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TO AMEND TITLE 49, UNITED STATES CODE, TO PERMIT AIR CARRIERS TO MEET AND DISCUSS THEIR SCHEDULES IN ORDER TO REDUCE FLIGHT DELAYS, AND FOR OTHER PURPOSES

MAY 23, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

[To accompany H.R. 1407]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1407) to amend title 49, United States Code, to permit air carriers to meet and discuss their schedules in order to reduce flight delays, 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 all after the enacting clause and insert the following:

SECTION 1. SCHEDULING COMMITTEES, DISCUSSIONS, AND AGREEMENTS.

(a) IN GENERAL.—Chapter 401 of title 49, United States Code, is amended by adding at the end the following:

"§ 40129. Air carrier discussions and agreements relating to flight scheduling

"(a) DISCUSSIONS TO REDUCE DELAYS.—

"(1) REQUEST.—An air carrier may file with the Secretary of Transportation a request for authority to discuss with one or more other air carriers or foreign air carriers agreements or cooperative arrangements relating to limiting flights at an airport during a time period that the Secretary determines that scheduled air transportation exceeds the capacity of the airport. The purpose of the discussion shall be to reduce delays at the airport during such time period.

"(2) APPROVAL.—The Secretary shall approve a request filed under this subsection if the Secretary finds that the discussions requested will facilitate voluntary adjustments in air carrier schedules that could lead to a substantial reduction in travel delays and improvement of air transportation service to the public. The Secretary may impose such terms and conditions to an approval under this subsection as the Secretary determines are necessary to protect the public interest and to carry out the objectives of this subsection.

"(3) NOTICE.—Before a discussion may be held under this subsection, the Secretary shall provide at least 3 days notice of the proposed discussion to all air carriers and foreign air carriers that are providing service to the airport that will be the subject of such discussion.

"(4) MONITORING.—The Secretary or a representative of the Secretary shall attend and monitor any discussion or other effort to enter into an agreement or cooperative arrangement under this subsection.

"(5) DISCUSSIONS OPEN TO PUBLIC.—A discussion held under this subsection shall be open to the public.

"(b) AGREEMENTS.—

"(1) REQUEST.—An air carrier may file with the Secretary a request for approval of an agreement or cooperative arrangement relating to interstate air transportation, and any modification of such an agreement or arrangement, reached as a result of a discussion held under subsection (a).

"(2) APPROVAL.—The Secretary shall approve an agreement, arrangement, or modification for which a request is filed under this subsection if the Secretary finds that the agreement, arrangement, or modification is not adverse to the public interest and is necessary to reduce air travel delays and that a substantial reduction in such delays cannot be achieved by any other immediately available means.

"(3) SECRETARIAL IMPOSED TERMS AND CONDITIONS.—The Secretary may impose such terms and conditions on an agreement, arrangement, or modification for which a request is filed under this subsection as the Secretary determines are necessary to protect the public interest and air service to an airport that has less than .25 percent of the total annual boardings in the United States.

"(c) LIMITATIONS.—

"(1) RATES, FARES, CHARGES, AND IN-FLIGHT SERVICES.—The participants in a discussion approved under subsection (a) may not discuss or enter into an agreement or cooperative arrangement regarding rates, fares, charges, or in-flight services.

"(2) CITY PAIRS.—The participants in a discussion approved under subsection (a) may not discuss particular city pairs or submit to another air carrier or foreign air carrier information concerning their proposed service or schedules in a fashion that indicates the city pairs involved.

"(d) TERMINATION.—This section shall cease to be in effect after September 30, 2003; except that an agreement, cooperative arrangement, or modification approved by the Secretary in accordance with this section may continue in effect after such date at the discretion of the Secretary.".

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

"40129. Air carrier discussions and agreements relating to flight scheduling.".

SEC. 2. LIMITED EXEMPTION FROM ANTITRUST LAWS.

Section 41308 of title 49, United States Code, is amended—

(1) in subsection (b) by striking "41309" and inserting "40129, 41309,"; and

(2) in subsection (c)—

(A) by inserting "40129 or" before "41309" the first place it appears; and

(B) by striking "41309(b)(1)," and inserting "40129(b) or "41309(b)(1), as the case may be,".

PURPOSE

The purpose of H.R. 1407 is to reduce delays in departures and arrivals of aircraft at airports.

H.R. 1407, as reported, authorizes the Secretary of Transportation to approve limited antitrust immunity to airlines to meet and discuss their schedules under the supervision of the Department of Transportation (DOT).

The bill is a response to the congestion and delays that have plagued the aviation system in recent years. Between 1995 and 1999, FAA reported a 58% increase in flight delays. FAA data shows that in 2000, delays were up an additional 20% over 1999. According to the Bureau of Transportation Statistics, almost 40% of flights were delayed or canceled last December.

Last year was the worst on record for airline delays. Some fear that this summer could be as bad, if not worse.

In the long term, the solution to the flight delay problem is to increase capacity. This involves building new runways, modernizing the air traffic control system and redesigning the routes that aircraft fly. However, most of these solutions will likely take years to bear fruit. The Committee believes that action is needed now to help alleviate this problem.

The Committee is aware that some suggest using congestion or peak hour pricing to dampen demand or spread flights throughout the day in order to reduce delays. The reported bill does not adopt that approach. Higher fees would likely be passed on to passengers in the form of higher fares at a time when people some complain that fares are too high. Also, smaller airlines, new airlines, and airlines that serve small communities would likely be priced out of the market by higher fees. This would result in less competition and reduced service to small communities. Coordination of airline schedules, properly supervised by DOT, should not have these negative affects.

The immunity approach in H.R. 1407 is similar to the approach taken in 1984 and 1987. On August 31, 1984, the Civil Aeronautics Board issued order 84–8–129 granting antitrust immunity to airlines to meet and discuss their schedules. In 1987, the Department of Transportation (DOT) issued a similar grant of antitrust immunity. In both cases, the immunity allowed airlines to meet for the purpose of coordinating schedules and led to a reduction in delays. There is no indication that it led to less competition or higher fares. However, in 1989, DOT's antitrust immunity authority lapsed.

In April, FAA issued its Airport Capacity Benchmarks Report. These benchmarks show that during certain periods of the day, the number of scheduled flights exceeds the capacity of the airport while during other times there is room for additional flights. Under H.R. 1407, airlines could meet and discuss adjustments in their schedules to reduce these peaks and thereby reduce delays. There would not necessarily be any reduction in the total number of flights.

Some have expressed concern that this bill would be anticompetitive. However there are safeguards included in the bill to ensure that nothing improper occurs. The primary safeguard is that any airline meeting would have to be approved by DOT and monitored by DOT officials. Any agreement reached as a result of that meeting could not go into effect unless it is approved by DOT.

Others have expressed concern that this legislation would harm air service to small communities. Under current law, airlines are free to enter and leave markets as long as no community listed on an airline certificate in 1978 is left without any air service. Nothing in this bill is intended to change that.

Nevertheless, the Committee is aware that some small communities may feel that their air service would be particularly vulnerable under this legislation. It is important to note that the objectives of the bill can be achieved by adjusting the timing of the flights without actually eliminating any flights. However, in order to alleviate any concerns that may exist, the reported bill authorizes the DOT Secretary to impose terms and conditions on an airline schedule-adjustment agreement to protect the public interest or to protect air service to communities that are characterized as

small hubs or non-hubs. This is not intended to give the Secretary any new powers to require air service to small communities outside of the agreement.

On April 26, 2001, the Subcommittee held a hearing on H.R. 1407. At that time, the airlines and the air traffic controllers testified in support of the bill. In addition, the Air Line Pilots Association submitted a letter expressing its support for the legislation. At an earlier hearing on April 4, Secretary Mineta indicated that he supported the antitrust immunity approach.

SECTION-BY-SECTION SUMMARY OF H.R. 1407

Section 1 establishes a new Section 40129 in Title 49 of the U.S. Code.

Paragraph (a)(1) authorizes an airline to request from DOT authority to meet with other airlines or foreign airlines in order to discuss their schedules in an effort to reduce delays.

Paragraph (a)(2) authorizes the Secretary of DOT to approve any request filed under (a)(1) if the Secretary finds that the requested meeting would facilitate voluntary adjustments to airline schedules that could lead to a substantial reduction in travel delays. DOT can impose any conditions to this authorization.

Paragraph (a)(3) requires the Secretary to notify airlines and foreign airlines that are providing service to the airport affected of the proposed discussions at least 3 days in advance of those discussions.

Paragraph (a)(4) directs the Secretary or his representative to attend and monitor any airline discussion of their schedules.

Paragraph (a)(5) mandates that any scheduling discussions be open to the public.

Subsection (b) applies to any agreements reached as a result of the above discussions.

Paragraph (b)(1) authorizes an airline to file with the Secretary a request for approval of any agreement reached as a result of the scheduling discussions and any modification of such an agreement.

Paragraph (b)(2) authorizes the Secretary of DOT to approve any scheduling agreement if the Secretary decides that the agreement is not adverse to the public interest and is necessary to reduce delays and that the reduction cannot be achieved by any other immediately available means.

Paragraph (b)(3) authorizes the Secretary to impose any terms or conditions on any agreement approved under (b)(2) that are needed to protect the public interest and to protect air service to non-hubs and small hubs.

Subsection (c) sets forth the limitations on the discussions and agreements authorized above.

Paragraph (c)(1) states that the airlines cannot discuss their prices or in-flight services.

Paragraph (c)(2) states that the airlines cannot discuss specific city pairs.

Subsection (d) states that the authority under this bill shall terminate on September 20, 2003, except that any scheduling agreement reached before then may continue after that date at the discretion of the Secretary.

Section 2 amends section 41308 of Title 49 to authorize the Secretary of DOT to grant an exemption from the antitrust laws under

the circumstances specified in Section 1 above. Although section 41308 is in a chapter covering foreign air transportation, this amendment to section 41308 is intended to apply to domestic air transportation.

HEARINGS AND LEGISLATIVE HISTORY

On April 26, 2001, the Aviation Subcommittee held a hearing on H.R. 1407. Testimony was given by the Air Transport Association, the Regional Airline Association, and the National Air Traffic Controllers Association.

COMMITTEE CONSIDERATION

On May 16, 2001, the Full Committee met in open session and approved H.R. 1407 by voice vote.

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 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 on H.R. 1407.

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 LEGISLATION

Clause 3(c)(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 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 performance goals and objective of this legislation are to reduce departure and arrival delays of airlines.

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. 1407 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 18, 2001.

Hon. DON YOUNG,
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. 1407, a bill to amend title 49, United States Code, to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1407—A bill to amend title 49, United States Code, to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes

H.R. 1407 would exempt air carriers from antitrust laws through 2003, under certain conditions. Under the bill, air carriers could cooperate to limit flights at airports where scheduled flights exceed capacity if the Secretary of Transportation determines that such agreements would reduce travel delays and improve service to the public. H.R. 1407 would require that a representative of the Department of Transportation (DOT) monitor discussions among airlines for this purpose, and that any discussions be open to the public. The bill would not allow air carriers to discuss fares, services, or the city pairs involved with such flights.

Based on information from DOT, CBO estimates that the annual cost of monitoring discussions between air carriers would be negligible and subject to the availability of appropriated funds. H.R. 1407 would not affect direct spending or receipts; therefore, pay-as-you-go procedures do not apply. H.R. 1407 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact is Mark Hadley. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of 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.)

ADVISORY COMMITTEE STATEMENT

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

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.)

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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

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SUBTITLE VII—AVIATION PROGRAMS

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PART A—AIR COMMERCE AND SAFETY

SUBPART I—GENERAL

CHAPTER 401—GENERAL PROVISIONS

Sec.
40101. Policy.
* * * * * * *
40129. Air carrier discussions and agreements relating to flight scheduling.
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§ 40129. Air carrier discussions and agreements relating to flight scheduling

(a) DISCUSSIONS TO REDUCE DELAYS.—

(1) REQUEST.—An air carrier may file with the Secretary of Transportation a request for authority to discuss with one or more other air carriers or foreign air carriers agreements or cooperative arrangements relating to limiting flights at an airport during a time period that the Secretary determines that scheduled air transportation exceeds the capacity of the airport. The purpose of the discussion shall be to reduce delays at the airport during such time period.

(2) APPROVAL.—The Secretary shall approve a request filed under this subsection if the Secretary finds that the discussions requested will facilitate voluntary adjustments in air carrier schedules that could lead to a substantial reduction in travel delays and improvement of air transportation service to the public. The Secretary may impose such terms and conditions to an approval under this subsection as the Secretary determines are necessary to protect the public interest and to carry out the objectives of this subsection.

(3) NOTICE.—Before a discussion may be held under this subsection, the Secretary shall provide at least 3 days notice of the proposed discussion to all air carriers and foreign air carriers that are providing service to the airport that will be the subject of such discussion.

(4) MONITORING.—The Secretary or a representative of the Secretary shall attend and monitor any discussion or other effort to enter into an agreement or cooperative arrangement under this subsection.

(5) DISCUSSIONS OPEN TO PUBLIC.—A discussion held under this subsection shall be open to the public.

(b) AGREEMENTS.—

(1) REQUEST.—An air carrier may file with the Secretary a request for approval of an agreement or cooperative arrangement relating to interstate air transportation, and any modification of such an agreement or arrangement, reached as a result of a discussion held under subsection (a).

(2) APPROVAL.—The Secretary shall approve an agreement, arrangement, or modification for which a request is filed under this subsection if the Secretary finds that the agreement, arrangement, or modification is not adverse to the public interest and is necessary to reduce air travel delays and that a substantial reduction in such delays cannot be achieved by any other immediately available means.

(3) SECRETARIAL IMPOSED TERMS AND CONDITIONS.—The Secretary may impose such terms and conditions on an agreement, arrangement, or modification for which a request is filed under this subsection as the Secretary determines are necessary to protect the public interest and air service to an airport that has less than .25 percent of the total annual boardings in the United States.

(c) LIMITATIONS.—

(1) RATES, FARES, CHARGES, AND IN-FLIGHT SERVICES.—The participants in a discussion approved under subsection (a) may not discuss or enter into an agreement or cooperative arrangement regarding rates, fares, charges, or in-flight services.

(2) CITY PAIRS.—The participants in a discussion approved under subsection (a) may not discuss particular city pairs or submit to another air carrier or foreign air carrier information concerning their proposed service or schedules in a fashion that indicates the city pairs involved.

(d) TERMINATION.—This section shall cease to be in effect after September 30, 2003; except that an agreement, cooperative arrangement, or modification approved by the Secretary in accordance with this section may continue in effect after such date at the discretion of the Secretary.

SUBPART II—ECONOMIC REGULATION

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CHAPTER 413—FOREIGN AIR TRANSPORTATION

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§ 41308. Exemption from the antitrust laws

(a) * * *

(b) EXEMPTION AUTHORIZED.—When the Secretary of Transportation decides it is required by the public interest, the Secretary, as part of an order under section [41309] *40129, 41309,* or 42111 of this title, may exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.

(c) EXEMPTION REQUIRED.—In an order under section *40129 or* 41309 of this title approving an agreement, request, modification, or cancellation, the Secretary, on the basis of the findings required under section [41309(b)(1),] *40129(b) or 41309(b)(1), as the case may be,* shall exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.

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