Protection of Consumer Interests under the Federal Aviation Act

Bernard F. Diederich
PROTECTION OF CONSUMER INTERESTS UNDER THE FEDERAL AVIATION ACT

BERNARD F. DIEDERICH*

In this article Mr. Bernard Diederich draws upon his experience with the CAB’s Bureau of Enforcement to explain how the Board has worked to protect consumer interests. His presentation covers the extent of Board jurisdiction, the scope of its regulation, the enforcement tools it has available, and the use it makes of those tools. Mr. Diederich concludes that through the Office of Consumer Affairs and the Bureau of Enforcement the Board is working to promote consumer interests within the parameters of the Federal Aviation Act.

DRAFTED at a time when “Consumers' Rights” was not a battle cry but one of several interests to be accorded,¹ the Federal Aviation Act² nevertheless continues today as a piece of congressional legislation pregnant with implicit and explicit provisions to foster and protect the public's right to “adequate air transportation service at reasonable rates.”³ The Civil Aeronautics Board, created as a completely independent federal regulatory agency for the air

* B.A., 1965, St. Norbest College; J.D., 1970, Marquette University. Mr. Diederich is an Enforcement Attorney with the Bureau of Enforcement of the Civil Aeronautics Board. The opinion’s expressed are those of the author and do not necessarily represent the views of the CAB.

¹ For a full review of the legislative history and other background to the Civil Aeronautics Act of 1938, the forerunner to the present Federal Aviation Act of 1958, see Rhyne, CIVIL AERONAUTICS ACT ANNOTATED (1939); Westwood & Bennett, A Footnote to The Legislative History of the Civil Aeronautics Act of 1938 and Afterward, 42 Notre Dame Lawyer 309 (1967); cf. J. Goulden, The Superlawyers 32-37 (1971).


transportation industry by that legislation, has continuously supplemented the Act to meet the needs and problems of the traveling public. The Board's Bureau of Enforcement (hereinafter referred to as the Bureau) is in turn charged with the responsibility of developing and executing a program to obtain observance of the economic provisions of the Act and the various Board regulations. This article will explore the Bureau's functional role and activities in the discharge of its responsibilities and duties. Not only the consumer,

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4 See §§ 102 & 201 of the Federal Aviation Act of 1958 [hereinafter cited as the Act], 49 U.S.C. §§ 1301 & 1321 (1973). Throughout this article, citation will be made to the Act followed by the parallel citation in 49 U.S.C.

5 Under § 204(a) of the Act, 49 U.S.C. § 1324(a), as amended, the Civil Aeronautics Board [hereinafter cited as the CAB or alternatively the Board] is "empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, . . . , as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under, this Act."

6 See § 185.1 of the C.A.B. Manual (1974). The Bureau has further enforcement responsibilities with regard to "relevant provisions of the Clayton Antitrust Act and The Railway Labor Act, and all economic orders . . . and other requirements promulgated by the Board, to include internal and carrier accounting and statistical audits."

7 Protection of consumer interests at the CAB, of course, involves much more than the enforcement efforts of the Bureau. In a very real sense, all of the CAB's activities involve protection of consumer interests; some activities are more visible than others. The CAB, in its overall performance, is to be guided by the policy declarations given to it in the Act by Congress, which include, "[t]he encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States of the Postal Service, and of the national defense." § 102(a) of the Act, 49 U.S.C. § 1302(a). Further declarations include "[t]he regulation of air transportation in such a manner as to . . . foster sound economic conditions in, such transportation . . . ." § 102(b) of the Act, 49 U.S.C. § 1302(b). It should be noted that the CAB's regulatory responsibilities are primarily concerned with the economic life of an air carrier. This fact is most evident in the CAB's power to suspend, investigate, and ultimately reject an air carrier's passenger fares. It is the duty of every air carrier to "establish, observe, and enforce just and reasonable . . . fares," § 404(a) of the Act, 49 U.S.C. § 1374(a), and it is within the power of the CAB to review the "lawfulness" of any such fare, § 1002(g), (j)(1) of the Act, 49 U.S.C. § 1482(g), (j)(1). If, after a hearing, the Board is of the opinion that the fare is or will be "unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial," the Board may reject or cancel it, prescribing either a "lawful" one or a maximum or minimum fare, or preventing the future use of the fare. All alternatives are subject to certain foreign and domestic carrier restrictions. § 1002(d), (f), (g), (j)(1)(2) of the Act, 49 U.S.C. § 1482(d), (f), (g), (j)(1)(2). In reviewing a fare the CAB will take into consideration such factors as "the need in the public interest of adequate and efficient transportation . . . at the lowest cost consistent with the furnishing of such service." § 1002(e), (j)(5) of the Act, 49 U.S.C. § 1482(e)(2), (j)(5), as amended (1972). In addition, the CAB's procedural rules allow for formal comments, petitions, and complaints from the traveling public in substantive CAB
but the "airline bar" as well, have, at times, indicated a lack of understanding of Board enforcement functions and activities. It would benefit both groups to be more familiar with:

(i) the extent of the Board's enforcement jurisdiction, i.e. what persons the Board can take action against;
(ii) the extent of the provisions that the Board enforces, i.e. what the Board can compel those persons to do;
(iii) the extent of the Board's enforcement remedies, i.e. what "enforcement tools" the Board has available; and
(iv) the specific activities the Board has undertaken in this area, who has benefited from these activities, and what have they been protected from.

I. BOARD JURISDICTION OVER THE PERSON

The Act specifically defines "person" to mean "any individual, firm, co-partnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof." Notwithstanding this broad definition of person, the one person the Act is principally concerned with in regard to Board jurisdiction, is the "air carrier." An air carrier is briefly defined as any person who undertakes to engage in "air transportation." There are, however, numerous

proceedings. The Board's Rules of Practice in Economic Proceedings, 14 C.F.R. § 302 (1973) allow for the filing of complaints by any person against any present or proposed airline fare or other charge for the transportation, or any rule or practice affecting such a fare or charge. See 14 C.F.R. §§ 302.500-8. The Rules also provide that any interested person may petition the CAB to issue, amend, modify, or repeal any regulation of the Board. See 14 C.F.R. § 302.038. In resulting "rulemaking" actions, regardless of who initiates them, the CAB invariably invites comments from interested members of the public to gain the benefit of their views and arguments before making any final determination of the proposals.


§ 101(3) of the Act, 49 U.S.C. § 1301(3). Air Transportation is defined as "interstate, overseas, or foreign air transportation or the transportation of mail by aircraft." § 101(10) of the Act, 49 U.S.C. § 1301(10). This definition is in turn defined as "the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between certain defined geographical areas. § 101(21) of the Act, 49 U.S.C. § 1301(21). The term "common carrier," not defined in the Act, is an old and established expression that has been defined in numerous decisions of the Interstate Commerce Commission, the CAB, and the courts. Briefly, a common carrier is defined as one who holds himself out as ready and willing to undertake for hire the transportation of passengers or property from place to place, and so invites the patronage of the public. Stimson Lumber Co. v. Kunkendall, 275 U.S.
types and classes of air carriers. The term may first be divided into two general types, the “direct” air carrier and the “indirect” air carrier. The direct air carrier is a person who is generally engaged in the physical operation of the aircraft that is being utilized. The indirect air carrier, though also holding out and selling “air transportation” as a principal, is not physically operating the aircraft involved in the air transportation service.

Within the class of indirect air carriers are such persons as air freight forwarders, cooperative shippers associations, and char-

207, 211 (1927); Las Vegas Hacienda, Inc. and Price, 298 F.2d 430 (9th Cir. 1962), modifying and aff'g 31 C.A.B. 415 (1960), cert. denied, 369 U.S. 885 (1962); Blumenthal v. United States, 88 F.2d 522 (8th Cir. 1937); Alaska Air Transport v. Alaska Airplane Charter Co., 72 F. Supp. 609 (D.C. Alaska 1947); Fordham Bus Corp. v. United States, 41 F. Supp. 712 (S.D.N.Y. 1941); Smitherman & McDonald v. Mansfield Hardwood Lumber Co., 6 F.2d 29, 31 (W.D. Ark. 1925); United States v. Sioux City Stock Yards Co., 162 F. 556, 560 (N.D. Iowa 1908), aff'd 167 F. 216 (8th Cir. 1909); Intercontinental, U.S., Inc., 41 C.A.B. 583, 600-1 (1965); Seven Seas Airlines, Inc., 34 C.A.B. 45 (1961); Southeastern Aviation, Inc., 32 C.A.B. 1281 (1961); Hacienda Hotels-Motels, 26 C.A.B. 372 (1958); Pan American Ferry Flight Case, 18 C.A.B. 214, 218 (1953); Consolidated Flower Shipments, Inc.-Bay Area, 16 C.A.B. 804 (1953); Meteor Air Transport, Inc., 12 C.A.B. 384 (1951); Transocean Air Lines, Inc., 11 C.A.B. 350 (1950); Standard Air Lines, Inc., 10 C.A.B. 486 (1949); Page Airways, Inc., 6 C.A.B. 1061 (1946); Universal Air Freight Corp., 3 C.A.B. 698 (1942); Liederman Common Carrier Application, 41 M.C.C. 595 (1942); Tanner Motor Livery Common Carrier Application, 32 M.C.C. 387 (1942); U-Drive-It Co. of Pa., Inc., Common Carrier Application, 23 M.C.C. 799 (1940); Barrows Common Carrier Application, 19 M.C.C. 179 (1939); State v. Witthaus, 102 S.W.2d 99 (Mo. 1937). The scope of the Civil Aeronautics Board’s jurisdiction is essentially limited to those persons engaged in “air transportation.” The jurisdiction of the Federal Aviation Administration [hereinafter cited as the FAA], which also finds its authority within the Act, is much broader, basically involving the administration of safety regulation. The FAA's safety jurisdiction is couched in terms applying to those engaged in “air commerce,” which includes not only what is traditionally regarded as interstate and foreign commerce (physical movement of aircraft across state and international boundaries and the transportation within a single state of persons or property moving to or from another state), but also all transportation of mail, operation, or navigation within the limits of any federal airway, and any operation or navigation that may endanger safety in air commerce. § 101(4), (20) of the Act, 49 U.S.C. § 1301(4), (20).

10 The definition of an air carrier under the Act includes one, “who undertakes, whether directly or indirectly . . . to engage in air transportation. . . .” Section 101(3) of the Act (emphasis added).


13 A cooperative shippers association ships property for its account and in its name or for the account and in the name of its members on direct air carriers on a non-profit basis. 14 C.F.R. § 296.2(b).
ter operators who provide inclusive tour charters, overseas military personnel charters, travel group charters or study group charters. The Board has also found a number of travel agents, organizations, and individuals to be operating as indirect air carriers without requisite Board authority. The courts have upheld the Board's jurisdiction over persons within this latter group as indirect air carriers. There are over three hundred air freight forwarders authorized by the Board and there have been almost four hundred "filings" by various charter operators for 1973.

The direct air carriers are those commonly known as the "airlines." There are, however, numerous sub-classes. There are U. S. air carriers and there are foreign air carriers. There are air carriers who provide inclusive tour charters, overseas military personnel charters, travel group charters or study group charters. The Board has also found a number of travel agents, organizations, and individuals to be operating as indirect air carriers without requisite Board authority. The courts have upheld the Board's jurisdiction over persons within this latter group as indirect air carriers. There are over three hundred air freight forwarders authorized by the Board and there have been almost four hundred "filings" by various charter operators for 1973.

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14 C.F.R. § 378 provides exemption authority to a "tour operator" to furnish an "inclusive tour."

15 C.F.R. § 372 provides an "operating authorization" to be issued to a "charter operator" to furnish an "overseas military personnel charter."

16 C.F.R. § 372(a) provides exemption authority to a "charter organizer" to furnish a "travel group charter."

17 C.F.R. § 373 provides exemption authority to a "study group charter" to furnish a "study group charter."

18 See CAB Order No. 73-11-77 (Nov. 16, 1973); CAB Order No. 73-9-43 (Sept. 11, 1973); CAB Order No. 73-8-110 (Aug. 23, 1973); CAB Order No. 73-8-95 (Aug. 20, 1973); CAB Order No. 73-8-16 (Aug. 2, 1973); CAB Order No. 72-12-47 (Dec. 12, 1972); CAB Order No. 72-11-110 (Nov. 27, 1972); CAB Order No. 72-9-3 (Sept. 1, 1972); CAB Order No. 71-10-116 (Oct. 26, 1971); CAB Order No. 71-6-117 (June 23, 1971); CAB Order 71-5-39 (May 10, 1971); CAB Order No. 71-2-33 (Feb. 5, 1971); CAB Order No. 70-6-84 (June 12, 1970); CAB Order No. 70-5-105 (May 21, 1970); CAB Order No. 70-5-77 (May 12, 1970).

19 See Pan American World Airways, Inc. v. CAB, 392 F.2d 483 (D.C. Cir. 1968); Las Vegas Hacienda, Inc. v. CAB, 298 F.2d 430 (9th Cir. 1962); M & R Investment Co. v. CAB, 308 F.2d 49 (9th Cir. 1962); Consolidated Flower Shipments, Inc.-Bay Area v. CAB, 213 F.2d 814 (9th Cir. 1954); Truck Tours, Inc., 52 M.C.C. 373 (1951), aff'd sub nom. National Bus Traffic Ass'n v. United States, 143 F. Supp. 689 (D. N.J. 1956), aff'd, 352 U.S. 1020 (1957).

20 The Board recently listed 312 airfreight forwarders with interstate, international, or household goods authorization from the Board. List of Airfreight Forwarders prepared by the Board's Publications Services Section, September 1, 1973. There are also seventeen cooperative shippers associations that have filed with the Board their schedules or formulae used to compute charges to their members in order to obtain exemption authority to operate as provided by section 296.31 of the Regulations. Tariffs Section of the Board's Bureau of Economics.

During 1973, there were 232 inclusive tour, 83 travel group charter, and three study group charter filings at the Board. There are presently four overseas military personnel charter authorizations outstanding. Supplementary Services Division of the Board's Bureau of Operating Rights.

22 An air carrier (U.S.) is defined by the Act as, "any citizen of the United States who undertakes . . . to engage in air transportation." § 101(3) of the
riers that operate scheduled flights over designated routes and there are air carriers that only operate flights at times and to locations selected by their customers. There are air carriers that transport

Act, 49 U.S.C. § 1301(3). The Act defines a citizen of the United States as:
(a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions. § 101(13) of the Act, 49 U.S.C. § 1301(13).

A foreign air carrier is defined as, "any person, not a citizen of the United States, who undertakes . . . to engage in foreign air transportation. § 101(19) of the Act, 49 U.S.C. § 1301(19).

28 Certain air carriers have been granted authority by the Board, in the form of a “Certificate of Public Convenience and Necessity,” to conduct flight operations over certain routes. Such a certificate, issued under Section 401 of the Act, authorizes, as well as obligates, the carrier to provide service between designated points on the route. An air carrier providing such a transportation service is generally referred to as a “scheduled” air carrier (or, colloquially, as one of the “skeds”). The passenger is provided the transportation on an individually-ticketed basis. There are presently thirty-five scheduled air carriers certificated by the Board. List of U.S. Air Carriers, prepared by the Board's Publications Services Section, September 1, 1973. The Board also grants authority to foreign air carriers in the form of “permits” to engage in scheduled “foreign air transportation,” i.e. air transportation between “a place in the United States and any place outside thereof.” § 101(21) of the Act, 49 U.S.C. § 1301(21).

In addition to the scheduled air carriers that operate regularly scheduled service (as well as charter flight operations), there is a class of carriers authorized by the Board to operate only charter flight services. These carriers, known as “supplemental air carriers” (or commonly referred to as “the charter carriers”), have been authorized to operate “planeload” flights on a prearranged, though non-scheduled basis to any points within broad geographical areas designated by the Board. SupPLEMENTAL AIR CARRIERS generally provided the transportation as a member of a larger group that has contracted for the use of the plane. The supplemental air carriers, holding certificates issued under section 401(d)(3) of the Act, 49 U.S.C. § 1371(d)(3), or a special operating authorization issued under section 417 of the Act, 49 U.S.C. § 1387, provide such flight services as: pro rata (affinity), single entity (own use), or mixed charters provided for by Part 208 of the Regulations; travel group, study group, inclusive tour, or overseas military personnel charters as provided for by 14 C.F.R. §§ 372a, 373, 378, or 372 respectively. The scheduled air carriers can also provide such charter services as provided by 14 C.F.R. §§ 207, 372, 372a, 373, and 378 of the Regulations. In addition, the scheduled air carriers may provide a type of air transportation known as a “special service.” § 401(e)(6) of the Act, 49 U.S.C. § 1371. See also 14 C.F.R. §§ 207.1 & 207.8. There are presently twelve supplemental air carriers certificated by the Board. List of Supplemental Air Carriers, prepared by the Board's Publications Services Section, September 1, 1973.

The Board also grants authority, similar to that described above for U.S. carriers, to foreign air carriers and foreign air carriers authorized to engage in charter transportation only (the so-called “foreign supplemental carriers”). This
only property and mail, those that transport only persons and property, and those that transport persons, property, and mail. There are air carriers whose flights operate over broad domestic routes, others that extend to international points, and others that serve only limited geographical areas. There are more than 4,200 of these air carriers, U.S. and foreign, direct and indirect, over which the Board has regulatory responsibilities.

In addition to air carriers, the Board has jurisdiction, albeit very limited, over "ticket agents." There are more than seven thousand travel agents in the United States who represent scheduled air carriers and sell travel and services offered by those air carriers.
The Board also requires reports and filings from certain persons who are not otherwise under any Board requirement. Any person who owns more than five percent of any class of the stock of an air carrier must periodically report that fact and certain other information to the Board. Banks and brokers holding more than five percent of a carrier's stock must also report to the Board. An "affiliate" of an air carrier must report to the Board. The Board may also require certain corporate officers or directors involved in interlocking relationships subject to Board approval to submit reports to the Board.

II. Economic Regulation

Because the Board's *raison d'être* involves the encouragement and development of an economically sound air transportation system adopted to serve the present and future needs of the United States, it follows that the Board is concerned with both the financial health of U. S. air carriers and the service they render to the public. It is also worthy of note that the Board's regulatory responsibilities, vis à vis the U. S. air transportation system, must also take into account the "present and future needs . . . of the Postal Service, and of the national defense."

The carriers themselves are of course private corporations many of which have issued stocks in the company to the public and which trade on the open stock exchanges. They function in most respects as any other corporation, with the distinction that areas of their

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27 14 C.F.R. § 245; see also § 407 of the Act, 49 U.S.C. § 1377. The Civil Aeronautics Board has recently shown how a regulatory commission, without new legislation can get behind inaccurate and misleading ownership reports to the Federal Government and require quarterly reports from institutional investors.


28 An "affiliate" is a person that has "direct or indirect control over" an air carrier. A person who owns directly or indirectly ten percent or more of the stock of the air carrier is presumed by the Board to be an "affiliate" of the carrier. 14 CFR § 246. See also § 408(f) of the Act, 49 U.S.C. § 1378(f).

29 See § 407(c) of the Act, 49 U.S.C. § 1377(c) and 14 C.F.R. § 245.1 requiring each officer and director of each air carrier to file certain stock ownership reports with the Board. See also 14 C.F.R. § 251.

30 See note 7 supra.

31 § 102(a) of the Act, 49 U.S.C. § 1302(a).
The Act not only subjects air carriers to economic regulation administered by the Board, but also to safety regulation administered by the Federal Aviation Administration. See Title IV & Title VI of the Act, 49 U.S.C. §§ 1380-87 & §§ 1421-1430.

The Board recently instituted an investigation into the relationships between airlines and various investment entities to determine whether and in what manner large equity holders, substantial creditors, prime lessors, and interlocking directors may influence airline managements and, in light of that, whether any such persons individually or jointly control any airline. Institutional Control of Air Carrier Investigation, CAB Order No. 74-1-132 (Jan. 25, 1974).

The consumer is protected not only from gouging, but also from rebating that may later result in higher fares for all. § 403(b) of the Act, 49 U.S.C. § 1373(b); 14 C.F.R. § 221.3.
transportation it provides at a duly authorized point. An air carrier may not give any "undue or unreasonable preference or advantage" to any person or point it serves nor, on the other hand, may it subject any person or point to any "unjust discrimination or any undue or unreasonable prejudice or disadvantage." Under section 411 of the Act the Board was also given a residual grant of power to investigate and determine whether any air carriers, foreign air carriers or ticket agents have been or are "engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof." If the Board should find,

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26 § 404(a) of the Act, 49 U.S.C. § 1374(a); 14 C.F.R. § 302.700 et seq. for the special rules applicable to adequacy of service proceedings. Congress did not define the term "adequate" service but left it as a relative expression to be construed on an ad hoc basis. In construing the term, the Board considers such factors as the size of the communities involved, the extent of the demand for service, the cost of providing the service, and the convenience of the traveling public. See 27 C.A.B. 260, 291-93.


28 Section 411 of the Act, 49 U.S.C. § 1381, empowers the Board to investigate and ultimately order a stop to those practices of U.S. air carriers, foreign air carriers, and ticket agents that are found to be injurious to competition or may tend to deceive the traveling public or impair its ability to make the "best" choice or purchase. Section 411 however, cannot be invoked for the vindication of purely private rights, but only when the "public interest" is involved and the interest is one that is sufficiently "specific and substantial." American Airlines, Inc. v. North American Airlines, Inc., 351 U.S. 79, 83 (1956). A single, isolated instance may not be actionable under Section 411. Eastern Airlines Overbooking Enforcement Proceeding, 30 C.A.B. 862, 864 (1960); but see Eastern Airlines, Inc. v. Nation-
after notice and hearing, that these persons are engaged in such practices or methods of competition, it may order them to "cease and desist" from those practices.

The Board Regulations established pursuant to the Act contain new, or in some cases, more detailed requirements for air carriers to observe. Although not found in the Act, the Regulations establish a right in each passenger and a duty on the part of each air carrier for tender of "denied boarding compensation" under certain conditions, to any passenger holding a confirmed seat on a flight from which he is "bumped" due to oversales.

The area of economic regulation where the Board has been

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8 See § 204(a) and 416(a) of the Act, 49 U.S.C. §§ 1324a, 1386a (1970).

9 See 14 C.F.R. § 250 for a full treatment of the conditions necessary before the compensation can be paid. It is generally necessary that the flight be one on a U.S. scheduled air carrier, originating or terminating in the U.S.; that the passenger have a confirmed reserve space on the flight and present himself for carriage at the appropriate time and place, and comply with the carrier's requirements as to ticketing, check-in, and reconfirmation procedures, and otherwise be acceptable for transportation under the carrier's tariff; that the flight's departure without him not stem from either a government requisition of space or the carrier's substitution of an aircraft of lesser capacity due to "operational and/or safety reasons"; and that the carrier be unable to provide the passenger with comparable air transportation to his next stopover on his trip in two hours or less for domestic flights or four hours or less for international flights. The compensation tendered will be for the full value of the flight to the next stopover but no less than $25 nor more than $200. Of course, the passenger can refuse the carrier's tender of compensation to liquidate all damages and seek his own redress. See Nader v. Allegheny Airlines, Inc., 12 CCH Av. L. Rep. 18,146 (D.D.C. 1973). The court awarded Mr. Nader $10.00 in compensatory damages and $25,000.00 as punitive damages. The judgment has been appealed by the defendant carrier. In addition to the tender of denied boarding compensation, the carrier is first required to give each passenger denied boarding a written statement explaining the regulation in question.

The Board has recently proposed certain amendments in its denied boarding compensation rules (Part 250) that would, if adopted, provide for such changes as tripling the current levels of denied boarding compensations. Order Instituting Investigation; Tentative Findings and Conclusion; and Notice of Proposed Rulemaking, CAB Order No. 73-12-93 (1973), Regulation EDR-260 (Dec. 21, 1973).
most active in recent years, establishing new provisions and amend-
ing old ones to adjust to changing conditions and to meet new
problems (all of which had a direct effect on the traveling public)
is that of "charter flights." In the past few years, the public has
indicated its strong desire for low cost vacation travel, especially
in the transatlantic market.\textsuperscript{40} While charter air transportation had
the potential to mollify that desire, it was generally available only
to so-called "affinity" groups.\textsuperscript{41} Various individuals saw the chance
to profit by illegally organizing their own groups for the low cost
charters and, wittingly or unwittingly, involving the carriers in
supplying the air transportation to the bogus groups at charter
rates. The Board reacted with strong enforcement action.\textsuperscript{42} It also
amended the charter regulations to enable itself, as well as the
carriers, to better monitor the charter organizations seeking trans-
portation and the flight programs operated for them.\textsuperscript{43} Because the
illegal flight operations often resulted in loss of customers' deposits
and, at times, the stranding of passengers in Europe, additional
amendments were made in the charter regulations to alleviate
these pitfalls for the consumer.\textsuperscript{44} And the Board, in recognition

\textsuperscript{40} Between 1968 and 1972 the number of international passenger charter flights
has slightly more than doubled. During the same period the number of inter-
national charter seats flown has nearly tripled. See Charter Policy and Negotia-
tions Unit, Bureau of International Affairs Civil Aeronautics Board U.S. Inter-

\textsuperscript{41} The basic type of charter flight, the "pro-rata charter," was generally one
that operated only for groups formed for purposes other than travel and whose
members have a sufficient prior "affinity" among each other to distinguish them
from members of the general public. The flight may not be held out to the general
public and persons who have not been a member of the group for six months or
more may not participate in the flight. The cost of the flight is to be pro-rated
equally among the flight participants.

\textsuperscript{42} Initiating an expanded charter flight enforcement program, in the first six
months of 1970 the Bureau filed thirteen complaints naming seventy-nine re-
spondents, all of whom were involved in charter flight violations. See Dockets
21836-21842, 22307-22312.

\textsuperscript{43} Part 208 of the Regulations, which contains the charter flight regulations
for supplemental air carriers, was amended by the Board fourteen times during
the period from January 1968 to the present. Similar amendments were generally
made to the Board's other charter regulations for U.S. scheduled, foreign, and
foreign "supplemental" air carriers at Parts 207, 212, and 214 of the Regulations,
respectively.

\textsuperscript{44} The Board's charter regulations provide for protection of customers' de-
posits against defalcation or insolvency by the carrier or its agent to whom ad-
vance charter funds have been given through the establishment of an escrow ac-
count or a surety bond. Claims against the escrow or under the bond can be
of factors like the public demand for low-cost charter transportation and the problems with policing compliance with the affinity charter rules, established a new class of charter available to all of the public, namely, the travel group charter.\textsuperscript{45}

The Board has several other unheralded regulations that directly relate to the consumer. The Board, through the powers granted to it under section 411 of the Act, polices airline advertising to insure against unfair, deceptive, or misleading content. The Board recently enacted a new set of regulations requiring that all U.S. certificated air carriers establish "no-smoking" areas for each class of service on all of their flights.\textsuperscript{6} The Board undertakes such little known activities as reviewing proposals by any air carrier for the issuance of a name or a change in name to insure that the proposed name is not one that will result in public confusion with an existing carrier.\textsuperscript{47} The Board engages in such other activities in the interest of the consumer as insuring compliance by air carriers with Titles I and VI of the Consumer Credit Protection Act (the Truth in Lending Act and the Fair Credit Reporting Act, respectively) to enable consumers to protect themselves against made with respect to nonperformance of the air transportation. See 14 C.F.R. §§ 207.17, 208.40, 212.15, 214.9c (1973).

Because provisions for the return flight of charters abroad were at times not properly made, passengers were stranded although they had paid for a return flight to the U.S. From very rough estimates of the number of people stranded abroad, the following figures suggest that the problem has subsided:

<table>
<thead>
<tr>
<th>Year</th>
<th>Persons</th>
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<tbody>
<tr>
<td>1968</td>
<td>140</td>
</tr>
<tr>
<td>1969</td>
<td>825</td>
</tr>
<tr>
<td>1970</td>
<td>1,550</td>
</tr>
<tr>
<td>1971</td>
<td>2,200</td>
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<td>1972</td>
<td>2,000</td>
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<tr>
<td>1973</td>
<td>300</td>
</tr>
</tbody>
</table>

See D. INOUYE, SENATE COMMITTEE ON COMMERCE REPORT, TRAVEL AGENTS REGISTRATION S. REP. NO. 93-458, 93rd Cong., 1st Sess. 4-6 (1973).

In mid-1972 the Board instituted new charter rules requiring that a carrier that had been engaged to provide only one-way transportation from the U.S. in connection with a pro rata charter trip originating in the U.S., shall ascertain, before providing such transportation, that the carrier which is to perform the return flight has received full payment of its charges therefor. See 14 C.F.R. §§ 207.25, 208.202b, 212.25, 214.18 (1972).


\textsuperscript{46} See Provision of Designated No-Smoking Areas Aboard Aircraft Operated by Certificated Air Carriers, 14 C.F.R. § 252 (1973).

\textsuperscript{47} See Names of Air Carriers and Foreign Air Carriers, 14 C.F.R. § 215 (1973).
arbitrary, erroneous, and malicious credit information and requiring greater standards of care in the issuance of unsolicited credit cards.\textsuperscript{48} The Board applies various price stabilization criteria to each increase in rates, fares, and charges for services proposed by any air carrier.\textsuperscript{49} The Board has a regulation that establishes stringent requirements for all certificated air carriers with respect to the extension of unsecured credit for campaign transportation to any candidate seeking federal office.\textsuperscript{50} The Board has a regulation that requires that each air carrier post and make available for public inspection at each of its stations or offices selling tickets, all of the tariff publications applicable to passenger traffic to or from that point, including tariffs covering any terminal services, charges, or practices. No reason need be given for examination of the tariffs, and further, the carriers' employees are required to give the inquirer any desired information contained in the tariffs and lend him any needed assistance in examining them.\textsuperscript{51}

III. ENFORCEMENT TOOLS

In the resolution of its enforcement actions, the Bureau, mindful of such factors as the "administrative lag" in full agency proceedings,\textsuperscript{89} employs a full range of measures to effect observance of the provisions it enforces.

A potential enforcement problem may first come to the attention of the Bureau from one of several different sources. A letter

\textsuperscript{48} Implementation of the Consumer Credit Protection Act with Respect to Air Carriers and Foreign Air Carriers, 14 C.F.R. § 374 (1973). (This regulation deals with the Truth in Lending Act and the Fair Credit Reporting Act).

\textsuperscript{49} By Part 229 of the Regulations, Special Provisions Under Price Stabilization Program, the Board established criteria to be applied in reviewing proposed increases in transportation fares, rates, and charges for service in conjunction with the Price Commission and Cost of Living Council. When the air transportation industry was exempted from coverage of the Cost of Living Council and Price Commission directives, Part 229 was repealed. See Regulation ER-823 adapted September 21, 1973. The Board, however, continues to apply these criteria together with its own to any fare changes. (see provisions at section 221.165 of the Regulations and ratemaking norms established in such cases as the Domestic Passenger-Fare Investigation, Docket 21866).

\textsuperscript{50} Regulations Pursuant to section 401 of the Federal Election Campaign Act of 1971 with Respect to Extension of Credit by Air Carriers to Political Candidates, 14 C.F.R. § 374a (1973).

\textsuperscript{51} See 14 C.F.R. § 221.70 et seq. (1973).

\textsuperscript{89} See Cramton, Causes and Cures of Administrative Delay, 58 A.B.A.J. 937 (1972).
from the public (ranging from an irate complaint letter to a casual note), a referral from another government agency or an industry group, a formal complaint by a competing air carrier, or an independent Bureau investigation are sources of Bureau input. Once the information arrives at the Bureau, depending on its type and after an appraisal of the magnitude of the problem and the need for further information, it may be handled by one of the Bureau's two operating divisions; the Investigation & Audit Division, or the Legal Division (Litigation/Compliance). Again, depending on the nature of the problem, it may be resolved by one of several different "enforcement tools." Some problems can be remedied by a mere letter of inquiry, a short telephone call, or a telegram. An indication of Bureau interest and an explanation of the regulations applicable to the conduct in question will often correct the problem without need for anything more. When the activity is more complex and widespread, a field investigation followed by Bureau correspondence and office conferences with the parties and/or their legal counsel may be needed to resolve the issue under review. A letter of reprimand may then "close the case." When these lesser measures are not appropriate or cannot be utilized, the Bureau does have more formal enforcement measures. When on the basis of verified information (before it), the Bureau has "reasonable grounds to believe" that the Act or "any rule, regulation, order, limitation, condition or other requirement established pursuant thereto, has been or is being violated" and that "investigation of any or all of the alleged violations is in the public interest," it may institute an "economic enforcement proceeding." Any respondent named in the complaint must file within

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60 Section 302.206 of the Regulations. In certain instances, the Board itself may order that an enforcement proceeding be instituted; e.g., Flying Tiger Line, Inc., CAB Order No. 73-8-7 (1973). An enforcement proceeding, however, is generally instituted by the docketing of a Petition for Enforcement by the Director of the Bureau in which he finds reasonable grounds to believe the Act has been violated as alleged in an attached complaint. The complainant is either one written and verified by a Bureau enforcement attorney on the basis of the Bureau staff's investigation of the matter or by a "third party complaint." Any person may file a formal complaint (referred to then as a "third party complaint") with the Bureau regarding anything done or omitted to be done by any person in contravention of any economic regulatory provision of the Act, or any rule, regulation, order, limitation condition, or other requirement established thereto. 49 U.S.C. § 1482 (1970); 14 C.F.R. § 302.201. The formal complaint must be subscribed, verified, and filed (executed original and 19 copies) with the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. The complaint must
fifteen days an answer which shall "fully and completely advise the parties and the Board as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint" or state that he is "without knowledge" of the allegation. Failure of the respondent to answer the complaint would place him in default and allow the Board, in its discretion, to "enter such order as may be appropriate" without further notice or hearing.

After a formal complaint and answer have been filed, the case will be set for a hearing before a Board Administrative Law Judge. Of course, at any stage of the proceeding prior to a final decision, the respondent may submit "offers of settlement or proposals of adjustment." Such offers generally take the form of a "Stipulation of Facts and Consent to the Issuance of an Order to Cease and Desist." Such offers may be, and often are, made before the filing of a formal complaint and thus avoid the need for any complaint. The language and terms of the stipulation may be modified until a version is agreed to by the Bureau and the respondent. Then the agreement will be submitted to the Board for its final approval. If the Board accepts the agreement, an order to cease and desist (commonly referred to as a C&D order) will be issued against the respondent, disposing of the case.

When no settlement offers are made or agreed to by the parties, the case will go to a hearing before an Administrative Law Judge. After a presentation of the complainant's evidence (through witnesses and exhibits presented by either a Bureau enforcement attorney or counsel for the third-party complainant) and whatever presentation the respondent makes in defense of his position, the hearing will be closed and the parties will submit briefs setting

also be served upon all respondents named in the complaint and a certificate attesting to same attached thereto. 14 C.F.R. §§ 302.3, 302.4, 302.8, 302.204(a). The filing of a formal complaint does not, in itself, result in the institution of an enforcement proceeding and hearing unless and until the Director of the Bureau docket his Petition for Enforcement with respect to the complaint. If after review of the complaint the Director decides not to institute an enforcement proceeding on the basis of the third party complaint, he will so inform the complainant by a "letter of dismissal" that is deemed an order of the Board unless review is requested by the complainant or by the Board itself. 14 C.F.R. § 302.205.

54 14 C.F.R. § 302.207.
55 14 C.F.R. § 302.208.
forth their respective arguments. After consideration of those briefs, the judge will issue an "initial decision" setting forth his conclusions on the merits of the case. Unless review of the decision by the Board is requested by one of the parties or the Board undertakes its own review, the judge's decision will become effective as a final order of the Board thirty days after it is served. Generally, the decision will either direct dismissal of the Bureau's complaint or grant the relief requested, which is usually an order to cease and desist from future activities which may be in violation of the Act.

The C&D order may be viewed as a non-executing, administrative injunction that represents a finding by the Board that the respondent's past conduct under the existent circumstances was in violation of the Act or other requirements, and that it being necessary in the public interest, the respondent is directed to halt any present, and refrain from any future violations by avoiding similar future activities. If the respondent violates the C&D order it is liable for a civil penalty of $1,000 for each violation, and is subject to a federal court injunction. In addition, the C&D order serves to inform others, in details beyond the language of the specific regulation, of just what activities and circumstances were found to violate such regulations. That may be especially useful when the finding of a violation involves the special expertise of the Board and is based upon a case by case review of all the facts and circumstances involved (e.g., an unfair or deceptive practice or unfair method of competition under section 411 of the Act, or the existence of a common carrier by air).

In addition to or in lieu of enforcement action seeking a C&D order, the Bureau may seek "civil penalties" from the respondent. Any person, who violates any provision of the Act, any rule, regulation, or order of the Board issued pursuant to it, or any provision

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58 In cases when the judge's decision involves the amendment, suspension, or revocation of any terms, conditions, or limitations contained in any certificate of a U.S. air carrier in other than domestic air transportation or in the permit of a foreign air carrier, the approval of the President is required. Section 801 of the Act. In such cases, the judge's decision would only be a "recommended decision" and would not become a final Board decision with the lapse of any time period as may occur in an "initial decision."
59 14 C.F.R. § 302.27.
60 § 1002(c) of the Act, 49 U.S.C. § 1482(c) (1970).
in any operating permit or certificate issued by the Board is subject to a civil penalty of $1,000 for each violation.\(^{61}\) The civil penalty may be collected by a suit in federal district court similar to a suit in admiralty, although either party may demand trial by jury of any issue of fact.\(^{62}\) The actual suit would be prosecuted at the request of the Board by the United States Attorney in the appropriate district, with the approval of the Department of Justice.\(^{63}\)

When the Board determines that civil penalties should be imposed, it may advise the respondent that it is willing to accept a compromise amount in full settlement of the maximum statutory civil penalties for the violations charged.\(^{64}\) If the respondent agrees to pay the compromise amount, the civil penalty collection suit is obviated and the case can be closed.

In more flagrant situations the Board may choose to seek "criminal penalties" under authorization granted in section 902 of the Act. By that section, "any person who knowingly and willingly violates" a provision of the Act, any rule, regulation, or order of the Board, or any provision of its operating certificate or permit, shall be deemed guilty of a misdemeanor and subject to fines and/or imprisonment.\(^{65}\) The criminal suit would be prosecuted at the request of the Board by the United States Attorney in the appropriate district court, with the approval of the Department of Justice.

The Board has also been granted specific statutory authority to seek a federal court injunction against any person who violates any provision of the Act, any rule, regulation, or order of the Board, or any provision of its operating certificate or permit.\(^{66}\) The injunction

\(^{61}\) § 901 of the Act, 49 U.S.C. § 1471. A bill was recently introduced to increase the Board's civil penalty limit to $25,000 per violation. S. 1066, 93rd Cong., 1st Sess. (1973).

\(^{62}\) § 903(b)(1) of the Act, 49 U.S.C. § 1473(b)(1) (1970). When an aircraft is involved in a violation committed by the owner or person in command for which a civil penalty may be imposed, the Board may also authorize a law enforcement officer or an FAA safety inspector to summarily seize the aircraft and then institute proceedings to enforce a lien against the aircraft for the penalty. §§ 901(b), 903(b)(2) of the Act, 49 U.S.C. § 1471(b), 1473(b)(2) (1970); 14 C.F.R. § 302.808.


\(^{66}\) § 1007(a) of the Act, 49 U.S.C. § 1487(a) (1970). See also CAB v. Aero-
tion suit, like the criminal penalty and civil penalty collection suits, is prosecuted by the U. S. Attorney with the approval of the Department of Justice. The Act also provides that when any person violates section 401(a) of the Act (prohibiting any person from engaging in "air transportation" without requisite Board authority) any "party in interest" may seek an injunction in the courts restraining that person from further violation of that provision. 67

Constituting what may be regarded as its ultimate enforcement tool is the Board's power to temporarily suspend or completely revoke a carrier's operating certificate. 68 This power is limited only to the extent that Presidential approval is required when the action involves a foreign air carrier or a U. S. air carrier in other than domestic air transportation. 69

Apart from the above-mentioned, more direct enforcement tools, the Bureau utilizes several other methods to aid and supplement its overall efforts. Bureau attorneys have prepared and filed through a U. S. Attorney amicus curiae briefs in federal court injunction suits brought by private parties when the action raised questions of Board policy and statutory interpretation. The briefs were offered to aid the court in determining the proper interpretation and application of terms and concepts found in the Act and the Board's Regulations. 70 The Bureau will from time to time issue "industry

68 See §§ 401(g), (n)(5), 402(f) of the Act, 49 U.S.C. §§ 1371(g), 1371(n)-(5), 1372(f), applicable to air carriers, supplemental air carriers and foreign air carriers, respectively. But see note 58, supra, for requirement of prior Presidential approval in certain cases.
69 See note 58 supra. This power of the Board is of course employed in only the most flagrant enforcement cases. See, e.g., Great Lakes Airlines, Inc., Enforcement Proceeding, 29 C.A.B. 1197 (1959); Twentieth Century Airline, Inc., Compliance Proceeding, 21 C.A.B. 133 (1955) Air America, Inc. and Flight School, Inc., Enforcement Proceeding, 18 C.A.B. 393 (1954); American Air Transport, Revocation Proceeding, 16 C.A.B. 294 (1952). Also note recent enforcement action against a foreign charter carrier in which the Bureau sought revocation of its operating permit: the action was ultimately resolved by the carrier agreeing to terminate all affinity charter flights; Laker Airways, Ltd., Enforcement Proceeding, CAB Order No. 73-7-30 (1973).
70 Any "party in interest," in addition to the Board, may seek an injunction for violations of 401(a) of the Act (see discussions, supra). See Board amicus curiae briefs in Monarch Travel Services, Inc. v. Associated Cultural Clubs, Inc., 466 F.2d 552 (9th Cir. 1972); cert. denied, 410 U.S. 967 (1973), for a discussion of Monarch, see 39 J. Air L. & Com. 463 (1973); Loomis Courier Service, Inc.
letters" to all air carriers or a class of them. These letters may describe an industry-wide problem or situation that has prompted the Bureau to request certain action, and they may put the carriers on notice of a Bureau position on a potential enforcement matter.\(^7\)

To aid it in its preliminary investigative efforts, the Bureau has several important tools. The Act provides that the Board:

\[
\text{shall at all times have access to all lands, buildings, and equipment of any carrier and to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept by air carriers . . . .} \quad 72
\]

The Bureau has been delegated the authority to "issue orders requiring air carriers to prepare and submit within a specified reasonable period, special reports, copies of agreements, records, accounts, papers, documents, and specified answers to questions . . . ."\(^73\)

The Bureau may also issue orders initiating informal, nonpublic investigations as distinguished from formal investigations and adjudicatory proceedings pursuant to Part 305 of the Regulations.\(^74\)

A "Part 305 investigation" may be utilized by the Bureau to compel disclosure of relevant information from any person to enable the Bureau to determine whether formal charges should be brought. Because the investigation is nonpublic, the persons involved can be protected from adverse publicity. This is particularly important in those cases in which the information obtained

\[^7\] See, e.g., letter dated January 5, 1970, subject: Procedures for investigation of En Route Passenger Complaints, that was sent to all U.S. certificated route passenger air carriers. The Bureau had received several passenger complaints charging air carriers with abusive treatment and discriminatory practices in removing them from flights without just cause and which, in certain cases, reflected overtones of racial prejudice. The Bureau advised the carriers to review their procedures for the handling of such incidents. Each carrier was requested to supply the Bureau with a copy of its procedures involving such matters. When a carrier was subsequently involved in an incident in which a passenger was unjustly removed from a flight and the carrier had not effected adequate rules regarding these removals, the Bureau followed up on the industry letter by filing a formal complaint that resulted in an Order to Cease and Desist against the carrier. See note 36 supra.

\[^72\] 407(e) of the Act, 49 U.S.C. § 1377(e) (1970). This section is further implemented by 14 C.F.R. § 240 (1973), Inspection of Accounts and Property.

\[^73\] 14 C.F.R. § 385.22(c)(1973). See CAB Order No. 71-3-166, (March 26, 1971), ordering an air carrier that had disregarded previous letter requests to submit various reports and copies of documents to the Bureau.

\[^74\] 14 C.F.R. § 385.22(c) (1973).
reveals that no violation of law has occurred, and that no public proceedings are necessary. Other procedural safeguards have been provided to insure that the rights of the individual are fully protected.

In an innovative effort by the Bureau to halt illegal activities before they develop into greater problems involving potential for disruption of travel plans and wider incrimination, a "preventive" enforcement program has been initiated. In certain situations, the Bureau may be able to identify the start of a growing enforcement problem and, with the cooperation and help of the carriers, travel agents, and others connected with it, alert everyone of the applicable Board regulations and the Bureau's resolve to pursue violators. Such undertakings by the Bureau can educate the uninformed, dissuade the opportunist, and identify, halt, and correct the illegal operator.

Beginning in September 1972, the Board established several Field Representative Offices throughout the United States. Each office is manned by a Transportation Industry Analyst whose function is to provide a "field presence" for the Board in a liaison, advisory, and investigative capacity. He serves as a public liaison to the Board, receiving industry and consumer complaints and recommendations, interpreting the economic provisions of the Act, the Board regulations and its rules and orders, and maintaining constant alertness to industry practices that warrant investigation or consideration by the Board. Offices are presently established in New York City, Anchorage, Miami, Dallas-Fort Worth, Los Angeles, and Chicago with another soon to be opened in Seattle.

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76 In the fall of 1972, the Bureau uncovered a number of questionable affinity charter programs to be operated in the New York City Irish charter market. The Bureau convened a meeting of various travel agents serving the Irish ethnic market and the scheduled air carriers serving Ireland, and proposed an organized, self-policing policy to eliminate any need for ex post facto enforcement action. See full text of the presentation in Travel Weekly, Dec. 12, 1972 at 54. Follow-up correspondence, telephone conversations, telegrams, and advisory opinions during the next six months regarding the charter-worthiness of various groups that had planned to operate "affinity" charters resulted in the carriers and/or groups deciding to cancel approximately 200 proposed flights. No formal enforcement action was found necessary to insure compliance with the Board's charter regulations.

77 CAB Press Release No. 73-220 and 73-221.
IV. Enforcement Activity

The Bureau has a present staff of eleven attorneys to institute and prosecute formal proceedings before the Board, to handle civil and criminal actions in the courts, and to treat informal complaints filed with the Board. The Bureau’s legal activity is supported by a staff of seasoned investigators, many of whom have had prior job experience in the aviation industry. With a total staff that has changed relatively little in size while the industry has grown from the piston aircraft era through the first generation jets to the present wide-bodied jets, the Bureau has enjoyed some success in encouraging an enviable compliance posture in the air transportation industry.

The Bureau’s enforcement activities are committed to protect not only the traveling public but also the shipping public, the towns and cities that have been awarded airline routes, and the carriers themselves. They are protected from acts and practices departing from those the Board established to insure the “promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices.” For the

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78 The Board’s Rules of Practice make specific provision for the filing of “informal complaints” that may involve “anything done or omitted to be done by any person in contravention of any provision of the act or any requirement established pursuant thereto . . . .” 14 C.F.R. § 302.200 (1973). The Bureau attorneys are also responsible for handling the many letters of inquiry from passengers, shippers, carriers, and others that raise legal questions of an enforcement nature.

79 The Bureau’s present six senior special agents have an average of twenty years experience with the Board which was preceded by an average of seven years experience with the airlines.

80 The Bureau’s predecessor, the Office of Compliance, was established independently in December 1948 after separating from the Office of the General Counsel. After a meager beginning with a total of thirteen persons, the Bureau staff ranged between approximately twenty-five and thirty-five from the 1950’s to recent times. The force was composed of approximately six to eight staff attorneys and five to seven investigators throughout that period.

In July 1973 the Bureau’s staff was substantially increased with the addition of about thirty-five personnel from the Board’s auditing division. The transfer was aimed at providing better consumer protection and more adequate surveillance of industry practices to assure compliance with Board regulations. The move was made to enable the Bureau to broaden its activities into areas that had not been possible before due to the limited investigative staff, and additionally to provide the consumer with the opportunity to receive a prompter federal response to complaints of illegal carrier activity than was theretofore possible. CAB Press Release No. 73-119.

81 § 102(c) of the Act, 49 U.S.C. § 1302(c) (1970).
most recent fiscal year, FY '73, the Bureau recorded increases of approximately forty percent over the previous year in both formal actions initiated and formal actions concluded. But beyond the summary statistics, the Bureau's enforcement program was composed of specific actions that were prosecuted not only to halt violations of the Act, but also to deal with those problems with the greatest potential for harm to the public and the industry. In the recent past, the Bureau has taken formal enforcement action against various carriers, travel agents, and others to remedy such situations as: the removal of a passenger from his flight without just cause; 83 the sale and operation of overseas tours under terms, restrictions, and conditions that did not conform to those in promotional materials or that were improper in other regards; 84 the

<table>
<thead>
<tr>
<th>Formal Actions:</th>
<th>FY '72</th>
<th>FY '73</th>
<th>Increase</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initiated</td>
<td>55</td>
<td>78</td>
<td>23</td>
<td>42%</td>
</tr>
<tr>
<td>Concluded</td>
<td>63</td>
<td>89</td>
<td>26</td>
<td>41%</td>
</tr>
</tbody>
</table>

A "formal action" is defined to include any formal Bureau enforcement proceeding, civil penalty proceeding, court injunction suit, amicus brief filing, or third party complaint proceeding.

During FY '73, the Bureau also obtained increases in the following categories:

<table>
<thead>
<tr>
<th>Formal Actions:</th>
<th>FY '72</th>
<th>FY '73</th>
<th>Increase</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bureau Complaints Filed</td>
<td>7</td>
<td>22</td>
<td>15</td>
<td>214%</td>
</tr>
<tr>
<td>C&amp;D Orders Issued</td>
<td>13</td>
<td>33</td>
<td>20</td>
<td>154%</td>
</tr>
<tr>
<td>Civil Penalties Collected</td>
<td>15</td>
<td>23</td>
<td>8</td>
<td>53%</td>
</tr>
</tbody>
</table>

Amount of Civil Penalties Collected $202,850 $410,900 $208,050 103%

The Board has become both more active and firm in protecting consumer interests. This historical change is reflected in Board philosophy and staff organization and in enforcement activity. The Board's increase in civil penalty collections exists as one dramatic measure of increased enforcement activity. The civil penalties collected by the Board in the last two and one-half years total more than two and one-half times as much as the amount collected by the Board since 1962 when the sanction was authorized. Collections from 1962 to the start of fiscal year 1972 totaled $365,250 while the amount collected since then is near one million dollars ($927,150 to April 1, 1974). Civil Penalty files of the Board's Docket Section. In a unique joint court injunction and civil penalty suit brought on behalf of both the FAA and the CAB an additional $75,000 was collected. United States v. Royal Airline Inc. (S.D. Fla. Civil Action No. 74-86 CIV-JE, March 12, 1974).

83 Continental Air Lines, Inc., CAB Order No. 72-6-28 (June 6, 1972).
charging of unauthorized rates for cargo shipments; the failure to provide required air transportation to a particular city or town; the bumping of passengers from overbooked flights without tendering applicable denied boarding compensation; the use of false, misleading, and deceptive advertising; the holding out and providing of air transportation as an air carrier without authority issued by the Board and accompanying public protections; unreasonable preference by the carriers given to selected travelers at special private airport waiting-room facilities; and repeated in-


Orders to Cease and Desist: Frontier Airlines, Inc., CAB Order No. 73-11-95 (Nov. 21, 1973) ($1,000 civil penalty); American Airlines, Inc., CAB Order No. 73-8-6 (Aug. 1, 1973) ($3,000 civil penalty); American Airlines, Inc., CAB Order No. 73-2-80 (Feb. 20, 1973); Continental Air Lines, Inc., CAB Order No. 72-11-27 (Nov. 9, 1972).

Order to Cease and Desist: Trans World Airlines, Inc., CAB Order No. 72-7-42 (July 13, 1972), ($8,700 civil penalty).

Order to Cease and Desist: Trans World Airlines, Inc., CAB Order No. 73-4-17 (Apr. 3, 1973) (carrier required to engage in “corrective advertising” of the same size and prominence, appearing in the same publications on the same days of the week, and running for the same duration as the deceptive ads).

Orders to Cease and Desist: Aeronauts International Travel Club, Order No. 74-3-136 (Mar. 29, 1974); Davis Agency, Inc., Order No. 74-2-28 (Feb. 7, 1974) ($10,000 civil penalty); note the Board’s remark concerning the amount agreed to as the civil penalty compromise:

It is noted that Davis has arranged to refund $24,400 to charter passengers who paid more than the applicable pro rated price for purported affinity flights. In the absence of such a showing of good faith the Board would not consider $10,000 to be an acceptable compromise amount considering the number and gravity of the violations.

Continental Express International, Inc., CAB Order No. 73-11-77 (Nov. 16, 1973) ($6,000 civil penalty); The Caledonians d/b/a Caledonian Club, CAB Order No. 73-9-43 (Sept. 11, 1973); Regal Travel Corp., CAB Order No. 73-8-110 (Aug. 23, 1973) ($3,000 civil penalty); Elliott International, CAB Order No. 73-8-16 (Aug. 2, 1973) ($4,000 civil penalty); Voyager 1000, CAB Order No. 73-3-1 (Mar. 1, 1973); Lilly Anderson, CAB Order No. 71-10-116 (Oct. 26, 1971).

Pan American World Airways, Inc., CAB Order No. 73-5-4 (May 2, 1973); Trans World Airlines, Inc., CAB Order No. 68-12-55 (Dec. 10, 1968); see esp. American Airlines, Inc., CAB Order No. 74-2-42 (Feb. 12, 1974) in which a carrier was ordered to “affirmatively perform” certain acts such as “advis[ing] all pas-
fractions of the Board's tariff and charter regulations.\textsuperscript{91}

The Bureau's response to a specific problem that comes to its attention will vary according to factors such as the gravity of the problem, the workload then facing the Bureau, and the compliance disposition of the respondent. The ultimate form of resolution of the problem will often depend on the respondent's response to the Bureau. The Bureau is always prepared to discuss settlement of an enforcement problem at terms that will allow the most rapid conclusion of the controversy consistent with provisions that will protect the public interest and guard against recurrence of the situation.\textsuperscript{92} But when the issue cannot be resolved by agreement between the parties, the Bureau maintains a competent staff, sufficient resources, and an adequate number of options to impose a solution upon any unrelenting party.

Quite apart from the Bureau's activities, the Board has given direct and specific attention to the consumer. In December 1970, the Board became the first regulatory agency to set up a separate consumer affairs office, the Office of Consumer Affairs (OCA).\textsuperscript{93} The new office is presently staffed by a Director, an Assistant Director, seven analysts, and four clerical people. The office has three main functions. First, the OCA is responsible for handling and following up informal complaints received from the public. When a letter is received that alleges mistreatment by an air carrier, the correspondence is brought to the attention of the air carrier involved for its review and correction. The response from the carrier is reviewed by the OCA staff to determine if further action is needed. If the response appears complete and satisfactory, the

\textsuperscript{91} The Bureau's efforts range from the collection of a $250 civil penalty compromise for the operation of a single flight without authority (CP-28, Transportes Aereas Benianos, S.A., Sept. 20, 1971), to an Order to Cease and Desist, combined with a $101,000 civil penalty and termination of partial operating authority for massive violations (Laker Airways, Ltd., CAB Order No. 73-7-30 (July 10, 1973)).

\textsuperscript{92} See note 52 supra.

\textsuperscript{93} CAB Press Release No. 70-146 (Dec. 9, 1970).
case may be closed. If, however, the carrier's explanation is not satisfactory or indicates a need for review or change in the carrier's procedures or practices, the Office will again contact the carrier.

In facilitating the handling of consumer complaints the OCA serves a second function, that of monitoring the flow of consumer mail for significant trends that may indicate an area of need for Board investigation and rulemaking or enforcement action. The OCA recently reported to the Board an industry-wide problem involving inefficient and negligent handling of baggage claims by the airlines. A Board investigation of the subject is under consideration. In another matter, the OCA, after noting a significant number of complaints regarding "overbooking" of passengers by a particular air carrier, and that airline's failure to abide by the Board's regulations pertaining to "denied boarding" notice and compensation, forwarded the information to the Bureau of Enforcement for possible enforcement action. The referral led to a Board Order to Cease and Desist against the carrier and the collection of an $87,000 civil penalty compromise. The OCA acts as the Board's antenna to pick up messages from the traveling and shipping public and to relay them to the internal Board staffs when action is indicated. The Office is presently receiving about one thousand letters a month from the travelling public. During 1973, it received over 14,000 complaints from air travelers and shippers, dealing primarily with flight irregularities, reservations, and baggage problems.

The Office performs a third function in providing information to the public regarding such matters as Board regulations, policy, and other notices. The Office distributes a monthly Consumer Report with a statistical listing of complaints received during the preceding month categorized by individually-named carriers and twenty-five problem areas. The Office recently issued a warning to travelers to guard against flight disruptions caused by fuel shortages and offered numerous suggestions to help alleviate the problem.

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84 Trans World Airlines, Inc., Enforcement Proceeding, CAB Order No. 72-7-42 (July 13, 1972).
CONSUMER INTERESTS

V. Conclusion

The immense size of the industry involved as compared to the Bureau's present staff size is the principal debilitating factor it faces in the endless quest for full and complete compliance. And economic regulation may be greatly supported by economic health in a competitive industry. But whatever comment may be leveled in any critique of present consumer protection under the Act, the most accurate remarks can be satisfied by noting that the Bureau is aware of the concern voiced and has begun remedial enforcement action, that it has found itself limited in its authority and has in turn sought enabling legislation, and that the suggestion is one that has merit and will be implemented as soon as time and resources permit.

The terms "consumer interests" and "consumer rights" have no precise meaning in the abstract except the most literal. The terms, when applied in a concrete situation, may vary from the interests/rights of one group of consumers to the next differing as the complexion of the group differs, reflecting such variables as geographical, economic, and occupational backgrounds. The summer vacationer's interest may be different from the business traveler's, the student's differs from the spendthrift's, etc. The terms "public interest" and "public convenience and necessity" are also not suscepti-

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97 There are more than 4,200 "air carriers" regulated by the Board (see note 24 supra). The following recent statistics indicate the magnitude of certificated route air carriers operations alone. They own or lease over 2,500 aircraft, employ nearly 300,000 persons, have over-all annual operating revenues greater than nine billion dollars, and emplane almost 200 million revenue passengers a year. CAB, AIR CARRIER TRAFFIC STATISTICS 1 (Vol. XIX-7, July, 1973); CAB, HANDBOOK OF AIRLINES STATISTICS 1 (1971 ed.).

98 The "rate of return on operating investment" for the "system trucks," including Pan American, for the twelve months ending September 1973 was 4.8%, down from 5.3% for the same period last year. CAB, QUARTERLY AIRLINE INDUSTRY ECONOMIC REPORT 5 (Sept. 1973).

E.g., the Bureau recently instituted an informal, non-public investigation into suspected passenger-fare discounting and other unlawful practices in the North Atlantic air travel market. The investigation is designed to gather evidence of violations for future enforcement action. CAB Press Release No. 72-166, 73-32.

E.g., a bill was recently introduced in the House to amend the Act to require ticket agents to observe currently effective tariffs for air transportation, and to grant the Board access to certain records of ticket agents. H.R. 4212, 93d Cong., 1st Sess. (1973).

101 See §§ 102, 101(3), 401, 402, 408(b), 409(a), 411, 412(b), 416 of the
able to any precise definition. These terms when applied by the Board in concrete situations may not be narrowed to only the interests of the given group, but must also take into account the present and future needs of the entire country.\textsuperscript{102} The potential for antagonism between the interests of a finite group and the perceived national interests is obvious. The Board must moderate its actions to consider both, but must ultimately determine an issue in favor of the broader interests and in light of the statutory objectives supplied by the Act.\textsuperscript{103}

\textsuperscript{102} See Mid-Continent Airlines, Inc.—Certificates of Public Convenience and Necessity, 2 C.A.B. 63, 91 (1940).

\textsuperscript{103} See § 102 of the Act, 49 U.S.C. § 1302 (1970); ATC Agency Resolution Investigation, 29 C.A.B. 258, 308-09 (1959); Canadian Colonial Airways, Ltd.—Permit to Foreign Air Carrier, 3 C.A.B. 50, 56 (1941).