED STATES RIGHTS.—The Attorney General shall take such action as may be necessary to enforce any right accruing to the United States as a result of the issuance of any guarantee under this subchapter.

"(c) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subchapter shall be construed as precluding any forbearance for the carrier which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary.

"(d) AUTHORITY OF SECRETARY.—Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired under this subchapter.

"§ 41766. Fees

"The Secretary of Transportation shall prescribe and collect from a lending institution a reasonable administrative fee in connection with each loan guaranteed under this subchapter.

"§ 41767. Use of Federal facilities and assistance

"(a) USE OF FEDERAL FACILITIES.—To permit the Secretary of Transportation to make use of such expert advice and services as the Secretary may require in carrying out this subchapter, the Secretary may use available services and facilities of other agencies and instrumentalities of the Federal Government—

"(1) with the consent of the appropriate Federal officials; and

"(2) on a reimbursable basis.

"(b) ASSISTANCE.—The head of each appropriate department or agency of the Federal Government shall exercise the duties and functions of that head in such manner as to assist in carrying out the policy specified in section 41761.

"(c) OVERSIGHT.—The Secretary shall make available to the Comptroller General of the United States such information with respect to the loan guarantee program conducted under this subchapter as the Comptroller General may require to carry out the duties of the Comptroller General under chapter 7 of title 31.

"§ 41768. Payments; administrative expenses

"(a) PAYMENTS.—Payments to lenders required as a consequence of any loan guarantee made under this subchapter may be made from funds appropriated pursuant to the authorization under section 202 of the Airline Service Improvement Act of 1998.

"(b) ADMINISTRATIVE EXPENSES.—In carrying out this subchapter, the Secretary shall use funds made available by appropriations to the Department of Transportation for the purpose of administration to cover administrative expenses of the loan guarantee program under this subchapter.

"§ 41769. Termination

"The authority of the Secretary of Transportation under section 41763 shall terminate on the date that is 5 years after the date of the enactment of this subchapter.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 417 of such title is amended by adding at the end the following:

"SUBCHAPTER III—REGIONAL AIR SERVICE INCENTIVE PROGRAM

"41761. Purpose.
"41762. Definitions.
"41763. Loan guarantees.
"41764. Conditions and limitations.
"41765. Payment of losses.
"41766. Fees.
"41767. Use of Federal facilities and assistance.
"41768. Payments; administrative expenses.
"41769. Termination.".

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the cost of loan guarantee commitments authorized in subchapter III of chapter 417 of title 49, United States Code, $120,000,000 per fiscal year for fiscal years 1999, 2000, 2001, 2002, and 2003.

TITLE III—CONTRACT TOWER PROGRAM

SEC. 301. CONTRACT TOWERS.

Section 47124(b) of title 49, United States Code, is amended by adding at the end the following:

"(3) NONQUALIFYING AIR TRAFFIC CONTROL TOWERS.—

"(A) IN GENERAL.—The Secretary shall establish a program to contract for air traffic control services at not more than 20 level I air traffic control towers, as defined by the Administrator of the Federal Aviation Administration, that do not qualify for the program established under subsection (a) and continued under paragraph (1).

"(B) PRIORITY.—In selecting facilities to participate in the program under this paragraph, the Administrator shall give priority to the following:

"(i) Air traffic control towers that are participating in the program continued under paragraph (1) but have been notified that they will be terminated from such program because the Administrator has determined that the benefit-to-cost ratio for their continuation in such program is less than 1.

"(ii) Level I air traffic control towers of the Federal Aviation Administration that are closed as a result of the air traffic controllers strike in 1981.

"(iii) Air traffic control towers that are located at airports that receive air service from an air carrier that is receiving compensation under the essential air service program of subchapter II of chapter 417.

"(iv) Air traffic control towers located at airports that are prepared to assume responsibility for tower construction and maintenance costs.

"(v) Air traffic control towers that are located at airports with safety or operational problems related to topography, weather, runway configuration, or mix of aircraft.

"(C) COSTS EXCEEDING BENEFITS.—If the costs of operating a control tower under the program established under this paragraph exceed the benefits, the airport sponsor or State or local government having jurisdiction over the airport shall pay the portion of the costs that exceed such benefits.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $6,000,000 per fiscal year to carry out this paragraph.".

TITLE IV—AIR CARRIER COMPETITION

SEC. 401. JOINT VENTURE AGREEMENTS.

(a) IN GENERAL.—Subchapter I of chapter 417 of title 49, United States Code, is amended by adding at the end the following:

"§ 41716. Joint venture agreements

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) JOINT VENTURE AGREEMENT.—The term 'joint venture agreement' means an agreement entered into by a major air carrier on or after January 1, 1998, with regard to (A) code-sharing, blocked-space arrangements, long-term wet leases (as defined in section 207.1 of title 14, Code of Federal Regulations) of a substantial number (as defined by the Secretary by regulation) of aircraft, or frequent flyer programs, or (B) any other cooperative working arrangement (as defined by the Secretary by regulation) between 2 or more major air carriers that affects more than 15 percent of the total number of available seat miles offered by the major air carriers.

"(2) MAJOR AIR CARRIER.—The term 'major air carrier' means a passenger air carrier that is certificated under chapter 411 of this title and included in Carrier Group III under criteria contained in section 04 of part 241 of title 14, Code of Federal Regulations.

"(b) SUBMISSION OF JOINT VENTURE AGREEMENT.—At least 30 days before a joint venture agreement may take effect, each of the major air carriers that entered into the agreement shall submit to the Secretary—

"(1) a complete copy of the joint venture agreement and all related agreements; and

"(2) other information and documentary material that the Secretary may require by regulation.

"(c) EXTENSION OF WAITING PERIOD.—

"(1) IN GENERAL.—The Secretary may extend the 30-day period referred to in subsection (b) until—

"(A) in the case of a joint venture agreement with regard to code-sharing, the 150th day following the last day of such period; and

"(B) in the case of any other joint venture agreement, the 60th day following the last day of such period.

"(2) PUBLICATION OF REASONS FOR EXTENSION.—If the Secretary extends the 30-day period referred to in subsection (b), the Secretary shall publish in the Federal Register the Secretary's reasons for making the extension.

"(d) TERMINATION OF WAITING PERIOD.—At any time after the date of submission of a joint venture agreement under subsection (b), the Secretary may terminate the waiting periods referred to in subsections (b) and (c) with respect to the agreement.

"(e) REGULATIONS.—The effectiveness of a joint venture agreement may not be delayed due to any failure of the Secretary to issue regulations to carry out this section.

"(f) MEMORANDUM TO PREVENT DUPLICATIVE REVIEWS.—Promptly after the date of enactment of this section, the Secretary shall consult with the Assistant Attorney General of the Antitrust Division of the Department of Justice in order to establish, through a written memorandum of understanding, preclearance procedures to prevent unnecessary duplication of effort by the Secretary and the Assistant Attorney General under this section and the antitrust laws of the United States, respectively.

"(g) PRIOR AGREEMENTS.—With respect to a joint venture agreement entered into before the date of enactment of this section as to which the Secretary finds that—

"(1) the parties submitted the agreement to the Secretary before such date of enactment; and

"(2) the parties submitted all information on the agreement requested by the Secretary,

the waiting period described in paragraphs (2) and (3) shall begin on the date, as determined by the Secretary, on which all such information was submitted and end on the last day to which the period could be extended under this section.

"(h) LIMITATION ON STATUTORY CONSTRUCTION.—The authority granted to the Secretary under this subsection shall not in any way limit the authority of the Attorney General to enforce the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).".

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of such chapter is amended by adding at the end the following:

"41716. Joint venture agreements.".

SEC. 402. COMPETITIVE PRACTICES IN THE AIRLINE INDUSTRY.

(a) NATIONAL RESEARCH COUNCIL.—

(1) STUDY.—The National Research Council of the National Academy of Sciences shall complete a comprehensive update of the 1991 study of airline deregulation prepared by the Transportation Research Board of the Council. The update shall include updated versions of the chapters contained in the study pertaining to competitive issues in the airline industry as well as recommendations for changes in the statutory framework under which the airline industry operates.

(2) REPORT BY NATIONAL RESEARCH COUNCIL.—Not later than 6 months after the date of enactment of this Act, the National Research Council shall transmit to Congress and the Secretary of Transportation a report containing the results of the study conducted under paragraph (1).

(3) REPORT BY THE SECRETARY.—Not later than 2 months after the date on which the Secretary receives the report of the National Research Council under paragraph (2), the Secretary shall transmit to Congress a report containing the response of the Secretary to the findings and recommendations of the National Research Council.

(b) REPORT TO CONGRESS.—The Secretary shall conduct a study and transmit to Congress a report that includes—

(1) a description of any complaints received by the Secretary concerning acts of unfair competition or predatory pricing in the airline industry (including the number of such complaints) and of specific examples of such acts;

(2) a description of the options of the Secretary for addressing any acts of unfair competition or predatory pricing identified under paragraph (1);

(3) an analysis of the guidelines proposed in Docket OST–98–3713, including information documenting and quantifying the impact of the guidelines on the items listed in subsection (c)(3); and

(4) a description of the manner in which the Secretary plans to coordinate the handling of predatory pricing and unfair competition complaints against air carriers filed with the Secretary and similar complaints filed with the Attorney General, including methods to ensure efficient use of limited government resources and to ensure that all parties avoid duplicate requests by government agencies for information unless each of the agencies needs the information to carry out its statutory responsibilities.

(c) GUIDELINES.—

(1) ISSUANCE.—The Secretary shall not issue final guidelines in Docket OST–98–3713 before the date of transmittal to Congress of a report under subsection (b).

(2) TRANSMITTAL TO CONGRESS.—If the Secretary issues final guidelines in Docket OST–98–3713, the Secretary shall transmit the guidelines to Congress.

(3) IMPACT OF GUIDELINES.—If, as a result of the study conducted under subsection (b), the Secretary decides to issue final guidelines in Docket OST–98–3713 that are different from the guidelines originally proposed, the Secretary shall, as part of the transmittal under paragraph (2), include information that documents and quantifies the impact of the guidelines on the following:

(A) Scheduled service to small- and medium-sized communities.

(B) Airfares, including the availability of senior citizen, Internet, and standby discounts on routes covered by the guidelines.

(C) The incentive and ability of major air carriers to offer low airfares.

(D) The incentive of new entrant air carriers to offer low airfares.

(E) The ability of air carriers to offer inclusive leisure travel for which airfares are not separately advertised.

(F) Members of frequent flyer programs.

(G) The ability of air carriers to carry non-origination and destination traffic on the portion of routes that are served by new entrant air carriers covered by the guidelines.

(H) Airline employees.

(d) CONSULTATION.—In conducting the study under section (b), the Secretary shall consult with the Attorney General, major air carriers, new entrant air carriers, airport and community leaders, academic and economic experts, and airline employees and passengers.

(e) EFFECTIVE DATE.—The guidelines adopted in Docket OST–98–3713, or any similar guidelines, shall not become effective before the last day of the 12-week period beginning on the date of transmittal to Congress of final guidelines in Docket OST–98–3713, except that a week shall not count toward such 12-week period unless the House of Representatives is in session for legislative business at least 1 day during the week.

BACKGROUND

The Airline Deregulation Act was enacted 20 years ago.[1] This legislation phased out 40 years of government regulation permit-

[1] Public Law 95–504, 92 Stat. 1705, October 24, 1978.

ting airlines to fly where passenger demand dictated and charge fares that could be justified under free market conditions.

As a result of this legislation, passengers have enjoyed enormous benefits. Two hundred seventy million more passengers fly each year now than flew when the airlines were regulated.[2] The number of scheduled departures have increased by 50% at smaller airports and 68% at larger ones.[3] And, a review of annual reports from the National Transportation Safety Board shows that the fatal accident rate for airlines has decreased even as the number of flights has increased.

Most dramatic has been the effect on air fares. Depending on the source, air fares have dropped either 28%,[4] 33%,[5] or 40%[6] as a result of the free market forces unleashed by airline deregulation. This has provided savings to passengers of between $6 billion[7] and $19 billion[8] annually. Indeed, airline discounts have become such a prevalent part of the American cultural landscape that it is now commonly accepted that it may be cheaper to fly half way across the country than to go down the street to a nice restaurant.[9]

However, although the benefits of the Deregulation Act are widespread, they are not universal. Some airports, particularly those serving small and medium-sized communities in the East and upper Midwest, have experienced higher fares and diminished service since deregulation.[10] It has been said that deregulation has benefited 70% to 75% of the country and that the question is how to address the needs of the other 25% to 30% without ruining it for the majority of air travelers.[11]

In February 1997, Chattanooga, Tennessee hosted the National Air Service Roundtable and in February 1998, Jackson Mississippi hosted a similar conference. Representatives from airports across the country, airlines, corporations, government officials, and others gathered to consider market-based solutions to local air service problems.

A key conclusion of these conferences was that greater Federal, regional, State, and local efforts were needed to promote economic growth and attract established and new airlines to serve medium-sized markets in the East, Southeast, and Upper Midwest.

The Aviation Subcommittee held a hearing on June 25, 1997, which examined market-based solutions to air service problems experienced by some medium-sized and smaller communities across the Nation. At that hearing, the Subcommittee heard from a num-

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[2] "Impact of Recent Alliances, International Agreements, DOT Actions, and Pending Legislation on Air Fares, Air Service, and Competition in the Airline Industry": Hearings Before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, 105th Congress, 2nd Session (April 1998) (Statement of Nancy E. McFadden, General Counsel, U.S. Department of Transportation) [Hereinafter cited as Competition Hearing].

[3] U.S. General Accounting Office, "Airline Deregulation: Changes in Airfares, Service, and Safety at Small, Medium-Sized, and Large Communities" 6 (April 1996).

[4] "Market-Based Solutions for Air Service problems at Medium-Sized Communities": Hearings before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, 105–30, 105th Congress, 1st Session, (June 25, 1997) 129 [Hereinafter cited as Air Service Hearing].

[5] Competition Hearing, Supra Note 2, (Statement of Nancy McFadden).

[6] Thierer, 20th Anniversary of Airline Deregulation: Cause for Celebration, Not Re-Regulation, The Heritage Foundation Backgrounder 6 (April 22, 1998).

[7] Air Service Hearing, Supra Note 4, at 22.

[8] Thierer, Supra Note 6, at 7.

[9] J. Berendt, "Midnight in the Garden of Good and Evil," at 25 (1994).

[10] Air Service Hearing, Supra Note 4, at 61.

[11] Id, at 34.

ber of witnesses, including representatives from airports and communities that have experienced higher fares and limited air service since the deregulation of the airline industry in 1978.

As a result of these conferences and hearings, the reported bill (H.R. 2748) was introduced by Subcommittee Chairman Duncan and seven cosponsors. The legislation attempts to address some of the air service problems experienced by medium-sized and smaller communities without undermining the benefits most people have realized from airline deregulation.

SLOT EXEMPTIONS

One barrier to improved service that was often cited was the high density rule.[12]

At almost all airports in the U.S., there is no limit on the number of flights an airline can offer. However, there are four airports (Chicago O'Hare, LaGuardia and Kennedy in New York, and Reagan National near Washington, D.C.) at which flights are limited by the High Density Rule (HDR).[13] The HDR was adopted in 1969 as a "temporary" measure to reduce congestion and delays. At the four airports covered by it, an aircraft must have a slot in order to take-off or land.

Although deregulation increased demand for access to these airports, many carriers have been unable to establish new service there because of the lack of slot availability. It is likely to be passengers from the smaller airports which are unable to obtain access to the high density airports as a result of these slot constraints.

In 1993, a blue ribbon panel recommended a series of actions to strengthen the financial health and competitiveness of the U.S. airline industry. Among its recommendations, the panel urged the FAA to "review the rule that limits operations at 'high density' airports with the aim of either removing these artificial limits or raising them to the highest practicable level consistent with safety requirements." [14]

A slot exemption provision was enacted in 1994 to allow some new air service at O'Hare, La Guardia, and Kennedy.[15] This provision allowed new service in three situations. Exemptions could be granted for essential air service to the smallest communities, for international air service authorized by bilateral air service agreements, and for service by new entrant airlines in cases where the Department of Transportation (DOT) "finds it to be in the public interest and the circumstances to be exceptional." DOT has granted some exemptions under this provision.

The reported bill adds a fourth category where exemptions from the slot rules could be granted. This would permit such exemptions for flights between a high density airport and an underserved airport. Exemptions could be provided to any airline, either an established one or a new entrant, if it was willing to provide air service from the high density airport to the underserved one. DOT would

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[12] Id, at 62 and 132.
[13] 14 CFR Part 93, Subpart K.
[14] "The National Commission to Ensure a Strong Competitive Airline Industry", Change Challenge and Competition 9 (1993).
[15] Public Law 103–305, 108 Stat. 1584, 49 U.S.C. 41714 (August 23, 1994).

have the discretion to decide which small hub or non-hub airports were underserved.

Exemptions would be limited to two per hour at all four airports. At Reagan National, the number of exemptions would be further limited to six per day. If applications for the slot exemptions exceed the number available, DOT would be expected to use expedited procedures in order to meet the 120-day deadline for a decision mandated by the bill.

This limited exemption from the slot rules should have several beneficial effects. The ability to grant exemptions should reduce whatever pressure now exists to completely eliminate the slot rule or to take slots away from existing airlines in order to accommodate underserved communities. Where this authority leads to a modest increase in flights, that will have a beneficial impact on competition, consumer choice, and the fares that passengers pay. This will benefit all passengers, both in the area of the high density airport, the underserved airport, and throughout the country. There will be no adverse impact on safety since section 41714(e)(4), as amended by section 101(b) of the reported bill, specifically authorizes the Federal Aviation Administration to block the new service if it "determines that providing such service would have an adverse effect on air safety."

The limited exemption authority also represents a reasonable compromise between the needs of passengers and those who live near the high density airports. In recent years, Congress has banned the use of the loudest Stage 1 aircraft and mandated the phase-out of the noisy Stage 2 aircraft. This phase-out will be completed by the end of the decade. No exemption can be granted under the reported bill unless the airline providing the service utilizes aircraft complying with the quiet Stage 3 noise standards.

The ban and phase-out have required airlines to re-equip their fleet at considerable cost. This cost has most likely been passed on to the passengers. At the same time, as noted above, passenger demand for air travel has increased dramatically. It is unrealistic to expect that air service can be perpetually frozen at levels established 20 or 30 years ago when a modest amount of additional service can be accommodated safely. The reported bill would accommodate only a small portion of this additional demand and direct it to where it is needed most—to underserved non-hubs and small hubs, while ensuring safety and local community concerns.

FUNDING

Other factors cited for the air service problems at some communities are slower economic growth, harsher weather, and the dominance of large airlines at nearby airports.[16]

The reported bill addresses this issue by tapping into a fund that already exists. This money could be used to market the underserved airport and attempt to attract more passengers to it. This, in turn, could attract more air service to the community and help make that service viable over the long-term. To help an airline beginning service at a community establish itself there, the fund

[16] Air Service Hearing, Supra Note 4, at 61.

could also be used to subsidize that airline for a period not to exceed 3 years.

It is important to note that this funding program will not require an increase in taxes. There is already $50 million available in a pot of money created in 1996.[17] That money is now dedicated to the Essential Air Service (EAS) Program. However, the EAS program has not been authorized to receive more than $38.6 million in the past 10 years and, in fact, was appropriated only $25.9 million last year.[18] Therefore, taking $5 million out of this fund, as the reported bill would do, would leave the EAS program with $45 million, much more than has been authorized or appropriated for it in recent years. The $5 million will help communities that are too large to benefit from the EAS program but are not large enough to secure adequate air service without some assistance.

The $45 million remaining should continue to ensure that the air service needs of the smallest communities are protected. The Committee recognizes that the EAS program plays an extremely important role in ensuring that smaller communities can continue to have access to the national air transportation system. As a result of P.L. 104–264, this program is permanently authorized and funded independent of appropriations through fees collected pursuant to 49 U.S.C. 45301(a)(1). The Committee supports this provision and the goals of the program.

LOAN GUARANTEE PROGRAM

The growing trend toward the use of Regional Jets has and will continue to offer a service option in markets with light to moderate traffic where it otherwise would be too expensive to provide adequate service. It is perfectly suited for serving the type of communities that the reported bill is designed to assist.

According to the Regional Airline Association (RAA), 28.2 million passengers flew on turboprop regional aircraft in 1986. That number has now more than doubled to over 60 million. The Regional Jet comprised only 10.6 percent of all seats flown by regional airlines in 1996. When factoring in the Regional Jets currently on order, nearly 40 percent of all regional airline passengers will eventually be on these type of planes in the near future.

Regional Jets can fly farther, faster, and quieter than turboprops and will give airlines the option of flying around or over major hub airports. Currently, these regional jets are being bought by the major airlines for their commuter affiliates. The reported bill establishes a loan guarantee program to help other airlines buy these aircraft. This should make some of the smaller regionals viable customers. These are the airlines most likely to fly to the underserved markets.

The reported bill conditions the grant of the loan guarantee on a commitment to provide air service to an underserved market. The Regional Jets could do much to improve air serve at many of the communities that have not benefited from deregulation so far.

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[17] Public Law 104–264, 110 Stat. 3249, 49 U.S.C. 41742 (October 9, 1996).
[18] Public Law 104–205, 110 Stat. 2952 (September 30, 1996).

CONTRACT TOWER PROGRAM

Since 1982, the FAA has provided air traffic control (ATC) services at many low activity Level I visual flight rule (VFR) airports by contracting with ATC companies in the private sector. This contract tower program has provided significant cost savings and enhanced aviation safety. By the end of this fiscal year, it is expected that more than 180 airports will participate in the contract tower program.

Participating airports and aviation users have generally expressed strong support for the program. Indeed, without this program, many of these airports would be without air traffic control services since FAA does not have the financial resources to staff these towers with its own personnel. The average contract tower costs about $250,000 per year, about half of what it would cost FAA to operate the tower itself.

In deciding at which airport to contract for air traffic control services, the FAA does a cost-benefit analysis. If the analysis results in a ratio of benefits to costs of less than 1, FAA will not contract for ATC services there.

There are some airports whose ratio is slightly less than 1 or which are in danger of dropping below 1. These airports will not have the safety and service benefits of the contract tower program.

As part of its effort to improve air service at these airports, the reported bill authorizes $6 million to fund contract tower services at airports that fall just below the cost benefit threshold and at other similar airports that have a legitimate need for this service as specified in the bill.

However, the reported bill does require these airports to share in the cost of the program. The local share would be in proportion to the amount that the airport's ratio falls below 1. So, for example, if the airport had a benefit to cost ratio of 0.8, it would have to absorb 20% of the cost.

MAJOR AIRLINE ALLIANCES

Alliances between major airlines and regional airlines are quite common. These usually involve code-sharing and other marketing arrangements. However, such alliances between two major airlines are more unusual.

Earlier this year, Northwest and Continental, United and Delta, and American and US Airways announced plans to form 3 separate alliances. These 6 airlines carry about 70% of passengers within the U.S.[19] These airlines contend that their alliances will benefit passengers by increasing the number of destinations and flights they can offer economically. Critics, however, argue that this consolidation will undermine the benefits of deregulation by decreasing competition, which will ultimately reduce passengers' choices and increase fares.

Committee members have differing views on the merits of these alliances. However, the Committee does believe that they raise im-

[19] Hearings Before the Subcommittee on Aviation of the Senate Committee on Commerce, Science, and Transportation, 105th Congress, 2d Session (June 4, 1998) (Statement of John H. Anderson, Jr., Director, Transportation Issues; Resources, Community, and Economic Development Division, U.S. General Accounting Office).

portant issues that should be considered by the DOT. Accordingly, the reported bill establishes a procedure under which DOT is given a specified period of time to review the alliances before implementation.

It is important to note that the reported bill does not expand or diminish DOT's authority to review airline alliances. It simply provides for a waiting period before a proposed alliance can take effect. During that period, DOT can take action it deems necessary under its existing statutory authority. No additional substantive authority is provided by the reported bill.

COMPETITION GUIDELINES

On April 10, 1998, DOT issued a request for comments on an "Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry."[20] It took this action in response to complaints from new entrant airlines that the larger more established airlines were using unfair methods to compete against them.

Under this proposed policy, DOT stated that it would trigger a review, including possible enforcement action, in the following circumstances:

1. When the major airline both adds flights and sells such a large number of seats at very low fares that it ends up losing more money than it would have if it had adopted a more reasonable competitive response;
2. When the major airline carries more passengers at the new airline's low fares than the new airline has in available seats and as a result ends up losing more money than it would have if it had adopted a more reasonable competitive response; or
3. When the major airline carries more passengers at the new airline's low fares than the new airline carries and as a result ends up losing more money than it would have if it had adopted a more reasonable competitive response.

The Committee certainly supports fair competition and believes that new entrants should have a reasonable chance to survive since they often are the catalyst for low fares and improved air service to many communities including the sort of communities that are the focus of this bill.

Many have expressed support for the Department's guidelines. The Attorney General of Iowa, the co-chair of a working group of over 20 states which are reviewing airline competition, stated the proposed guidelines are "a sound common-sense, and much-needed tool" with regard to airline competition. In testimony before Congress, Spirit Airlines stated that it was forced out of markets because a major airline, in protecting a monopoly route, was engaging in exactly the type of behavior the Department is proposing to find unlawful. And Alfred Kahn, the father of deregulation, has praised the Department's initiative for promoting competition by providing air carriers clear guidance in distinguishing legitimate competition from what is intended to drive competitors out and exploit consumers.

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[20] 63 Fed. Reg. 17919. April 10, 1998.

However, others have expressed concern that the proposed guidelines will not increase competition but may hurt the very communities that they are designed to help by raising air fares and reducing air service, the exact opposite of the goals of the reported bill. Not only the major airlines, but also small and medium-sized airports, airline employees, both liberal and conservative think tanks, and at least one consumer group have indicated their opposition to the guidelines. For example, the Aviation Consumer Action Project stated that the "DOT initiative in the area of airline competition is likely to effectively prohibit airfare price wars and increase airfares higher than they would otherwise be"[21] and a small airport wrote to DOT on May 25, 1998 complaining that under its guidelines, "the loser is the consumers in small markets who are looking for increased service and capacity."

In light of these arguments, it is important that a closer look be taken at the issue. Accordingly, the reported bill mandates two studies.

The first, by the Transportation Research Board (TRB), would update their highly-regarded work on airline deregulation published 7 years ago.[22] This is designed to take a broad look at the issue of airline competition today and provide guidance to Congress and DOT for future policy decisions. While it is hoped that TRB can complete its work soon enough so that DOT can take advantage of it in its reconsideration of its guidelines, the issuance of the guidelines is not tied to completion of TRB's work.

The second study would be conducted by DOT and would be focused more specifically on the proposed guidelines and any alternatives to it. DOT would be expected to address many of the concerns raised by the opponents of the proposed guidelines in this study.

No deadline is imposed on DOT for the completion of its study. However, it could not issue final guidelines until the completed study was transmitted to Congress. If as a result of the study, DOT still believes the guidelines are justified, those guidelines would have to be transmitted to Congress as well and there would be a period for Congressional review before those guidelines could become effective.

As with the alliances, it is important to note here as well that the reported bill does not take any position on DOT's authority to adopt competition guidelines. The reported bill merely calls for studies on the factors which may impact competition in the airline industry. These studies are designed to provide guidance to Congress and DOT in deciding what if any action should be taken to enhance or modify the level of competition in the airline industry.

If, upon completion of these studies, DOT decides to issue competition guidelines, those guidelines must be within the agency's existing statutory authority. Nothing in the reported bill expands or diminishes DOT's authority in this regard or expresses a position on DOT's existing authority.

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[21] Competition hearing, Supra Note 2, (Statement of Paul Hudson).

[22] Transportation Research Board, National Research Council, "Winds of Change: Domestic Air Transport Since Deregulation," (1991).

MISCELLANEOUS ISSUES

The Committee had been urged to include in the reported bill a modification of the preemption provision [23] but has elected not to do so. This issue was raised by some who felt that passengers were being blocked from breach of contract or tort suits against the airlines by that provision. The Committee certainly believes people should be able to have their day in court. However the Committee is concerned that modifying the preemption law may have unintended consequences that could undermine the national nature of the air transportation system on which the current legal and regulatory structure is based. Moreover, there have been several cases that have upheld one's right to bring breach of contract and tort suits against the airlines.[24] The Committee tends to believe those cases were decided correctly. However, the Aviation Subcommittee will continue to consider this issue and toward that end held hearings on September 10, 1998.

In addition, the Committee is aware of recent reports about the oversight by airlines of unaccompanied minors on airline flights. Some of these reports have involved minors being left alone at gates for hours or left to move from one gate to another on their own. The Committee is concerned about the potential for harm to these children and urges DOT to survey and evaluate airline plans for unaccompanied minors to ensure they adequately protect the welfare of the minor. In addition, DOT should develop an effective outreach plan so parents are more aware of ways to ensure their children's safety and a tracking system to allow for an evaluation of complaints about airline service to unaccompanied minors.

SECTION-BY-SECTION SUMMARY

Section 1 is the short title.

TITLE I—SERVICE TO AIRPORTS NOT RECEIVING SUFFICIENT SERVICE

Section 101. Availability of slots

Subsection (a) deletes obsolete provisions relating to a rule that was never issued.

Subsection (b) adds a new subsection (e) to current section 41714 to permit additional air service from smaller airports to the 4 slot controlled airports (O'Hare, LaGuardia, Kennedy, and Reagan National).

Paragraph (e)(1) allows DOT to grant exemptions from the slot rules to permit airlines using quiet jet aircraft to offer flights from an undeserved airport to a slot-controlled airport.

Paragraph (e)(2) limits these flights to no more than 2 per hour, per slot-controlled airport and no more than 6 per day at Reagan National. It further specifies that the flights to Reagan National must be within the 1,250 perimeter and use Stage 3 aircraft.

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[23] 49 U.S.C. 41713.

[24] See for example *American Airlines* v. *Wolens,* 513 U.S. 219 (1995) (breach of contract action not preempted) and *Ducombs* v. *Trans World Airlines.* 937 F. Supp. 897 (N.D. Cal. 1996) (tort action not preempted).

Paragraph (e)(3) requires airlines interested in providing the flights to apply to DOT. The application process cannot begin until 30 days after enactment.

Paragraph (e)(4) requires DOT to make a decision on an application within 120 days. If the Secretary does not do so, the airline can begin the service until DOT acts or FAA determines the additional service to be unsafe. The introductory clause of the paragraph is designed to ensure that the Secretary cannot use the obligations or limitations of any other law as an excuse for not meeting the 120 deadline. However, that clause does remain subject to the FAA's safety authority as set forth at the end of the paragraph.

Paragraph (e)(5) permits the airline to continue to hold the exemption from the slot rules as long as it continues to provide the service to the small airport that was the subject of the original application. It cannot take the slot exemption and use it to serve another airport. If the airline attempted to do so, the Secretary would be expected to withdraw the exemption and take other appropriate enforcement action.

Paragraph (6) defines terms.

Subsection (f) makes clear that whether a carrier is owned, allied or has another sort of relationship with some other carrier will not affect its ability to obtain slot exemptions under this section.

Section 102. Funding for air carrier service to airports not receiving sufficient service

Paragraph (1) states that the current fund in 49 U.S.C. 41742 shall be spent as follows:

(A) $45 million to carry out the Essential Air Service (EAS) Program;

(B) $5 million to subsidize service to an underserved airport for no more than 3 years or to assist an underserved airport to market its air service.

Paragraph (2) permits any money left over to be used to improve air safety at rural airports (those with less than 100,000 passengers). The 100,000 threshold is used because it is consistent with the definition of rural airports for ticket tax purposes in section 1031(e) of Public Law 105–34, 111 Stat. 930.

Paragraph (3) makes clear that if more than $50 million becomes available to the fund in 49 U.S.C. 41742, at least half of that additional amount must be used for the subsidy and marketing at underserved airports described in paragraph (1)(B) above.

Paragraph (4) directs DOT to give priority for funding to those communities that are willing to provide local tax revenue to assist in the effort to improve air service at their airport.

Paragraph (5) defines terms.

Section 103. Waiver of local contribution

Waives the local contribution that is required for certain communities receiving subsidized essential air service if the community was designated as eligible or its proposal was approved within the specified dates.

Section 104. Unfair competition complaints

Requires DOT to make a decision within 180 days on any complaint charging unfair competition against an airline.

TITLE II—REGIONAL AIR SERVICE INCENTIVE PROGRAM

Section 201. Amendment of Title 49, United States Code

Section 41761 states that the purpose of the program is to improve jet service to underserved markets by assisting commuter airlines in the purchase of Regional Jets.

Section 41762 defines terms.

Section 41763 authorizes, subject to appropriation, DOT to provide loan guarantees for aircraft purchases to commuter airlines and new airlines. All commuters are to be treated equally under this program regardless of whether they are owned by, allied with, code-share with, or have some other relationship with a major airline.

Section 41764 establishes conditions and limitations on the loan guarantees.

Subsection (a) states that DOT can't guarantee loans for more than —

(1) the interest and 80% of the principal;
(2) 80% of the purchase price;
(3) 15 years; or
(4) $100 million to any one airline.

Subsection (b) requires DOT, before making a loan guarantee, to find that:

(1) the aircraft being purchased is a regional jet;
(2) the airline will use the jet to serve an underserved market with at least 2 round-trips per day, 5 days per week; and
(3) the airline will be able to pay off the loan.

Subsection (c) states that the aircraft subject to the loan guarantee must be a stage 3 quiet aircraft.

Subsection (d) requires the aircraft to be used to serve an underserved market for at least 2 years and prohibits the loan guarantee from being subordinated to another debt of the airline or to any other claims against the airline.

Section 41765 governs payment of losses.

Subsection (a) permits DOT to pay the holder of a loan that it guaranteed if it determines that the holder has suffered a loss and has made efforts to collect on the loan. If DOT pays the holder, DOT shall be subrogated to all the rights of the holder against the airline.

Subsection (b) permits the Justice Department to enforce any right of the U.S. under this program.

Subsection (c) makes clear that nothing in the law would prohibit leniency in the collection of the loan if that is agreed to by the parties to the loan and approved by DOT.

Subsection (d) gives DOT discretion in handling aircraft or other property acquired under this program.

Section 41766 requires DOT to collect a reasonable guarantee fee from the lending institution.

Section 41767 permits DOT to utilize the services of other Federal agencies in implementing this program and requires DOT to make available to GAO any information requested.

Section 41768 sets forth various administrative requirements.

Section 41769 terminates the loan guarantee program after 5 years.

Section 202. Authorization of appropriations

Authorizes $120 million per year for the next 5 years to carry out this loan guarantee program.

TITLE III—CONTRACT TOWER PROGRAM

Section 301. Contract towers

Paragraph (A) directs DOT to extend the current contract tower program to not more than 20 low activity air traffic control (ATC) towers that do not now qualify for the program.

Paragraph (B) lists the characteristics of the airport that the FAA should consider in deciding which ones should get priority under this program. They are the following:

(i) Airports that are participating in the current program but have been notified that they will be terminated because their benefit to cost ratio is less than 1.

(ii) Airports at which the tower was closed as a result of the air traffic controllers strike in 1981.

(iii) Airports that are receiving subsidized essential air service.

(iv) Airports that are prepared to assume the construction and maintenance costs of the tower.

(v) Airports with safety or operational problems related to their topography, weather, runway configuration, or mix of aircraft.

Paragraph (C) requires the airport or State or local government to share in the costs of operating the tower to the extent that the costs of that operation exceed the benefits.

Paragraph (D) authorizes $6 million for this program.

TITLE IV—AIR CARRIER COMPETITION

Section 401. Joint venture agreements

Establishes a procedure for DOT review of major airline alliances.

Subsection (a) defines terms.

Paragraph (1) defines the sort of alliances between major airlines that are covered by this section. They are—

(A) Code-sharing, blocked space, long-term wet leases, and frequent flyer programs; and

(B) Other cooperative working arrangements that affect more than 15% of the major airlines' available seat miles.

Paragraph (2) cross-references Part 241 of DOT rules to define which airlines are covered by this section.

Subsection (b) requires major airlines covered by this section to file with DOT a copy of their alliance agreement and other information that DOT, by regulation, requires at least 30 days before an alliance covered by this section takes effect.

Subsection (c) permits DOT to extend the 30-day period for 150 days in the case of an alliance involving code-sharing and for 60 days in the case of any other alliance covered by this section. However, DOT could not automatically extend the time as a matter of course but would have to publish in the Federal Register the reasons that the extension is needed.

Subsection (d) permits DOT to shorten the waiting periods at any time.

Subsection (e) makes clear that the waiting periods could not be delayed while DOT is developing regulations to implement this section.

Subsection (f) directs DOT and the Justice Department to develop a memorandum of understanding on pre-clearance procedures to prevent unnecessary duplication of effort.

Subsection (g) states that the waiting period for alliances entered into before the date of enactment begins on the date, as determined by the Secretary, on which all of the required information was submitted and ends on the last day under which the waiting period could have been extended under subsection (c) above.

Subsection (h) makes clear that the procedural authority granted to DOT under this section does not limit the authority of the Justice Department to enforce the antitrust laws.

Section 402. Competitive practices in the airline industry

Subsection (a) requires certain studies.

Paragraph (1) requires the Transportation Research Board to update the portions of its 1991 study of airline deregulation that deal with competition issues in the airline industry and include any recommendations for changes in the statutory framework under which the airline industry operates.

Paragraph (2) requires this study to be transmitted to Congress and DOT within 6 months of the date of enactment.

Paragraph (3) requires DOT to respond to this study within 2 months.

Subsection (b) directs DOT to conduct a study and transmit to Congress a report that includes the following:

(1) A description of complaints DOT has received alleging predatory pricing or unfair competition, the number of such complaints, and specific examples of unfair competition or predatory pricing;

(2) A description of the options DOT has for addressing these problems;

(3) An analysis of its proposed competition guidelines including the analysis required by subsection (c) below; and

(4) A description of how DOT will coordinate the handling of predatory pricing and unfair competition complaints with the Justice Department.

Subsection (c) prohibits DOT from issuing final competition guidelines until it transmits the report described above to Congress. If DOT decides to issue such guidelines, it must transmit them to Congress. If the guidelines transmitted are different from the ones it originally proposed, DOT must include, as part of its transmittal to Congress, information documenting and quantifying the impact of these final guidelines on the following:

(A) Scheduled service to small and medium-sized communities;

(B) Air fares including the availability of senior citizen, Internet, and standby discounts;

(C) The incentive and ability of major airlines to offer low air fares;

(D) The incentive of new airlines to offer low air fares;

(E) The ability of airlines to offer inclusive leisure travel for which air fares are not separately advertised;

(F) Members of frequent flyer programs;

(G) The ability of airlines to carry connecting passengers on the portion of the routes served by new airlines covered by the guidelines; and

(H) Airline employees.

Subsection (d) requires DOT, in conducting the study, to consult with the Justice Department, airlines, airports, academic and economic experts, airline employees, and passengers.

Subsection (e) states that, if DOT issues final competition guidelines, those guidelines shall not become effective until 12 weeks after they were transmitted to Congress. A week shall only be counted toward the 12 if the House was in session for legislative business (with votes as opposed to a pro forma session) during at least one day of that week.

HEARINGS AND LEGISLATIVE HISTORY

The Subcommittee on Aviation held hearings on the issue of airline service on June 25, 1997. H.R. 2748 was introduced on October 28, 1997. Hearings were held on that bill on April 23, 1998 and April 30, 1998.

COMMITTEE CONSIDERATION

On June 18, 1998, the Subcommittee on Aviation reported the bill, by unanimous voice vote, to the Committee on Transportation and Infrastructure. On June 25, 1998, the Committee on Transportation and Infrastructure ordered the bill reported, with an amendment, by voice vote with a quorum present. There were no recorded votes taken during Committee consideration of H.R. 2748.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H.R. 2748 reported. A motion by Mr. Duncan to order H.R. 2748 favorably reported to the House, without amendment, was agreed to by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 2(l)(3)(A) of rule XI of the Rules of House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF THE LEGISLATION

Clause 7 of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2748.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2748 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 15, 1998.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2748, the Airline Service Improvement Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Clare Doherty (for federal costs), and Lisa Cash Driskill (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 2748—Airline Service Improvement Act of 1998

Summary: H.R. 2748 would authorize the appropriation of $630 million for a loan program and air traffic control services administered by the Federal Aviation Administration (FAA) for fiscal years 1999 through 2003. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2748 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2748 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal years in millions of dollars—				
	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	126	126	126	126	126
Estimated Outlays	24	84	126	126	126

Basis of estimate: For purposes of this estimate, CBO assumes that the entire amounts authorized in the bill will be appropriated by the start of each fiscal year. H.R. 2748 would authorize subsidy appropriations of $120 million a year for fiscal years 1999 through 2003 for loan guarantees to commuter air carriers that purchase jet aircraft for use in underserved markets. For purposes of this estimate, CBO assumes that the loans would be disbursed over a three-year period with the bulk of each year's obligations leading to disbursements in the year after obligations.

The bill would also authorize the appropriations of $6 million per fiscal year for a program to contract for air traffic control services at not more than 20 air traffic control towers.

In addition, H.R. 2748 would require the Secretary of Transportation to consult with the Department of Justice on joint-venture agreements and establish a written memorandum of understanding. The bill also would require the National Research Council at the National Academy of Sciences to complete a comprehensive update of the 1991 study on airline deregulation. Based on information from the National Research Council. CBO estimates that the cost of completing the six-month study would be less than $500,000. Upon completion of this report, the Secretary of Transportation would be required to submit a report to the Congress with responses to the findings of the council. In addition, the bill would require the Secretary to complete a report and possible guidelines on airline competition. CBO expects that the additional costs to the Department of Transportation would not be significant.

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribe governments: H.R. 2748 contains no intergovernmental mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments. In the aggregate, airports managed by state and local governments would benefit from this bill. It would establish a contract tower program and authorize $6 million to subsidize the cost of air traffic control services at no more than 20 locations not currently served by the DOT air traffic control contract programs. In addition, two communities, Dickinson, North Dakota and Fergus Falls, Minnesota, would no longer be required to match the money they receive from the Small Community Airservice Program. Finally, by earmarking some of the money currently authorized to support the essential air service program, the bill would redirect a total of $15 million over the 1999–2001 period to assist in increasing service to and from underserved airports.

The bill also would allow the Secretary of Transportation to grant air carriers flying to or from an underserved airport a small

number of exemptions from slot regulations at the nations four high density airports. In general, as a condition of receiving aid from the Airport Improvement Fund, airports must agree to provide gate access, if available, to air carriers granted such exemptions. CBO estimates that providing this access would have an insignificant budgetary impact.

Estimated impact on the private sector: H.R. 2748 would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Clare Doherty. Impact on State, Local, and Tribal Governments: Lisa Cash Driskill.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of the Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (2)(l)(4) of rule XI of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * * * *

SUBTITLE VII—AVIATION PROGRAMS

* * * * * * *

PART A—AIR COMMERCE AND SAFETY

* * * * * * *

SUBPART II—ECONOMIC REGULATION

* * * * * * *

CHAPTER 417—OPERATIONS OF CARRIERS

SUBCHAPTER I—REQUIREMENTS

SUBCHAPTER I—REQUIREMENTS

* * * * * * *

§ 41712. Unfair and deceptive practices and unfair methods of competition

(a) IN GENERAL.—On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.

(b) DEADLINE FOR DECISION ON UNFAIR COMPETITION COMPLAINTS.—The Secretary shall make a decision on any complaint

the Secretary receives under this section regarding whether an air carrier has been or is engaged in an unfair method of competition in air transportation or the sale of air transportation not later than 180 days after the date of receipt of the complaint.

* * * * * * *

§ 41714. Availability of slots

(a) * * *

(b) SLOTS FOR FOREIGN AIR TRANSPORTATION.—

(1) * * *

* * * * * * *

[(4) PERIOD OF EFFECTIVENESS.—This subsection and exemptions issued under this subsection shall cease to be in effect when the final rules issued under subsection (f) become effective.]

(c) SLOTS FOR NEW ENTRANTS.—

[(1) IN GENERAL.—] If the Secretary finds it to be in the public interest and the circumstances to be exceptional, the Secretary may by order grant exemptions from the requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to enable new entrant air carriers to provide air transportation at high density airports (other than Ronald Reagan Washington National Airport).

[(2) PERIOD OF EFFECTIVENESS.—Exemptions issued under this section shall cease to be in effect on or after the date on which the final rules issued under subsection (f) become effective.]

* * * * * * *

[(e) STUDY.—

[(1) MATTERS TO BE CONSIDERED.—The Secretary shall continue the Secretary's current examination of slot regulations and shall ensure that the examination includes consideration of—

[(A) whether improvements in technology and procedures of the air traffic control system and the use of quieter aircraft make it possible to eliminate the limitations on hourly operations imposed by the high density rule contained in part 93 of title 14 of the Code of Federal Regulations or to increase the number of operations permitted under such rule;

[(B) the effects of the elimination of limitations or an increase in the number of operations allowed on each of the following:

[(i) congestion and delay in any part of the national aviation system;

[(ii) the impact of noise on persons living near the airport;

[(iii) competition in the air transportation system;

[(iv) the profitability of operations of airlines serving the airport; and

[(v) aviation safety;

[(C) the impact of the current slot allocation process upon the ability of air carriers to provide essential air service under subchapter II of this chapter;

[(D) the impact of such allocation process upon the ability of new entrant air carriers to obtain slots in time periods that enable them to provide service;

[(E) the impact of such allocation process on the ability of foreign air carriers to obtain slots;

[(F) the fairness of such process to air carriers and the extent to which air carriers are provided equivalent rights of access to the air transportation market in the countries of which foreign air carriers holding slots are citizens;

[(G) the impact, on the ability of air carriers to provide domestic and international air service, of the withdrawal of slots from air carriers in order to provide slots for foreign air carriers; and

[(H) the impact of the prohibition on slot withdrawals in subsections (b)(2) and (b)(3) of this section on the aviation relationship between the United States Government and foreign governments, including whether the prohibition in such subsections will require the withdrawal of slots from general and military aviation in order to meet the needs of air carriers and foreign air carriers providing foreign air transportation (and the impact of such withdrawal on general aviation and military aviation) and whether slots will become available to meet the needs of air carriers and foreign air carriers to provide foreign air transportation as a result of the planned relocation of Air Force Reserve units and the Air National Guard at O'Hare International Airport.

[(2) REPORT.—Not later than January 31, 1995, the Secretary shall complete the current examination of slot regulations and shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report containing the results of such examination.

[(f) RULEMAKING.—The Secretary shall conduct a rulemaking proceeding based on the results of the study described in subsection (e). In the course of such proceeding, the Secretary shall issue a notice of proposed rulemaking not later than August 1, 1995, and shall issue a final rule not later than 90 days after public comments are due on the notice of proposed rulemaking.]

(e) SLOTS FOR AIRPORTS NOT RECEIVING SUFFICIENT SERVICE.—

(1) EXEMPTIONS.—Notwithstanding part D of chapter 491 of this title, the Secretary may by order grant exemptions from the requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to enable air carriers to provide nonstop air transportation using jet aircraft that comply with the stage 3 noise levels of part 36 of such title 14 between a high density airport and a small hub airport or nonhub airport that the Secretary determines is not receiving sufficient air carrier service to and from such high density airport.

(2) LIMITATIONS.—No more than 2 exemptions per hour may be granted under this subsection for slots at any high density airport, and no more than 6 exemptions per day may be granted under this subsection for slots at Ronald Reagan Washington National Airport. An exemption may be granted under this subsection for a slot at Ronald Reagan Washington National Airport only if the flight utilizing such slot begins or ends within 1,250 miles of the Airport and a stage 3 aircraft is used for such flight.

(3) APPLICATION.—An air carrier interested in an exemption under this subsection shall submit to the Secretary an application for such exemption. No application may be submitted to the Secretary before the last day of the 30-day period beginning on the date of the enactment of this paragraph.

(4) DEADLINE FOR DECISION.—Notwithstanding any other provision of law, the Secretary shall make a decision with regard to granting an exemption under this subsection on or before the 120th day following the date of the application for the exemption. If the Secretary does not make the decision on or before such 120th day, the air carrier applying for the service may provide such service until the Secretary makes the decision or the Administrator of the Federal Aviation Administration determines that providing such service would have an adverse effect on air safety.

(5) PERIOD OF EFFECTIVENESS.—An exemption granted under this subsection may remain in effect while the air carrier for whom the exemption is granted continues to provide nonstop air transportation between the airport that the Secretary determined was not receiving sufficient air carrier service and the high density airport.

(6) DEFINITIONS.—In this subsection, the following definitions apply:

(A) NONHUB AIRPORT.—The term "nonhub airport" means an airport that each year has at least 2,500 passenger boardings but less than .05 percent of the total annual boardings in the United States.

(B) SMALL HUB AIRPORT.—The term "small hub airport" means an airport that each year has at least .05 percent but less than .25 percent of the total annual boardings in the United States.

(f) TREATMENT OF CERTAIN COMMUTER AIR CARRIERS.—The Secretary shall treat all commuter air carriers that have cooperative agreements, including code share agreements with other air carriers, equally for determining eligibility for exemptions under this section regardless of the form of the corporate relationship between the commuter air carrier and the other air carrier.

* * * * * * *

§ 41716. Joint venture agreements

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) JOINT VENTURE AGREEMENT.—The term "joint venture agreement" means an agreement entered into by a major air carrier on or after January 1, 1998, with regard to (A) code-

sharing, blocked-space arrangements, long-term wet leases (as defined in section 207.1 of title 14, Code of Federal Regulations) of a substantial number (as defined by the Secretary by regulation) of aircraft, or frequent flyer programs, or (B) any other cooperative working arrangement (as defined by the Secretary by regulation) between 2 or more major air carriers that affects more than 15 percent of the total number of available seat miles offered by the major air carriers.

(2) MAJOR AIR CARRIER.—The term "major air carrier" means a passenger air carrier that is certificated under chapter 411 of this title and included in Carrier Group III under criteria contained in section 04 of part 241 of title 14, Code of Federal Regulations.

(b) SUBMISSION OF JOINT VENTURE AGREEMENT.—At least 30 days before a joint venture agreement may take effect, each of the major air carriers that entered into the agreement shall submit to the Secretary—

(1) a complete copy of the joint venture agreement and all related agreements; and

(2) other information and documentary material that the Secretary may require by regulation.

(c) EXTENSION OF WAITING PERIOD.—

(1) IN GENERAL.—The Secretary may extend the 30-day period referred to in subsection (b) until—

(A) in the case of a joint venture agreement with regard to code-sharing, the 150th day following the last day of such period; and

(B) in the case of any other joint venture agreement, the 60th day following the last day of such period.

(2) PUBLICATION OF REASONS FOR EXTENSION.—If the Secretary extends the 30-day period referred to in subsection (b), the Secretary shall publish in the Federal Register the Secretary's reasons for making the extension.

(d) TERMINATION OF WAITING PERIOD.—At any time after the date of submission of a joint venture agreement under subsection (b), the Secretary may terminate the waiting periods referred to in subsections (b) and (c) with respect to the agreement.

(e) REGULATIONS.—The effectiveness of a joint venture agreement may not be delayed due to any failure of the Secretary to issue regulations to carry out this section.

(f) MEMORANDUM TO PREVENT DUPLICATIVE REVIEWS.—Promptly after the date of enactment of this section, the Secretary shall consult with the Assistant Attorney General of the Antitrust Division of the Department of Justice in order to establish, through a written memorandum of understanding, preclearance procedures to prevent unnecessary duplication of effort by the Secretary and the Assistant Attorney General under this section and the antitrust laws of the United States, respectively.

(g) PRIOR AGREEMENTS.—With respect to a joint venture agreement entered into before the date of enactment of this section as to which the Secretary finds that—

(1) the parties submitted the agreement to the Secretary before such date of enactment; and

(2) the parties submitted all information on the agreement requested by the Secretary,

the waiting period described in paragraphs (2) and (3) shall begin on the date, as determined by the Secretary, on which all such information was submitted and end on the last day to which the period could be extended under this section.

(h) LIMITATION ON STATUTORY CONSTRUCTION.—The authority granted to the Secretary under this subsection shall not in any way limit the authority of the Attorney General to enforce the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).

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SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE

* * * * * * *

§ 41736. Air transportation to noneligible places

(a) * * *

* * * * * * *

(b) APPROVAL FOR CERTAIN AIR TRANSPORTATION.—Notwithstanding subsection (a)(1)(B) of this section, the Secretary shall approve a proposal under this section to compensate an air carrier for providing air transportation to a place in the 48 contiguous States or the District of Columbia and designate the place as eligible for compensation under this section if—

(1) * * *

* * * * * * *

(4) the State or local government submitting the proposal or a person is willing and able to pay 25 percent of the cost of providing the compensated transportation.

Paragraph (4) shall not apply to any place for which a proposal was approved or that was designated as eligible under this section in the period beginning on October 1, 1991, and ending on December 31, 1997.

§ 41742. [Essential] *Small community* air service authorization

(a) IN GENERAL.—Out of the amounts received by the Federal Aviation Administration credited to the account established under section 45303 of this title or otherwise provided to the Administration, the sum of $50,000,000 is authorized and shall be made available immediately for obligation and expenditure to carry out the [essential air] *small community* service program under this subchapter for each fiscal year.

[(b) FUNDING FOR SMALL COMMUNITY AIR SERVICE.—Notwithstanding any other provision of law, moneys credited to the account established under section 45303(a) of this title, including the funds derived from fees imposed under the authority contained in section 45301(a) of this title, shall be used to carry out the essential air service program under this subchapter. Notwithstanding section 47114(g) of this title, any amounts from those fees that are not obligated or expended at the end of the fiscal year for the purpose of funding the essential air service program under this subchapter

shall be made available to the Administration for use in improving rural air safety under subchapter I of chapter 471 of this title and shall be used exclusively for projects at rural airports under this subchapter.]

(b) FUNDING FOR SMALL COMMUNITY AIR SERVICE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, from moneys credited to the account established under section 45303(a), including the funds derived from fees imposed under the authority contained in section 45301(a)—

(A) not to exceed $45,000,000 for each fiscal year beginning after September 30, 1998, shall be used to carry out the essential air service program under this subchapter; and

(B) not to exceed $5,000,000 for such fiscal year shall be used—

(i) for assisting an air carrier to subsidize service to and from an underserved airport for a period not to exceed 3 years; and

(ii) for assisting an underserved airport to market service to and from the underserved airport.

(2) RURAL AIR SAFETY.—Any funds that are made available by paragraph (1) for a fiscal year and that the Secretary determines will not be obligated or expended before the last day of such fiscal year shall be available to the Administrator for use under this subchapter in improving rural air safety at airports with less than 100,000 annual boardings.

(3) ALLOCATION OF ADDITIONAL FUNDING.—If, for a fiscal year beginning after September 30, 1998, more than $50,000,000 is made available under subsection (a) to carry out the small community air service program, 1/2 of the amounts in excess of $50,000,000 shall be used for the purposes specified in paragraph (1)(B), in addition to amounts made available for such purposes under paragraph (1)(B).

(4) PRIORITY CRITERIA FOR ASSISTING AIRPORTS NOT RECEIVING SUFFICIENT SERVICE.—In providing assistance to airports under paragraph (1)(B), the Administrator shall give priority to those airports for which a community will provide, from local sources (other than airport revenues), a portion of the cost of the activity to be assisted.

(5) UNDERSERVED AIRPORT DEFINED.—In this subsection, the term "underserved airport" means a nonhub airport or small hub airport (as such terms are defined in section 41714(e)) that the Secretary determines is not receiving sufficient air carrier service.

(c) SPECIAL RULE FOR FISCAL YEAR 1997.—Notwithstanding subsections (a) and (b), in fiscal year 1997, amounts in excess of $75,000,000 that are collected in fees pursuant to section 45301(a)(1) of this title shall be available for the [essential air] *small community* service program under this subchapter, in addition to amounts specifically provided for in appropriations Acts.

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SUBCHAPTER III—REGIONAL AIR SERVICE INCENTIVE PROGRAM

§ 41761. Purpose

The purpose of this subchapter is to improve service by jet aircraft to underserved markets by providing assistance, in the form of loan guarantees, to commuter air carriers that purchase regional jet aircraft for use in serving those markets.

§ 41762. Definitions

In this subchapter, the following definitions apply:

(1) AIRCRAFT PURCHASE LOAN.—The term "aircraft purchase loan" means any loan made for the purchase of commercial transport aircraft, including spare parts normally associated with the aircraft.

(2) COMMUTER AIR CARRIER.—The term "commuter air carrier" means an air carrier that primarily operates aircraft designed to have a maximum passenger seating capacity of 75 or less in accordance with published flight schedules.

(3) NEW ENTRANT AIR CARRIER.—The term "new entrant air carrier" means an air carrier that has been providing air transportation according to a published schedule for less than 5 years, including any person that has received authority from the Secretary to provide air transportation but is not providing air transportation.

(4) NONHUB AIRPORT.—The term "nonhub airport" means an airport that each year has at least 2,500 passenger boardings, but less than .05 percent of the total annual boardings in the United States.

(5) REGIONAL JET AIRCRAFT.—The term "regional jet aircraft" means a civil aircraft—

(A) powered by jet propulsion; and

(B) designed to have a maximum passenger seating capacity of not less than 30 nor more than 75.

(6) SMALL HUB AIRPORT.—The term "small hub airport" means an airport that each year has at least .05 percent, but less than .25 percent, of the total annual boardings in the United States.

(7) UNDERSERVED AIRPORT.—The term "underserved airport" means an airport that—

(A) is a nonhub airport or a small hub airport;

(B) is not within a 40-mile radius of another airport that each year has at least .25 percent of the total annual boardings in the United States; and

(C) the Secretary determines does not have sufficient air service.

§ 41763. Loan guarantees

(a) IN GENERAL.—Subject to advance appropriations, the Secretary of Transportation may guarantee any lender against loss of principal or interest on any aircraft purchase loan made by that lender to a commuter air carrier or new entrant air carrier.

(b) FORM, TERMS, AND CONDITIONS.—A guarantee shall be made under subsection (a)—

(1) in such form and on such terms and conditions; and

(2) pursuant to such regulations;

as the Secretary considers to be necessary and consistent with this subchapter.

(c) TREATMENT OF CERTAIN COMMUTER AIR CARRIERS.—The Secretary shall treat all commuter air carriers that have cooperative agreements, including code share agreements with other air carriers, equally for determining eligibility for guarantees under this section regardless of the form of the corporate relationship between the commuter air carrier and the other air carrier.

§ 41764. Conditions and limitations

(a) LIMITATIONS ON FUNDS.—Subject to subsection (d), no loan guarantee shall be made under this subchapter—

(1) extending to more than the unpaid interest and 80 percent of the unpaid principal of any loan;

(2) on any loan or combination of loans for more than 80 percent of the purchase price of the aircraft, including spare parts, to be purchased with the loan or loan combination;

(3) on any loan with respect to which terms permit repayment more than 15 years after the date the loan is made;

(4) in any case in which the total face amount of the loan and any other loans to the same air carrier or corporate predecessor of that air carrier that are guaranteed and outstanding under the terms of this subchapter exceed $100,000,000.

(b) CONDITIONS FOR MAKING LOANS.—Subject to subsection (c), the Secretary of Transportation may only make a loan guarantee under this subchapter if—

(1) the Secretary finds that the aircraft to be purchased with the loan is a regional jet aircraft to be used by the commuter air carrier or new entrant air carrier;

(2) the commuter air carrier or new entrant air carrier agrees to use the aircraft to provide at least 2 round-trips per day 5 days per week to the underserved airport; and

(3) the Secretary finds that the prospective earning power of the commuter air carrier or new entrant air carrier, together with the character and value of the security pledged, furnish—

(A) reasonable assurances of the air carrier's ability and intention to repay the loan within the term of the loan—

(i) to continue its operations as an air carrier; and

(ii) to the extent that the Secretary determines to be necessary, to continue its operations as an air carrier between the same route or routes being operated by the air carrier at the time of the loan guarantee; and

(B) reasonable protection to the United States.

(c) REQUIREMENT.—Subject to subsection (d), no loan guarantee may be made under this subchapter on any loan or combination of loans for the purchase of any regional jet aircraft that does not comply with the stage 3 noise levels of part 36 of title 14 of the Code of Federal Regulations, as in effect on January 1, 1998.

(d) OTHER LIMITATIONS.—

(1) ON PURCHASE OF REGIONAL JET AIRCRAFT.—No loan guarantee shall be made by the Secretary under this subchapter on any loan for the purchase of a regional jet aircraft unless the

commuter air carrier or new entrant air carrier agrees that it will provide scheduled passenger air transportation to the underserved airport for which the aircraft is purchased, or to another underserved airport, for a period of not less than 24 consecutive months after the aircraft is placed in service.

(2) ON SUBORDINATION.—No loan guarantee made under this subchapter may be subordinated to another debt of the carrier or to any other claims against the carrier.

(3) TO PROTECT INTERESTS OF UNITED STATES.—No loan may be guaranteed under this subchapter unless the Secretary determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interests of the United States.

§ 41765. Payment of losses

(a) IN GENERAL.—If, as a result of a default by a carrier under a loan guaranteed under this subchapter and after the holder of the loan has made such further collection efforts as the Secretary of Transportation may require, the Secretary determines that the holder has suffered a loss, the Secretary shall pay the holder the amount of the loss under the guarantee contract. Upon making the payment, the Secretary shall be subrogated to all the rights of the recipient of the payment.

(b) ENFORCEMENT OF UNITED STATES RIGHTS.—The Attorney General shall take such action as may be necessary to enforce any right accruing to the United States as a result of the issuance of any guarantee under this subchapter.

(c) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subchapter shall be construed as precluding any forbearance for the carrier which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary.

(d) AUTHORITY OF SECRETARY.—Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired under this subchapter.

§ 41766. Fees

The Secretary of Transportation shall prescribe and collect from a lending institution a reasonable administrative fee in connection with each loan guaranteed under this subchapter.

§ 41767. Use of Federal facilities and assistance

(a) USE OF FEDERAL FACILITIES.—To permit the Secretary of Transportation to make use of such expert advice and services as the Secretary may require in carrying out this subchapter, the Secretary may use available services and facilities of other agencies and instrumentalities of the Federal Government—

(1) with the consent of the appropriate Federal officials; and

(2) on a reimbursable basis.

(b) ASSISTANCE.—The head of each appropriate department or agency of the Federal Government shall exercise the duties and functions of that head in such manner as to assist in carrying out the policy specified in section 41761.

(c) OVERSIGHT.—The Secretary shall make available to the Comptroller General of the United States such information with respect to the loan guarantee program conducted under this subchapter as the Comptroller General may require to carry out the duties of the Comptroller General under chapter 7 of title 31.

§ 41768. Payments; administrative expenses

(a) PAYMENTS.—Payments to lenders required as a consequence of any loan guarantee made under this subchapter may be made from funds appropriated pursuant to the authorization under section 202 of the Airline Service Improvement Act of 1998.

(b) ADMINISTRATIVE EXPENSES.—In carrying out this subchapter, the Secretary shall use funds made available by appropriations to the Department of Transportation for the purpose of administration to cover administrative expenses of the loan guarantee program under this subchapter.

§ 41769. Termination

The authority of the Secretary of Transportation under section 41763 shall terminate on the date that is 5 years after the date of the enactment of this subchapter.

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PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471—AIRPORT DEVELOPMENT

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SUBCHAPTER I—AIRPORT IMPROVEMENT

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§ 47124. Agreements for State and local operation of airport facilities

(a) * * *

(b) AIR TRAFFIC CONTROL CONTRACT PROGRAM.—(1) The Secretary shall continue the low activity (Visual Flight Rules) level I air traffic control tower contract program established under subsection (a) of this section for towers existing on December 30, 1987, and extend the program to other towers as practicable.

* * * * * * *

(3) NONQUALIFYING AIR TRAFFIC CONTROL TOWERS.—

(A) IN GENERAL.—The Secretary shall establish a program to contract for air traffic control services at not more than 20 level I air traffic control towers, as defined by the Administrator of the Federal Aviation Administration, that do not qualify for the program established under subsection (a) and continued under paragraph (1).

(B) PRIORITY.—In selecting facilities to participate in the program under this paragraph, the Administrator shall give priority to the following:

(i) Air traffic control towers that are participating in the program continued under paragraph (1) but have

been notified that they will be terminated from such program because the Administrator has determined that the benefit-to-cost ratio for their continuation in such program is less than 1.

(ii) Level I air traffic control towers of the Federal Aviation Administration that are closed as a result of the air traffic controllers strike in 1981.

(iii) Air traffic control towers that are located at airports that receive air service from an air carrier that is receiving compensation under the essential air service program of subchapter II of chapter 417.

(iv) Air traffic control towers located at airports that are prepared to assume responsibility for tower construction and maintenance costs.

(v) Air traffic control towers that are located at airports with safety or operational problems related to topography, weather, runway configuration, or mix of aircraft.

(C) COSTS EXCEEDING BENEFITS.—If the costs of operating a control tower under the program established under this paragraph exceed the benefits, the airport sponsor or State or local government having jurisdiction over the airport shall pay the portion of the costs that exceed such benefits.

(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $6,000,000 per fiscal year to carry out this paragraph.

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