

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR

AMENDMENT TO H.R. 5576 TO PREVENT THE DEPARTMENT OF TRANSPORTATION FROM
FINALIZING OR IMPLEMENTING A NOTICE OF PROPOSED RULEMAKING THAT WOULD ALLOW
FOREIGN INTERESTS TO CONTROL U.S. AIRLINES
JUNE 14, 2005

Mr. Chairman, I have an amendment at the desk.

Mr. Chairman, our government is engaged in one of the most important aviation policy decisions since de-regulation was enacted in 1978: the Department of Transportation's (DOT) notice of proposed rulemaking (NPRM) on foreign ownership. The DOT's proposed rulemaking on foreign ownership in effect would trade away the crown jewel of American transportation -- our nation's airlines -- to their foreign competitors by changing longstanding policies prohibiting foreign interests from exercising "actual control" over U.S. airlines. My amendment, which is being offered along with the Gentleman from New Jersey, Mr. LoBiondo, and the Gentleman from Texas, Mr. Poe, would prohibit the DOT from finalizing or implementing the policy proposed in the NPRM during the next fiscal year. This will give the DOT an opportunity to propose, and Congress to consider, whether there should be changes in the law governing foreign control. Any changes in the law must come from Congress -- not by administrative fiat!

For the past 65 years, governing law requires that U.S. citizens have “actual control” over a U.S. airline. In the NPRM, DOT attempts to “interpret” this requirement to require that U.S. citizens *only* control decisions affecting the Civil Reserve Air Fleet, security, and safety. DOT’s proposed rule would allow foreign interests to control all commercial aspects of a U.S. airline’s operations, including fleet mix, routes, frequency, classes of service and pricing. How can it possibly be claimed that it is a reasonable interpretation of “actual control” to not require control over commercial decisions that are at the heart of an airline’s operations? The courts have made it clear that although an Executive Branch agency has the discretion to interpret a statute, an agency does not have the discretion to make interpretations that conflict with the “plain meaning” of the statute.

The DOT is advancing this interpretation of “actual control” to conclude an Open Skies agreement with the European Union, an agreement which the State Department and the DOT describe as a major breakthrough, but which in reality, would provide only limited benefits for U.S. airlines.

We have a \$9 billion surplus balance of payments in aerospace trade with the North Atlantic Community. We should not let their airlines and their financial interests control U.S. carriers and decide which markets they will serve and what type of aircraft they will buy. Under the NPRM, foreign interests could restructure the

route system and fleet of a U.S. airline so that the U.S. airline would become, in effect, a "feeder" for the international operations of a foreign carrier. Such a restructuring could hurt small community air service. A foreign investor could also decide to take an airline out of the Civil Reserve Air Fleet program, or it could accomplish this indirectly by changing the fleet mix of a U.S. airlines to reduce the number of large, wide-body civilian aircraft that the Department of Defense needs during a time of war.

In addition, U.S. airline employees could lose high-quality job opportunities, in favor of employees of the foreign carrier. There could be similar effects on other aviation industry employees. Foreign investors would be inclined to support the purchase of aircraft produced by foreign companies, and to have the airline use foreign repair stations.

We must not allow unelected, international trade bureaucrats in the State Department and the Transportation Department decide the fate of U.S. aviation, which drives nearly 6 percent of U.S. economic activity. The DOT's proposed policy would make fundamental changes to our nation's aviation system, is contrary to recent Congressional mandates in this area, and should not be unilaterally imposed by the Executive Branch. Rather, such a major change should only be considered after

thorough debate by the appropriate Congressional committees that are vested with the jurisdiction in such international aviation matters.

Accordingly, I strongly urge members to support this amendment and stop the DOT from finalizing or implementing its proposed policy that would allow foreign interests to control U.S. airlines.