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COMMERCIAL OPERATION OF SUPERSONIC TRANSPORT CATEGORY AIRCRAFT

MARCH 2, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 661]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 661) to direct the Secretary of Transportation to prohibit the commercial operation of supersonic transport category aircraft that do not comply with stage 3 noise levels if the European Union adopts certain aircraft noise regulations, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BACKGROUND

Aircraft noise has been a significant issue in the aviation industry for many years. Aircraft noise affects communities and people located near airports. To combat aviation noise, Congress passed Public Law No. 101–508, 104 Stat. 1388–378, codified at 49 U.S.C. 47524. This law imposes significant noise restrictions on the aviation industry. The most stringent of these restrictions, known as Stage 3 noise restrictions, have been phased in and require certain categories of aircraft to be fully Stage 3 compliant by December 31, 1999.

The International Civil Aviation Organization ("ICAO"), created by the Chicago Convention, sets and administers international certification standards for aircraft. Once an aircraft is certified as having met ICAO standards, it may be used in any ICAO member country. ICAO certification gives operators and investors assurances of worldwide marketability for the normal life cycle of an aircraft. ICAO has promulgated international noise restrictions, simi-

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lar to U.S. Stage 3 restrictions, that are known as Chapter 3 noise restrictions; these restrictions become fully effective in 2002. Chapter 3 and Stage 3 noise restrictions are the most stringent noise restrictions currently in effect and significantly reduce the amount of noise experienced by people near airports.

An aircraft may meet these noise restrictions by various means. The most common means are: purchasing new aircraft that are manufactured to meet the restrictions; modifying an existing Stage 2 engine by essentially placing a device on it that makes the engine quieter and brings it up to Stage 3 levels, a process known as "hushkitting;" or putting new, quieter Stage 3 engines on an existing Stage 2 aircraft, known as "re-engining." In addition, aircraft weight and flap restrictions may be imposed to ensure that noise levels are at Stage 3 levels.

The European Union ("EU") is in the process of adopting a regulation that will severely restrict the use of hushkitted and re-engined aircraft in Europe despite the fact that these aircraft meet all Stage 3 and Chapter 3 requirements. The draft regulation targets "recertificated" aircraft, defined by the EU as aircraft modified through technical measures—hushkits, engine modifications, or other technical measures—or indirectly through operational restrictions, such as weight or flap restrictions.

The proposed regulation targets several generally accepted methods for bringing older aircraft in compliance with current noise restrictions. Hushkits have been used for close to 15 years as an appropriate measure to meet existing aircraft noise restrictions. Companies also often elect to re-engine their older aircraft to meet current noise restrictions.

The draft regulation provides that an EU member state cannot place "recertificated civil subsonic jet aeroplanes" on its register after April 1, 1999. However, a recertificated aircraft that was on the register of an EU member state before April 1, 1999 can be freely transferred to the registry of another EU Member State.

Recertificated aircraft registered in non-EU States can not be operated in the EU after April 1, 2002, unless the operator can prove that these aircraft were both operated in the EU between April 1, 1995 and April 1, 1999, and have remained on the same register. In addition, recertificated aircraft already on the register of an EU Member State cannot operate in the EU after April 1, 2002, unless they were already operating in the EU before April 1, 1999.

The EU's proposal does allow the use of some re-engined aircraft. The proposed regulation uses the bypass ratio of an engine as an artificial cut off in determining whether an aircraft is a "recertificated" aircraft. The EU's proposal restricts the use of aircraft that are re-engined with a new engine having a bypass ratio of less than 3.0:1. This artificial cut off would, for example, allow the continued operation of aircraft having Rolls Royce engines, which have a bypass ratio of 3.1:1, but would disallow the use of aircraft re-engined with Pratt & Whitney JT8D engines, which have a bypass ratio of less than 3.0:1. Put another way, only aircraft equipped with U.S. manufactured engines are being disallowed under the proposed regulation.

The proposal would affect U.S. cargo, express package service, and passenger airlines. Specifically, the regulation would affect over 1600 aircraft including DC–9s and 727s.

The proposed ban violates universally recognized international obligations. Article 33 of the Chicago Convention mandates universal recognition of an airline's airworthiness certificate, where aircraft of the airlines' flag meet all current ICAO standards.

The proposed regulation also treats domestic and foreign operators differently in violation of the Convention's nondiscrimination principle, and potentially violates EU Member States' bilateral air service agreements with the U.S. This proposal is a major departure from international standards in the aircraft certification arena. It unlawfully discriminates against U.S. operators by denying U.S. designated airlines the right to choose Chapter 3 compliant equipment best suited for its fleet.

The Committee finds that the EU's proposed regulation will adversely affect the fleet value of aircraft that have been modified either by adding hushkits or re-engining to meet ICAO Chapter 3 noise rules. The rule would artificially and dramatically limit the pool of possible buyers of U.S.-owned hushkitted aircraft because EU operators can no longer buy these aircraft from non-Europeans-only from other Europeans. Since these aircraft will no longer be allowed to operate in Europe, the market value of the aircraft will substantially decline.

The EU's proposal would also significantly increase the cost of U.S. operations to, from, and within Europe—any new operations would have to use aircraft originally manufactured to meet Chapter 3 standards.

Ostensibly, the EU has proposed this regulation for environmental purposes. However, there has been no credible evidence that the proposal has any environmental basis. The aircraft targeted by the proposed regulation would be banned from some airports where noise has not been an issue. Furthermore, some non-hushkitted Chapter 3 aircraft, which would be allowed to fly under this proposal, are noisier than the hushkitted aircraft affected by the proposed regulation

The proposed regulation promotes European commercial interests rather than environmental interests by favoring EU airlines over U.S. airlines, prohibiting airlines from developing countries, and favoring EU manufacturers over U.S. and other non-European manufacturers. The proposed regulation will cost U.S. operators between $1 and $2 billion by disrupting investor expectations and making certificated aircraft significantly less valuable in the EU market. The regulation is expected to cost U.S. manufacturers over $1 billion in spare parts and engines sales. It will shrink the number of potential buyers for those aircraft and drastically reduce the value of affected aircraft. In addition, it may increase the cost of aircraft financing significantly, as financial institutions realize that the certification process can not be relied on to establish aircraft life expectancy.

The Committee further believes that the EU proposal unfairly discriminates against hushkit and U.S. aircraft manufacturers. Development of hushkit technology is U.S.-based; essentially all hushkits are U.S. manufactured and the overwhelming majority of

the business is conducted by U.S. companies. There are no European manufactured hushkitted aircraft. The proposed regulation does not affect any European aircraft or aircraft engine manufacturer.

The Committee believes that the EU proposal seriously undermines ICAO's broad applicability and purpose to set international aviation standards to which all member countries abide, and will result in a patchwork of regional regulations that could dramatically disadvantage the U.S. aviation industry. Specifically, by imposing a regional noise standard, the EU severely undercuts ICAO's efforts to address environmental issues on a uniform international basis and current ICAO efforts to draft Chapter 4 noise restrictions could potentially falter. ICAO explicitly rejected this EU proposal at its September 1998 assembly meeting. Airbus Industries, a European based aircraft manufacturer that could potentially benefit from this regulation, also is on record opposing its implementation for the above reasons.

REPORTED BILL

The Concorde is a civil supersonic transport category aircraft operated by both British Airways and Air France. It does not meet, and has been exempted from, Stage 3 environmental noise requirements for its U.S. operations. In fact, the Concorde does not even meet less stringent Stage 2 noise standards.

The reported bill would ban U.S. commercial operations of the Concorde if the European Union adopts its proposed regulations by restricting the U.S. commercial operations of civil supersonic transport category aircraft that do not meet current U.S. noise restrictions. In contrast, the EU proposal would restrict U.S. aircraft that meet current international noise restrictions. Other EU-based aircraft that meet Chapter 3 noise restrictions in the same way are not restricted by the EU's proposed regulation. The Committee believes that this bill is a fair and measured response to the EU's proposed action.

HEARINGS AND LEGISLATIVE HISTORY

H.R. 661 was introduced on February 9, 1999. The Committee has not held hearings on the reported legislation.

COMMITTEE CONSIDERATION

On February 11, 1999 the Committee on Transportation and Infrastructure met in open session and ordered the bill reported, without an amendment, by voice vote with a quorum present. There were no recorded votes taken during Committee consideration of H.R. 661.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each roll call 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. 661 reported. A mo-

tion by Mr. Duncan to order H.R. 661 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 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF THE LEGISLATION

Clause 3(d)2 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 XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII 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 3(c)(4) of rule XIII 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. 661.

3. With respect to the requirement of clause 3(c)(3) of rule XIII 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. 661 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 25, 1999.

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. 661, a bill to direct the Secretary of Transportation to prohibit the commercial operation of supersonic transport category aircraft that do not comply with stage 3 noise levels if the European Union adopts certain aircraft noise regulations.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for federal costs), and Lesley Frymier (for the private-sector impact).

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 661—A bill to direct the Secretary of Transportation to prohibit the commercial operation of supersonic transport category aircraft that do not comply with stage 3 noise levels if the European Union adopts certain aircraft noise regulations

H.R. 661 would require the Secretary of Transportation to prohibit the operation of civil supersonic aircraft to or from U.S. airports if the European Union adopts a final regulation affecting the use and sale of certain airline equipment retrofitted for noise control by American companies.

CBO estimates that enacting H.R. 661 would have no immediate impact on the federal budget, but the government could incur costs as the result of arbitration, litigation, or other efforts at dispute resolution in an international forum. It is possible that the federal government could be liable for damages, but CBO has no basis for predicting the likelihood or outcome of such proceedings. Pay-as-you-go procedures would apply because the bill could affect direct spending—if the United States has to pay damages and if it uses the permanent judgment fund appropriation for that purpose.

H.R. 661 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. By effectively banning the operation of Concorde aircraft at U.S. airports, H.R. 661 would impose a new private-sector mandate on British Airways and Air France, the operators of the Concorde. Based on information provided by the Department of Transportation, the Congressional Research Service, and industry sources, CBO estimates that the direct cost of the new private-sector mandate would not exceed the statutory threshold established in UMRA ($100 million in 1996, adjusted annually for inflation).

The CBO staff contacts are Deborah Reis (for federal costs), and Lesley Frymier (for the private-sector impact). This estimate was approved by Robert A. Sunshine, Deputy 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 3(d)(1) of rule XIII 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.

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