

proposed to be made in connection therewith under the provisions of Section 3 hereof, together with copy of the order or other transfer instrument proposed to be executed by them.

(b) In connection with any particular action or actions under Section 1 of this order, the Director of the Office of Management and Budget may either waive the requirements of Section 4(a), above, or reduce the 30 day period there prescribed.

EX. ORD. NO. 11161. TRANSFER OF FEDERAL AVIATION AGENCY TO DEFENSE DEPARTMENT IN EVENT OF WAR

Ex. Ord. No. 11161, eff. July 7, 1964, 29 F.R. 9317, as amended by Ex. Ord. No. 11382, eff. Nov. 28, 1967, 32 F.R. 16247, provided:

WHEREAS Section 302(e) of the Federal Aviation Act of 1958 [see 49 U.S.C. 40107(b)] provides, in part, that in the event of war the President by Executive order may transfer to the Department of Defense any functions (including powers, duties, activities, facilities, and parts of functions) of the Federal Aviation Administration; and

WHEREAS it appears that the defense of the United States would require the transfer of the Federal Aviation Administration to the Department of Defense in the event of war; and

WHEREAS if any such transfer were to be made it would be essential to the defense of the United States that the transition be accomplished promptly and with maximum ease and effectiveness; and

WHEREAS these objectives require that the relationships that would obtain in the event of such a transfer as between the Federal Aviation Administration and the Department of Defense be understood in advance by the two agencies concerned and be developed in necessary detail by them in advance of transfer:

NOW, THEREFORE, by virtue of the authority vested in me by Section 302(e) (72 Stat. 746; 49 U.S.C. 1343(c)) [see 49 U.S.C. 40107(b)], and as President of the United States and Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense and the Secretary of Transportation are hereby directed to prepare and develop plans, procedures, policies, programs, and courses of action in anticipation of the probable transfer of the Federal Aviation Administration to the Department of Defense in the event of war. Those plans, policies, procedures, programs, and courses of action shall be prepared and developed in conformity with the following-described standards and conditions—

(A) The Federal Aviation Administration will function as an adjunct of the Department of Defense with the Federal Aviation Administrator being responsible directly to the Secretary of Defense and subject to his authority, direction, and control to the extent deemed by the Secretary to be necessary for the discharge of his responsibilities as Secretary of Defense.

(B) To the extent deemed by the Secretary of Defense to be necessary for the accomplishment of the military mission, he will be empowered to direct the Administrator to place operational elements of the Federal Aviation Administration under the direct operational control of appropriate military commanders.

(C) While functioning as an adjunct of the Department of Defense, the Federal Aviation Administration will remain organizationally intact and the Administrator thereof will retain responsibility for administration of his statutory functions, subject to the authority, direction, and control of the Secretary of Defense to the extent deemed by the Secretary to be necessary for the discharge of his responsibilities as Secretary of Defense.

SEC. 2. In furtherance of the objectives of the foregoing provisions of this order, the Secretary of Defense and the Secretary of Transportation shall, to the extent permitted by law, make such arrangements and take such actions as they deem necessary to assure—

(A) That the functions of the Federal Aviation Administration are performed during any period of national emergency short of war in a manner that will as-

sure that essential national defense requirements will be satisfied during any such period of national emergency.

(B) Consistent with the provisions of paragraphs (A), (B), and (C) of Section 1 of this order, that any transfer of the Federal Aviation Administration to the Department of Defense, in the event of war, will be accomplished smoothly and rapidly and effective operation of the agencies and functions affected by the transfer will be achieved after the transfer.

LYNDON B. JOHNSON.

§ 40108. Training schools

(a) AUTHORITY TO OPERATE.—The Administrator of the Federal Aviation Administration may operate schools to train officers and employees of the Administration to carry out duties, powers, and activities of the Administrator.

(b) ATTENDANCE.—The Administrator may authorize officers and employees of other departments, agencies, or instrumentalities of the United States Government, officers and employees of governments of foreign countries, and individuals from the aeronautics industry to attend those schools. However, if the attendance of any of those officers, employees, or individuals increases the cost of operating the schools, the Administrator may require the payment or transfer of amounts or other consideration to offset the additional cost. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1104.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40108(a)	49 App.:1354(d) (1st sentence). 49 App.:1655(c)(1).	Aug. 23, 1958, Pub. L. 85-726, §313(d), 72 Stat. 753. Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1963, Pub. L. 97-449, §7(b), 96 Stat. 2444.
40108(b)	49 App.:1354(d) (2d-last sentences). 49 App.:1655(c)(1).	

In this section, the word “Administrator” in section 313(d) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 753) is retained on authority of 49:106(g). The words “school or” are omitted because of 1:1.

In subsection (a), the words “officers and” are added for clarity and consistency in the revised title and with other titles of the United States Code. The words “to carry out duties, powers, and activities of the Administrator” are substituted for “in those subjects necessary for the proper performance of all authorized functions of the Administration” for clarity and consistency in the revised title.

In subsection (b), the words “officers and employees” are substituted for “personnel”, the words “departments, agencies, or instrumentalities of the United States Government” are substituted for “governmental”, and the words “governments of foreign countries” are substituted for “foreign governments”, for consistency in the revised title and with other titles of the Code. The words “courses given in”, “sufficient”, and “appropriate” are omitted as surplus. The text of 49 App.:1354(d) (3d sentence) is omitted as unnecessary because chapter 41 of title 5, United States Code, applies to all training of employees. The words “or both” are substituted for “(3) in part as provided under clause

(1) and in part as provided under clause (2)' to eliminate unnecessary words.

§ 40109. Authority to exempt

(a) AIR CARRIERS AND FOREIGN AIR CARRIERS NOT ENGAGED DIRECTLY IN OPERATING AIRCRAFT.—(1) The Secretary of Transportation may exempt from subpart II of this part—

(A) an air carrier not engaged directly in operating aircraft in air transportation; or

(B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

(2) The exemption is effective to the extent and for periods that the Secretary decides are in the public interest.

(b) SAFETY REGULATION.—The Administrator of the Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections¹ 40103(b)(1) and (2) of this title when the Administrator decides the exemption is in the public interest.

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, and sections 44909(a), 44909(b), and 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) LABOR REQUIREMENTS.—The Secretary may not exempt an air carrier from section 42112 of this title. However, the Secretary may exempt from section 42112(b)(1) and (2) an air carrier not providing scheduled air transportation, and the operations conducted during daylight hours by an air carrier providing scheduled air transportation, when the Secretary decides that—

(1) because of the limited extent of, or unusual circumstances affecting, the operation of the air carrier, the enforcement of section 42112(b)(1) and (2) of this title is or would be an unreasonable burden on the air carrier that would obstruct its development and prevent it from beginning or continuing operations; and

(2) the exemption would not affect adversely the public interest.

(e) MAXIMUM FLYING HOURS.—The Secretary may not exempt an air carrier under this section from a provision referred to in subsection (c) of this section, or a regulation or term prescribed under any of those provisions, that sets maximum flying hours for pilots or copilots.

(f) SMALLER AIRCRAFT.—(1) An air carrier is exempt from section 41101(a)(1) of this title, and the Secretary may exempt an air carrier from another provision of subpart II of this part, if the air carrier—

(A)(i) provides passenger transportation only with aircraft having a maximum capacity of 55 passengers; or

(ii) provides the transportation of cargo only with aircraft having a maximum payload of less than 18,000 pounds; and

(B) complies with liability insurance requirements and other regulations the Secretary prescribes.

(2) The Secretary may increase the passenger or payload capacities when the public interest requires.

(3)(A) An exemption under this subsection applies to an air carrier providing air transportation between 2 places in Alaska, or between Alaska and Canada, only if the carrier is authorized by Alaska to provide the transportation.

(B) The Secretary may limit the number or location of places that may be served by an air carrier providing transportation only in Alaska under an exemption from section 41101(a)(1) of this title, or the frequency with which the transportation may be provided, only when the Secretary decides that providing the transportation substantially impairs the ability of an air carrier holding a certificate issued by the Secretary to provide its authorized transportation, including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title.

(g) EMERGENCY AIR TRANSPORTATION BY FOREIGN AIR CARRIERS.—(1) To the extent that the Secretary decides an exemption is in the public interest, the Secretary may exempt by order a foreign air carrier from the requirements and limitations of this part for not more than 30 days to allow the foreign air carrier to carry passengers or cargo in interstate air transportation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers' reservations systems to the extent practicable;

(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

(C) review the exemption at least every 30 days (or, in the case of an exemption that is necessary to provide and sustain air transportation in American Samoa between the islands

¹ So in original. Probably should be "section".